



City Hall, Council Chambers  
401 S. Johnstone Avenue  
Bartlesville, OK 74003

**REGULAR MEETING OF THE  
BARTLESVILLE CITY COUNCIL**

**Monday, December 3, 2018  
7 p.m.**

**City Attorney, Jerry Maddux  
918-338-4282**

**AGENDA**

- 1. Call to order the business meeting of the Bartlesville City Council by City Attorney, Jerry Maddux.**
- 2. Oath of Office administered by Mr. Maddux to Mr. Dale Copeland, Ward 1, Mr. Paul Stuart, Ward 2, Mr. Jim Curd, Jr., Ward 3, Mr. Alan Gentges, Ward 4 and Mr. Trevor Dorsey, Ward 5.**
- 3. Roll Call and Establishment of a Quorum.**
- 4. The Invocation will be provided by Father Stephen Hood, Rector, St. Luke's Episcopal Church.**
- 5. Citizens to be heard.**
- 6. Discuss and take action on the election of Mayor.**
- 7. Discuss and take action on the election of Vice Mayor.**
- 8. City Council Announcements and Proclamations.**
  - Veterans Suicide Awareness Month December 2018
- 9. Authorities, Boards, Commissions and Committee Openings**
  - One opening on the Construction and Fire Codes Appeals Board
  - One opening on the Street and Traffic Committee
  - Two openings on the White Rose Cemetery Board
- 10. Consent Docket**
  - a. Approval of Minutes**
    - i. The Regular Meeting Minutes of November 5, 2018.
    - ii. The Special Meeting Minutes of November 19, 2018.
  - b. Approval and/or Ratification of Appointments and Reappointments to Authorities, Boards, Commissions and Committees**
    - i. Reappoint Brady Haffner to an additional three-year term on the Street and Traffic Committee at the recommendation of Councilman Dorsey.
  - c. Approval of Agreements and Contracts**
    - i. Extension of Option for Lease of Real Property between the City of Bartlesville and KCD Tower, LLC.
    - ii. Pharmacy Renewal Agreement with RX Benefits for the City of Bartlesville employees.

- iii. Professional services contract with Meshek and Associates for professional services for the installation and configuration of ESRI's ArcGIS Enterprise Software
- iv. Professional services contract with Keleher Architects for the Architectural and Engineering Design of the proposed renovation and expansion of the Water Utilities Building
- v. Professional services contract with Ambler Architects for the Architectural and Engineering Design of the Tower Center at Unity Square
- vi. Amendment #2 to a professional service contract with Tetra Tech to update the Wastewater Treatment Plan include a Reuse Feasibility Study
- vii. Professional Services agreement with Municipal Finance Services, Inc. to provide continuing disclosure reporting assistance.
- viii. Professional Services agreement with Arbitrage Compliance Specialist, Inc. to provide arbitrage calculations for General Obligation Bond series 2008 and 2008B.

**d. Receipt of Financials**

- i. Interim Financials for the two months ending August 31, 2018
- ii. Interim Financials for the three months ending September 2018

- 11. Discuss and take action to accept a grant for \$10,000 from Arvest Foundation to assist in the development of the Tower Center project. Presented by Lisa Beeman, Director of Community Development.**
- 12. Discuss and take action to award Bid No. 2018-2019-019 for Daniels Fields Light. Presented by Councilman Curd.**
- 13. Discuss and take action on an Ordinance Amending Chapter 5, Article IV of the Bartlesville Municipal Code providing regulations for medical marijuana business establishments, including dispensing, growing, processing and research facilities with the City of Bartlesville; identifying acts that are not authorized; declaring an emergency and providing for the severability thereof. Presented by Lisa Beeman, Director of Community Development.**
- 14. Discuss and take action to appoint Jason Muninger as Treasurer for the City of Bartlesville. Presented by Mike Bailey, City Manager.**
- 15. Discuss and take action regarding an amendment to Ordinance No. 3371 pertaining to the Street and Traffic Committee. Presented by Micah Siemers, P.E., Director of Engineering.**
- 16. Discuss and take action to review and reaffirm the Code of Ethics Policy, Resolution #3326. Presented by the Mayor.**
- 17. Discuss and take action to review and reaffirm the Current Rules of Conduct with Roseburg's Rules of Order. Presented by the Mayor.**
- 18. Discuss and take possible action regarding City Council liaisons to Authorities, Boards, Commissions and Committees. Presented by the Mayor.**
- 19. New Business**

20. City Manager and Staff Reports.

21. City Council Comments and Inquiries.

22. Adjournment.

The Agenda was received and filed in the Office of the City Clerk and posted in prominent public view at City Hall at 5 p.m. on Thursday, November 29, 2018.

*Jason Muninger*

Jason Muninger, City Clerk/Finance Director

*/s/ Elaine Banes*

by Elaine Banes, Deputy City Clerk

All discussion items are subject to possible action by the City Council. Agenda items requiring a public hearing as required by law will be so noted. The City Council may at their discretion change the order of the business agenda items. City of Bartlesville encourages participation from all its citizens. If participation at any public meeting is not possible due to a disability, notification to the City Clerk at least one working day prior to the scheduled meeting is encouraged to make the necessary accommodations. The City may waive this rule if signing is not the necessary accommodation.

# *Oath of Office*

State of Oklahoma        )  
  ) ss.  
County of Washington    )

I, \_\_\_\_\_, do solemnly swear (or affirm) that I will support, obey, and defend the Constitution of the United States, and the Constitution of the State of Oklahoma, and will discharge the duties of my office with fidelity; that I have not paid, or contributed, either directly, or indirectly, any money or other valuable thing, to procure my nomination or election (or appointment), except for necessary and proper expenses expressly authorized by law; that I have not, knowingly, violated any election law of the State or procured it to be done by others in my behalf; that I will not knowingly receive, directly or indirectly, any money or other valuable thing, for the performance or non-performance of any act or duty pertaining to my office, other than the compensation allowed by law, and I further swear (or affirm) that I will not receive, use or travel upon any free pass or on free transportation during my term of office.

\_\_\_\_\_  
Principal

Subscribed and sworn to before me this \_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_

\_\_\_\_\_  
Notary Public

Certificate No. \_\_\_\_\_

My commission expires: \_\_\_\_\_

***LOYALTY OATH***

(H.B. 981 – 1968 Okla. Leg.)

I do solemnly swear (or affirm) that I will support the Constitution and the laws of the United States of America and the Constitution and the laws of the State of Oklahoma, and that I will faithfully discharge, according to the best of my ability, the duties of my office or employment during such time as I am

\_\_\_\_\_  
(Here put name of office, or, if an employee, insert “An Employee of \_\_\_\_\_” followed by the complete designation of the employing officer, agency, authority, commission, department or institution.)

\_\_\_\_\_  
Affiant

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_.

\_\_\_\_\_  
Notary Public, or other officer authorized  
to administer oaths of affirmations.



***Official Proclamation  
Veterans Suicide Awareness Month***

**WHEREAS**, according to the most recent U.S. Department of Veterans Affairs study, approximately 20 veterans die by suicide every day in the United States; and

**WHEREAS**, veterans face a disproportionate risk of suicide when compared to the general population; and

**WHEREAS**, the highest risk for suicide is among younger veterans, especially those who served on the battlefields of Iraq and Afghanistan; and

**WHEREAS**, the risk of suicide can be reduced through awareness, proper education, resources, and treatment; and

**WHEREAS**, suicide affects each and every one of us in some way and it is up to us to help those we love by being good neighbors, good friends and good family members if we are to protect our veterans from such a tragic fate.

**NOW THEREFORE**, the Bartlesville City Council does hereby officially proclaim December, 2018 as “Veterans Suicide Awareness Month” and encourage all citizens to recognize how serious suicide is and the steps each of us can take to protect those around us from such tragedy.

***IN WITNESS WHEREOF***, we hereunto set our hands and caused the Official Seal of the City of Bartlesville, Oklahoma, to be affixed this 3rd day of December, in the year of our Lord two thousand and eighteen.

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Dale Copeland, Ward 1

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Paul Stuart, Ward 2

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Jim Curd, Jr. Ward 3

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Alan Gentges, Ward 4

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Trevor Dorsey, Ward 5



City Hall, Council Chambers  
401 S. Johnstone Avenue  
Bartlesville, OK 74003

**MINUTES OF THE  
REGULAR MEETING OF THE  
BARTLESVILLE CITY COUNCIL  
Monday, November 5, 2018  
7:00 p.m.**

**Mayor Dale Copeland  
918-338-4282**

**MINUTES**

(Notice of Meeting was posted 12/15/17. Agenda posted November 1, 2018)

City Council Members present were Mayor Dale Copeland, Vice Mayor John J. Kane, Jim Curd, Jr., Alan Gentges and Trevor Dorsey.

City staff present were Mike Bailey, City Manager, Jerry Maddux, City Attorney; Terry Lauritsen, Director of Water Utilities; Lisa Beeman, Director of Community Development and Park Planning; Micah Siemers, Director of Engineering; Keith Henry, Director of Public Works; Nancy Warring, Grants Administrator; CID Sgt. Jim Warring; Kelli Williams, Chief Communications Officer; Police Chief Tracy Roles; and Elaine Banes, Executive Assistant. Also in attendance were City Council candidates Remona Colson and Paul Stuart.

- 1. Mayor Copeland called the business meeting of the Bartlesville City Council to order at 7:00 p.m.**
- 2. Roll call was conducted and a quorum established.**
- 3. The Invocation will be provided by Errol Hada, Lighthouse Outreach Center.**
- 4. Citizens to be heard.**

Fletcher Daniels spoke in regards to the name chosen by the Tower Green Design Committee for the downtown green space project, reporting that a public petition was taken and over 500 citizens were in favor of the name of Tower Green. He appreciated the committee's work, but asked that consideration be given to the name "Tower Green" in place of the name "The Green at Unity Square".

Maria Gus provided context on the process of naming the downtown green space. She served on the Tower Green Design Committee as Community Center Trust Authority representative, and as such, she felt it was her duty to include their name as part of the project name. She pointed out that the Community Center will be working cooperatively to maintain and assist with events. She also pointed out that the name was not changed since there was no official name of the project. She added that it had been her honor and a privilege to serve on the committee, and appreciated their hard work.

Jim Mills asked the Council to delay approval of vote on the name of the downtown green space and perhaps use the Bartlesville Community Center mailing list to clarify two issues, 1) the name since public opinion highly favored "Tower Green"; and 2) the issue of an interactive water feature. His opinion was that kids playing and music venues do not go together.

Remona Colson asked the Council to table hiring a new city attorney until the new City Council is in place. Her concerns are the timing of the appointment, and the lack of attention given to one of the applicants. She noted that there is no urgency for this appointment and that this Council is not necessarily the one who will be working with the city attorney.

Annah Fischer stated that it been a privilege to serve on the Tower Green Design Committee and thanked the Council for appointing her. She added that thirteen meetings held, open to the public and well publicized, with many citizens in attendance. She appreciated those who attended recognizing the time and effort it takes to attend. She stated that the committee received input and took everything into consideration. She added that as members went through the process, “unity” stood out to them. She thanked the committee members, Lisa Beeman, the Price Tower Board, the Community Center Board, and Ambler Architecture.

Hillary Kamplain stated that although she was not a member of the Tower Green Design Committee, she attended the meetings. She felt that they did listen to everyone’s input, and encouraged the City Council to approve the plan and the name, “The Green at Unity Square”, which is a beautiful representation of the ideas that were heard.

Earl Sears came to say thank you to the City Council for their service. He referred to a meeting in October where a citizen treated the City Council very disrespectfully, and he was saddened that they were called liars. He feels that the way the City Council handles meetings and citizens who wish to speak at the meetings is very honorable, and he thanked them again for the way they conduct themselves.

## **5. City Council Announcements and Proclamations.**

- Mr. Gentges read the Extra Mile Day – November 1, 2018 proclamation.
- Mr. Curd read the Small Business Saturday – November 24, 2018 proclamation.

The Mayor also welcomed two young ladies from Dewey High School attending the meeting in order to obtain credit in their college government class.

## **6. Authorities, Boards, Commissions and Committee Openings**

- One opening on the Construction and Fire Codes Appeals Board
- Three openings on the White Rose Cemetery Board

Mayor Copeland read the openings and encouraged citizens to volunteer on City Committees. Applications can be found at [www.cityofbartlesville.org](http://www.cityofbartlesville.org) or at City Hall in the City Manager’s Office.

## **7. Consent Docket**

### **a. Approval of Minutes**

- i. The Special Meeting Minutes of October 22, 2018.

### **b. Approval and/or Ratification of Appointments and Reappointments to Authorities, Boards, Commissions and Committees**

- i. The reappointment of Mr. Tyler Vaclaw for an additional three-year term on the Bartlesville Redevelopment Trust Authority at the recommendation of Mayor Copeland.
- ii. The appointment of Ms. Blair Ellis to a three-year term on the Bartlesville Redevelopment Trust Authority at the recommendation of Mayor Copeland.

- iii. Addendum to the Agenda – Reappointment of Mr. David Nelson to an additional three-year term on the Bartlesville Redevelopment Trust Authority at the recommendation of Mayor Copeland.
- iv. Addendum to the Agenda – Appointment of Mr. Phil Bates to fill an unexpired term on the White Rose Cemetery Board at the recommendation of Mayor Copeland.

**c. Approval of Resolutions**

- i. A resolution naming the authorized signatories for all of the City of Bartlesville Investment and Banking Accounts.
- ii. A resolution amending the budget of the City of Bartlesville, Oklahoma for Fiscal Year 2018-2019, appropriating unanticipated revenue from the BRTA for downtown landscaping.
- iii. A resolution amending the budget of the City of Bartlesville, Oklahoma for Fiscal Year 2018-2019, appropriating Oklahoma Highway Safety Office Grant funds for patrol overtime and travel for training.
- iv. A resolution amending the budget of the City of Bartlesville, Oklahoma for Fiscal Year 2018-2019, appropriating JAG Grant funds for bullet proof vests.
- v. A resolution amending the budget of the City of Bartlesville, Oklahoma for Fiscal Year 2018-2019, appropriating Oklahoma Tourism and Recreation Department Grant for MJ Lee Lake Lighting Project.
- vi. A Non-Corporate resolution regarding an investment platform change with Arvest Asset Management, which includes approval of the Non-Corporate Agreement as well.

**d. Approval of Agreements, Contracts and Memorandum of Understanding**

- i. Ground Sub-Lease with Youth Scoreboards, LLC that provides for the installation of eight (8) videoboard scoreboards for the fields located in the Price Field North Quads.
- ii. Amendment of Contract with Tyler Technologies substituting TCM Standard for TCM Enterprise Edition.

**e. Approval of CDBG Anti-Displacement Plan**

- i. Residential Anti-Displacement and Relocation Assistance Plan for the City's participation in the FY 2018 Community Development Block Grant Program (Contract #17281 CDBG 18).

**f. Receipt of Permit**

- i. Receipt of Permit No. SL000074180294 for the construction of 1,620 linear feet of twenty-one (21) inch PVC, 2,032 linear feet of eighteen (18) inch PVC sanitary sewer line and all appurtenances to serve the Basins T-05 & T-06, Washington County, Oklahoma.

**g. Receipt of Financials**

- i. Interim Financials for one month ending July 31, 2018.

**h. Receipt of Bids**

- i. Bid No. 2018-2019-018 for Soil Conditioner
- ii. Bid No. 2018-2019-019 for Daniels Field Lights

Mayor Copeland read the consent docket in its entirety. Mr. Curd pulled Items 7.c.iv., 7.c.v., 7.d.i. for discussion.

Vice Mayor Kane moved to approve the consent docket less those items pulled, seconded by Mr. Gentges.

Aye: Mr. Dorsey, Mr. Gentges, Mr. Curd, Vice Mayor Kane, Mayor Copeland  
Nay: None  
Motion: Passed

Mr. Curd inquired about the JAG Grant funds (Item 7.c.iv.) that provided bullet proof vests. Ms. Warring came forward and provided detailed information regarding the grant.

At Mr. Curd's request, Ms. Beeman provided information regarding the MJ Lee Lake Lighting Project (Item 7.c.v.)

Ms. Beeman also provided the information regarding the Ground Sub-lease with Youth Scoreboards, LLC. The organization, founded by Barry Switzer, will provide scoreboards for eight fields located in the two north quads at Price Fields. The City does not have to pay for the scoreboards but will provide power, safe-keeping and storage of the remote control devices.

Mr. Curd moved to approve Items 7.c.iv, 7.c.v, and 7.d.i. as presented seconded by Vice Mayor Kane.

Aye: Mr. Dorsey, Mr. Gentges, Mr. Curd, Vice Mayor Kane, Mayor Copeland  
Nay: None  
Motion: Passed

**8. Discuss and take action on a recommendation from the Tower Green Design Committee regarding a preferred design and name for the community green space as approved in the March 2018 GO Bond Election. Presented by Chairmen Curd and Gentges.**

Mr. Gentges provided background of the project, committee development, surveys conducted, the number of open meetings, the Taliesin student contribution, and how important public input was considered. He added that at a future meeting there will be a recommendation to add an interactive water feature, but further research into budgeting is necessary. He continued that the name "Tower Green" had been a working name but was not considered the official name. He stated that at one point there were dozens of names being considered, and ultimately the committee came up with "The Green at Unity Square". He went on to describe the process of providing for restrooms, creating a centralized location for food trucks, keeping the existing fountain, creating a "wild area", and going through several phases of design. He stated his appreciation of city staff, the Taliesin students, Ambler Architects, and the community. He stated that he feels like that all parties involved did a good job and commended the committee for their diligence, as well as Jim Curd who he stated was the most energetic person around.

Mr. Curd stated that the committee, and all parties involved, knew from the start there was not enough money for everything, so the biggest job was to drive the project within the budget. He added that some ideas for the green space could be funded in the future. The Park Board met and agreed to recommend moving the water feature from Johnstone Park to

the Tower Green, but that recommendation will be decided by the Council at a later date. He continued that the project will not cost more than what has been appropriated by the City. He concluded that this project was passed by voters with over 70% approval, he feels that this is a long-term project that can be built up over time, and will be one of the most widely used areas of the City.

Scott Ambler, Ambler Architects, stated that he and Val Callaghan, Community Center Director, started dreaming about a project like this three years ago-connecting the two great venues of the Price Tower and the Community Center. He added that their excitement grew when the citizens of Bartlesville wanted the same thing. Using a PowerPoint, Mr. Ambler and Mr. Winters from the Taliesin School walked through the design concepts and provided the final design for approval by the City Council. Mr. Winters thanked the community for making his students welcome and stated that they learned a lot while they were here.

Discussion covered Vice Mayor Kane's concern that the project keep a moving forward and maintain a consistent vision. Mr. Ambler suggested that a committee be formed to be the "keeper" of the space, book events, vet different additions to the area; going forward and maintaining consistent vision; and continue taking advantage of the momentum. Further discussion covered the drainage project in the area which begins after the first of the year; Mr. Curd added how there will be multi-generational elements of the space, thanking the Taliesin students for their ideas creating a space that is malleable so it can grow with the community.

Additional discussion ensued regarding the naming of the green space. Mayor Copeland reiterated Mr. Gentges' statement that "Tower Green" was the working title, but not the official name. Mr. Curd stated that he appreciated all of the work that the committee did and the public input. He added that he would like the City Council to approve the design plan but delay acting on the name. Mr. Gentges stated that he was comfortable with the design and the name, but is also comfortable with further review of the name of the project. Vice Mayor Kane asked how the name, "The Green at Unity Square" was derived. Mr. Gentges explained that the committee received many different names, then the committee boiled it down to two or four, then finally, "The Green at Unity Square". He added that it was not something done on the spur of the moment, that there had been a great deal of deliberation. The Mayor stated that the name is important since it will assist in what is called "branding". He does agree that the design approval needs to be moved forward. Vice Mayor Kane stated his reservations in moving the water feature from Johnstone Park, with Mr. Gentges stating that it is not in the current design being put forward for approval at this meeting. Mr. Curd stated that the Vice Mayor's reservation is duly noted.

Mr. Curd moved to approve the Design as presented, seconded by Mr. Dorsey.

Aye: Mr. Gentges, Mr. Curd, Vice Mayor Kane, Mr. Dorsey, Mayor Copeland  
Nay: None  
Motion: Passed

**9. Discuss and take action to award Bid No. 2018-2019-018 for Soil Conditioner. Presented by Vice Mayor Kane.**

Vice Mayor Kane moved to award the bid to Murphy Products, Oklahoma City, Oklahoma in the amount of \$77,000 as presented, seconded by Mr. Gentges.

Aye: Mr. Curd, Vice Mayor Kane, Mr. Dorsey, Mr. Gentges, Mayor Copeland  
Nay: None  
Motion: Passed

- 10. Discuss and take action to approve a recommendation from the Bartlesville Development Authority (BDA) Board of Trustees to transfer approximately three acres (Tract 20) within the Bartlesville Industrial Park to Phillips Precision Machining (PPM) for the construction of a new manufacturing facility, and to transfer up to \$550,000 from the Economic Development Fund to the BDA for provision of working capital and building equity for PPM Project. Presented by David Wood, President, Bartlesville Development Authority.**

David Wood presented the Bartlesville Development Authority's recommendation. Using a PowerPoint, Mr. Wood reported that in late February, the BDA was approached by Mark Phillips, a 28-year veteran Production Manager of Siemens' machine department to discuss the potential of retaining the work in Bartlesville by forming a new company, Phillips Precision Machining (PPM) to produce the "outsourced parts utilizing the soon-to-be former Siemens employees and maintaining Siemens wage/benefits schedule. The process began, meeting with the Siemen's Product Manager from Houston and Siemens' controller for the Bartlesville operation. It was determined that with the assistance provided by the BDA, the venture could be successful. Further steps involving proforma income statements, a lending commitment from BancFirst, Siemens Real Estate approval allowing space for the business through September 2019, and Keleher Architects vision on a new facility, it was determined that the BDA could provide a \$200,000 forgivable loan for retention of the 16 baseline employees and \$350,000 in building equity to be repaid over at term not to exceed 10 years. Mr. Wood continued to explain the forgivable loan, the no-cost site in the Bartlesville Industrial Park of three-acres, and building equity. Mr. Wood concluded that the BDA believes the overall business case supports the aggressive level of recommended assistance for PPM.

Mr. Curd acknowledged this completely unique deal and commended the BDA staff, Mr. Phillips and BancFirst who stepped up to make this project work. Mr. Gentges agreed and fully supports retaining the jobs and the new company. He stated his appreciation to the employees in attendance. Mayor Copeland agreed that this type of venture is the heart of economic development, organic growth. He added that the BDA has a good batting average and is excited to keep the jobs here in Bartlesville.

Mr. Dorsey moved to approve the transfer of the three acres in the Bartlesville Industrial Park to Phillips Precision Machining, and to transfer funds up to \$550,000 from the Economic Development Fund to the Bartlesville Development Authority as presented, seconded by Mr. Gentges.

Aye: Vice Mayor Kane, Mr. Dorsey, Mr. Gentges, Mr. Curd, Mayor Copeland  
Nay: None  
Motion: Passed

- 11. Receive bids for the purchase of \$2,500,000 Combined Purpose General Obligation Bonds, Series 2018C of the City and vote to award said Bonds to the lowest bidder complying with the notice of sale and instructions to bidders or to reject all bids. Presented by Nate Ellis, The Public Finance Law Group and Jon Wolff, Municipal Finance Services, Inc.**

Mr. Wolff reported that three bids were received with the recommendation to award the bid to Hutchinson, Shockey, Erley & Company at the true interest cost of 2.970909% with the net interest cost of \$458,178.25.

Mr. Dorsey moved to receive bids and award said bonds to Hutchinson, Shockey, Erly & Company as presented, seconded by Mr. Curd.

Aye: Mr. Dorsey, Mr. Gentges, Mr. Curd, Vice Mayor Kane, Mayor Copeland  
Nay: None  
Motion: Passed

- 12. Discuss and take action to approve an Ordinance providing for the issuance of Combined Purpose General Obligation Bonds, Series 2018C in the sum of \$2,500,000 by the City of Bartlesville, Oklahoma, authorized at an election duly called and held for such purpose; prescribing form of Bonds; providing for registration thereof; designating the Registrar for the issue; providing for levy of an annual tax for the payment of principal and interest on the Bonds and fixing other details of the issue; approving the forms of a Continuing Disclosure Agreement and an Official Statement; authorizing executions and actions necessary for the issuance and delivery of the Bonds; and declaring an emergency. Presented by Nate Ellis, The Public Finance Law Group and Jon Wolff, Municipal Finance Services, Inc.**

Mr. Wolff provided a brief explanation of the ordinance.

Vice Mayor Kane moved to adopt the Ordinance as presented, seconded by Mr. Curd.

Aye: Mr. Gentges, Mr. Curd, Vice Mayor Kane, Mr. Dorsey, Mayor Copeland  
Nay: None  
Motion: Passed

Vice Mayor Kane moved to declare an emergency as presented, seconded by Mr. Gentges.

Aye: Mr. Curd, Vice Mayor Kane, Mr. Dorsey, Mr. Gentges, Mayor Copeland  
Nay: None  
Motion: Passed

- 13. Discuss and take possible action to approve an employment contract with Jess Kane for City Attorney. Presented by Mayor Copeland and City Attorney Jerry Maddux.**

Mayor Copeland reported that the two applications received were reviewed, and discussion was held during an Executive Session of the City Council on October 22, 2018. He stated that following the meeting, he asked current City Attorney Maddux to enter into employment discussions with Jess Kane. At this point, Vice Mayor Kane stated that although he had reviewed the Ethics Commission, City Charter and knew that he was well within his rights to participate in voting on this matter, he was cognizant of public perception. He recused himself from further discussion and voting, and left the Council Chambers. Mayor Copeland stated that Mr. Maddux prepared a contract at his request. Mr. Maddux presented it to Mr. Kane, and Mr. Kane was acceptable to the contract. Mr. Maddux reviewed the contract with Council, adding that he feels Mr. Kane would be the right choice as City Attorney which would begin January 1, 2019.

Mr. Dorsey moved to approve the employment contract with Jess Kane as presented, seconded by Mr. Curd.

Aye: Mr. Dorsey, Mr. Gentges, Mr. Curd, Mayor Copeland  
Nay: None  
Motion: Passed

#### **14. New Business.**

There was no new business.

#### **15. City Manager and Staff Reports.**

Mr. Bailey stated that although it had been a lengthy meeting, it had been a good meeting with long-term issues handled professionally.

He reminded citizens that the week of November 12 was free leaf pickup. This service will be conducted again the week of December 17.

Mr. Bailey encouraged everyone to attend the Veterans Day Parade, Saturday Nov. 10 at 11.

#### **16. City Council Comments and Inquiries.**

Vice Mayor Kane recognized the Tower Green Design Committee, including Mr. Curd and Mr. Gentges. He stated his hope that citizens will see that everyone has been heard.

Mr. Dorsey also thanked Mr. Gentges for his term and work on the committee.

Mr. Curd also congratulated Mr. Gentges on his good work on all levels he has served.

Mayor Copeland attended the successful and well-attended Public Safety Open House this past Saturday.

The Mayor also appreciated the passion and different perspectives as it pertain to the downtown green space discussions.

#### **17. There being no further business to discuss, the Mayor adjourned the meeting at 9:24 p.m.**

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Mayor Dale W. Copeland

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Jason Muninger, City Clerk/Finance Director



Council Chambers  
401 S. Johnstone Avenue  
Bartlesville, OK 74003

**MINUTES OF THE  
SPECIAL MEETING  
OF THE  
BARTLESVILLE CITY COUNCIL**

**Monday, November 19, 2018  
7:00 p.m.**

**Mayor Dale Copeland  
918-338-4282**

**MINUTES**

(Notice of Meeting and Agenda posted November 15, 2018)

City Council Members present were Mayor Dale Copeland, Vice Mayor John J. Kane, Jim Curd, Jr., Alan Gentges and Trevor Dorsey.

City staff present were Mike Bailey, City Manager, Jerry Maddux, City Attorney; Terry Lauritsen, Director of Water Utilities; Lisa Beeman, Director of Community Development and Park Planning; Kelli Williams, Chief Communications Officer; and Elaine Banes, Executive Assistant. Also in attendance were City Council Ward 2 Elect Paul Stuart.

- 1. Mayor Copeland called the business meeting of the Bartlesville City Council to order at 7:00 p.m.**
- 2. Roll call was conducted and a quorum established.**
- 3. The Invocation will be provided by Mayor Copeland.**
- 4. Citizens to be heard.**

Sherry Gray, Administrative Director of the Bartlesville Community Center, spoke in favor of the name the Tower Green Design Committee unanimously approved or if that is not chosen, to choose a name that is unique. For example, a name that either includes both the Price Tower and the Community Center, or a name that does not include either entity.

Val Callaghan, Managing Director of the Bartlesville Community, read an email from Pat Wright, a member of the Community Center Trust Authority, at her request. The email covered that she is thankful for the thought that went into the committee's recommendation of the name they submitted. In her email, Mrs. Wright broke down the aspects of the name, "Tower Green at Unity Square", and asked that the City Council approve the name.

Shelby Brammer reported that it was her pleasure to serve on the Tower Green Design Committee. Continuing, she stated that it was her understanding, from the beginning, that part of their duties was to develop a name for the green space. She said that the committee debated many different names, providing a sampling of them. The name chosen did not hold a political agenda, and it was felt that it encompassed both the Price Tower and the Community Center.

Angela Box stated in this time of big problems, it is fun to work on a problem like this and that looking at this competition between two buildings, is myopic. She feels that the Council should look at what is good for the whole city. She continued that Bartlesville is known for the Price Tower and Community Center, as well as Woolaroc. She suggested the name Price Tower Green and to take time to decide.

Annah Fischer stated her appreciation for the opportunity of speaking to the City Council face-to-face. She reported that the Tower Green Design Committee held several open meetings that were well attended, and that the chairman allowed public input throughout the meetings. At the June 14 meeting, it was posed as to what should the green space be named, followed by numerous discussions at numerous meetings. She addressed those who have submitted ideas and opinions after the fact; the survey; the concern voiced about a direct tie to a private entity; and how the committee voted unanimously to name the space "The Green at Unity Square." Ms. Fischer concluded that she is proud to have a Council that makes hard decisions, that they are decisive and forward thinking, and encouraged them to make a decision this evening.

Jay Webster stated that he concurs with Ms. Fischer adding that he feels it is amazing that we can live in a community that the citizens can put their fingerprint on projects like this. He stated his appreciation to serve on the Tower Green Design Committee, and that Councilmen Curd and Gentges kept the meetings open and received input from citizens. He said that the survey was for public input but that it should not be weighed any more than any other way information was gathered. He stated that he has been privileged to work in branding and marketing products and felt the name approved by the committee spoke about how the design came together, not beholden to any one group or person and also speaks to the aspirations seen for that space. He asked the City Council to approve the name submitted by the committee.

#### **5. City Council Announcements and Proclamations.**

There were no announcements or proclamations.

#### **6. Authorities, Boards, Commissions and Committee Openings**

- One opening on the Construction and Fire Codes Appeals Board
- Two openings on the White Rose Cemetery Board

Mayor Copeland read the openings and encouraged citizens to volunteer on City Committees. Applications can be found at [www.cityofbartlesville.org](http://www.cityofbartlesville.org) or at City Hall in the City Manager's Office.

#### **7. Discuss and take possible action on a process for determining the name of the downtown green space and/or approving a name. Presented by Councilman Curd.**

Mr. Curd commented on how he had driven by the Price Tower and Community Center as he came into the meeting. He thanked all of the committee members, those who spoke tonight, and that he respected the thought that has been put into the name since the last City Council meeting. He stated his appreciation to those who responded to the survey, and to those who put the petition together to name it "Tower Green". He added that he feels that the Price Tower and Community Center should both be incorporated into the name of the green space, therefore, Tower Center should be part of the name. He then welcomed input from the other council members.

Vice Mayor Kane agreed that tonight's comments were well received, and that the deliberation that was given to selecting a name was not taken lightly. He stated that he was in favor of selecting the name the committee submitted, "The Green at Unity Square".

Mr. Gentges thanked everyone who spoke for their involvement. He stated that he is comfortable with many of the names that were discussed and comfortable with the name recommended by the committee. He added that he is thankful for the additional two weeks in order to hear other ideas. He concluded that he agreed with Vice Mayor Kane and gives deference to the recommendation of the committee and the work they put into it.

Mr. Dorsey agreed there were a lot of great sounding names, adding that he supports the name recommended by the committee. He stated that he appreciated the time they put into it and felt that the city will adopt whatever is agreed upon.

Mayor Copeland stated that he also supported waiting two weeks to decide on the name. That he wanted the last meeting to celebrate the accomplishment of the committee on the design plan, without any negativity. He asked Mr. Curd to provide his PowerPoint recounting how the process has come to this point.

Mr. Curd reiterated that he felt it was important that Tower and Center are both communicated in the name. He suggested the name, "Tower Center at Unity Square" complete with a picture of the logo.

Mr. Curd moved to name the project "Tower Center at Unity Square", seconded by Vice Mayor Kane.

Further discussion ensued covering deciding the name tonight so that work could move forward on the project; how the name submitted by Mr. Curd does bind the two entities together; how this could promote successful branding; keeping the Unity Square in the name; and praise for Councilmen Curd and Gentges for the work they have put into the project.

Aye: Mr. Dorsey, Mr. Gentges, Mr. Curd, Vice Mayor Kane, Mayor Copeland  
Nay: None  
Motion: Passed

- 8. At 7:36 p.m. the City Council moved into the First Floor Conference Room for a Workshop Session.**
- 9. Discussion on construction management services for the downtown green project. Presented by Terry Lauritsen, Utilities Director.**

Mr. Lauritsen reported that the next step after approval of the conceptual design involved Ambler Architects pulling together proposals from their team for the engineering and architectural design of these facilities, which will be presented for council action at the December 3 meeting. Mr. Lauritsen explained that an additional option to augment the design team and construction administration is to utilize a construction manager. Construction management is a professional service type of agreement where the owner contracts with a construction entity to provide a series of services that include, but are not limited to, design review, scheduling, cost control, value engineering, constructability evaluation, preparation and coordination of bid packages, and construction administration. He explained the two forms of Construction Management: (1) Agency construction management is where the construction entity provides services to the owner without taking on financial risks for the execution of the actual construction; and (2) at-risk construction management where the construction entity, after providing services during the pre-construction period, takes on the financial obligation to carry out construction under a specified cost agreement. The utilization of a construction manager is not selecting a contractor to build the improvements but a construction professional to aid in plan reviews, and construction estimates to keep a design within budget as well as delineation/coordination of bid packages, inspection and project accounting to track progress through construction. Since construction Management is a professional service, State law requires selection based on qualifications and fees negotiated once the most qualified construction manager has been identified. Staff is seeking discussion from the City Council prior to moving forward.

Discussion covered that it is important to have city staff involved in making sure inspections are completed per regulations; bids must be solicited if Council directs this course of action; owner and construction manager will agree on contingency so there is a cushion for unexpected items that could not have been foreseen; if a bid comes in over budget, it will be re-bid; the preconstruction phase brings value from a cost perspective; scope of services; and how if a construction manager wants to do both, it still falls under the Competitive Bidding Act. Additional discussion covered that there is a budget for this expense in the amount of \$200,000; the process of developing a bid packet and negotiations with final approval by Council; how the construction manager will work with the City team and Ambler's team. Mr. Lauritsen stated that using a construction manager in this situation instead of a general contractor is warranted and will solve any problems associated with this type of project, bringing value and good stewardship throughout. Vice Mayor Kane stated that this is absolutely worth this investment, with Mr. Curd stating that he appreciates the discussion. He added that Mr. Lauritsen always finds the best route for a successful project.

Additional discussion covered that this process would neither increase or decrease construction time; the drainage project that will take place in the area prior to development; and how Mr. Ambler agrees this is the best way to manage the project and ensure everyone is working on the same team. Staff will proceed with developing the required criteria and bring it back before the Council for approval.

#### **10. Update on medical marijuana. Presented by Lisa Beeman, Community Development Director.**

Ms. Beeman reported that on September 4, 2018 the City Council passed Ordinance 3499 which set forth the regulations for those who have a State-approved patient or caregiver license, or for those who have a State-approved dispensary license. She provided the specific provisions of the ordinance. At that time, the City Council chose not to take action concerning the zoning for and location of other State-licensed medical marijuana land uses such as growers, processors and researchers. Various cities have outright banned growers and processors and are facing lawsuits. If Bartlesville tries to pass a law that bans them, a lawsuit will likely follow.

Ms. Beeman reported that the City has been presented with two requests for dispensaries and there were laws to handle that request. Growers and growers facilities permits have now been requested. Referring to her staff report, Ms. Beeman covered the options on statutory authority to regulate zoning; referenced the article from OMAG who is the City of Bartlesville liability insurance providers; and how if a grower requests a permit, the City has to treat them the same as if they are growing any other type of crop. She set out where this is permissible in the five commercial districts or industrial districts. She defined what can be used in commercial districts and industrial districts, as well as reviewed building codes, which covers nuisances, such as the odor of marijuana. Certain regulations recommended by the Unity Law can be used if the Council wants a specific ordinance to govern permits for growers, and has been clearly identified as the community's right to regulate under police power. Discussion followed on litigation, the difference between what is already in place, and any new ordinance and nuisance laws. Ms. Beeman stated that the City can monitor growers under the laws we have in place. Further discussion covered increased security issues such as adding additional requirements for growers to be secured against unauthorized entry, being fenced in, and independently monitored. Indoor humidity would be an OSHA issue but too much humidity damages the plants, so growers would prevent it.

Further discussion covered the permitting fee; security regulations, minimal water release from facilities; base-line nutrients in run-off, nothing exotic; the revenue impact to the City of 7% added to the 8.9%; primary jobs; and regulations on rental properties.

Ms. Beeman stated she would like to allow the growers to go forward and handle issues if and when they come up. Mr. Bailey inquired of the Council if they would prefer to have an ordinance with restrictions for growers. Mr. Curd stated that he would like Ms. Beeman to develop a base line ordinance with standards for growers, processors and researchers, and the Mayor agreed. Mr. Gentges engaged citizens in attendance asking if they were good with the Unity Plan. They agreed that they were good with the Unity Plan and they wanted to see this business done right. Vice Mayor Kane stated that he felt these issues will take care of themselves, not wanting to add another ordinance. Mr. Curd stated that he understood Vice Mayor Kane's concerns, but although the people at the meeting may be trustworthy, others may not be. Mr. Bailey stated that staff would prepare an ordinance for Council approval at the next meeting.

#### **11. City Manager and Staff Reports.**

Mr. Bailey reminded the City Council and citizens in attendance of the Thanksgiving Holiday this week and that Thursday trash routes will run on Wednesday. Friday routes will run as normal.

He also reported another free leaf and yard waste pickup the week of December 17.

#### **12. City Council Comments and Inquiries.**

Mayor Copeland expressed his best wishes for a Happy Thanksgiving.

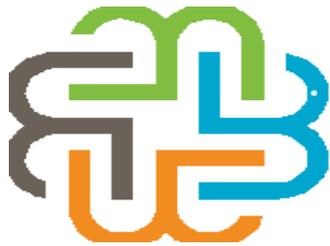
#### **13. There being no further business to address, Mayor Copeland adjourned the meeting at 8:53 p.m.**

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Mayor Dale W. Copeland

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Jason Muninger, City Clerk/Finance Director



city of  
**bartlesville**  
CONNECTED / CREATIVE / VIBRANT

# MEMO

November 28, 2018

TO: The Honorable Mayor and City Council

FROM: Micah Siemers, Director of Engineering

REF: Re-appointment to the Street/Traffic Committee

Brady Haffner's term on the Street/Traffic Committee expired May 2018. He is eligible for another term and willing to serve on the committee.

Please consider my recommendation to re-appoint Brady Haffner to the Street/Traffic Committee for another 3 year term.



**Jerry Maddux, City Attorney**  
**City of Bartlesville**  
**401 S. Johnstone, Suite 400**  
**Bartlesville, OK 74003**  
**918-214-8040**  
[jerry@madduxihrig.com](mailto:jerry@madduxihrig.com)

Dear Mike:

I have reviewed the proposed Extension of Option for Lease of Real Property between the City of Bartlesville and KCD Towers, LLL. This is land around the South water tower, which land the City is not using and has no plans to use. Kevin Potter intends to establish a tower facility on the property, but needs a little more time to get everything in line. The present Option to Lease expires December 31, 2018, and this document simply extends the option period to December 31, 2019. I see no reason why it should not be approved. Please place this on the agenda for the next City Council meeting.

*Jerry M. Maddux*  
City Attorney

OPTION FOR LEASE OF REAL PROPERTY

This Option Contract ("Option") is entered into this 5<sup>th</sup> day of MARCH, 2018, by and between The City of Bartlesville, 401 S. Johnstone, Bartlesville, Oklahoma, 74003 (hereinafter called "Lessor") and KCD Towers, LLC, an Oklahoma limited liability company, 2301 Rice Creek Road, Bartlesville, Oklahoma 74006 (hereinafter called "Lessee").

WHEREAS, Lessee desires to lease from Lessor certain real property located in Washington County, State of Oklahoma, containing approximately one-third of an acre, and said property is more particularly described on Exhibit "A" attached hereto and made a part hereof (the "Lease Property") and

WHEREAS, Lessor is agreeable to giving Lessee an option to lease the Lease Property in accordance with the terms and conditions herewith.

NOW, THEREFORE, in consideration (a) the mutual covenants herein contained (b) the payment to Lessor of \$100.00 ("Option Consideration") which Option Consideration is fully earned by Lessor upon execution of this Option, the receipt and sufficiency of which is hereby acknowledged, the parties do hereby agree as follows:

1. Term of Option and Manner of Exercise. This Option shall be a term or period commencing as of the date hereof and ending at 12:00 midnight on the 31st day of December, 2018. This Option may be exercised by the Lessee herein giving to Lessor written notice of the exercise of this Option ("Notice"). Said Notice must be delivered personally or sent by registered or certified mail, return receipt requested, or national overnight courier, return receipt requested, postage prepaid, addressed to the Lessor at the address above set forth. The date of the exercise of this Option shall be the date when the aforesaid Notice thereof is personally received by Lessor or two days after the same is sent in accordance herewith. Lessor reserves the right by prior written notice to Lessee to change the place or address for giving of the notice.

2. Terms of Lease Agreement. Upon exercise of the Option, Lessor and Lessee shall enter into the terms of that certain Lease Agreement, the form of which is attached hereto as Exhibit "B".

3. Effect. This Option shall be executed in duplicate and, when executed by both Lessor and Lessee, shall be binding upon and inure to the benefit of Lessor and Lessee and their successors and assigns. This Option sets forth the complete understanding of Lessor and Lessee and supercedes all previous negotiations, representations and agreements between them and their agents. This Option can only be amended or modified by written agreement signed by Lessor and Lessee.

4. Miscellaneous.

(a) The prevailing party in any suit or action based upon this Option shall be entitled to recover judgment for its reasonable attorney fees and court costs incurred in connection therewith.

(b) This Option shall be governed by the laws of the State of Oklahoma.

(c) This Option contains the entire agreement between the parties hereto with regard to the possible lease of the property and all prior discussions, negotiations, agreements or understandings are merged with this Option.

(d) This Option and all rights hereunder may be assigned by Lessee only after obtaining written consent of Lessor, which consent shall not be unreasonably withheld. In no event shall such assignment release Lessor from its obligations under this Option.

(e) Time is of the essence for this Option.

IN WITNESS WHEREOF the parties have executed this Option for Lease of Real Property in duplicate as of the day and year first above written.

LESSOR

CITY OF BARTLESVILLE

*Mrs. Bay*  
\_\_\_\_\_  
City Clerk

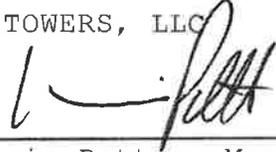


By *Dale C. Cooper*  
\_\_\_\_\_  
Mayor

LESSEE

KCD TOWERS, LLC

By

A handwritten signature in black ink, appearing to read "Kevin Potter", written over a horizontal line.

Kevin Potter, Manager

EXHIBIT "A"

The West 120 feet of the North 120 feet of the following tract, to-wit:

Beginning 100 feet North of the SE corner of the NE/4 SW/4; thence North 400 feet; thence West 200 feet; thence South 400 feet; thence East 200 feet to the point of beginning, containing 1.84 acres in Section 28, Township 26 North, Range 13 East, Washington County, Oklahoma

EXHIBIT "B"  
LEASE AGREEMENT

This AGREEMENT is made this 5<sup>th</sup> day of March, 2018, by and between City of Bartlesville, having its principal offices at 401 S. Johnstone, Bartlesville, Oklahoma, 74003, hereinafter called "LESSOR", and KCD Towers, LLC, an Oklahoma limited liability company, 2301 Rice Creek Road, Bartlesville, Oklahoma 74006, hereinafter called "LESSEE".

WHEREAS, the LESSOR is the owner of a 1.84 acre tract of property located in the SE/4 NE/4 SW/4 of Section 28, Township 26 North, Range 13 East, Washington County, Oklahoma, as more particularly described on the attached Exhibit "A"; and

WHEREAS, LESSEE desires to lease a portion of the Exhibit "A" property for LESSEE'S construction and operation of a communications tower and all appurtenances thereto, together with a right of way for utility lines and ingress and egress, over and across the Exhibit "A" property together with an easement for ingress and egress from the Leased Premises to public right of way.

NOW THEREFORE, in and for the covenants, conditions, agreements and rents hereinafter set forth, and other good and valuable consideration, the LESSOR and LESSEE agree to the following:

1. The LESSOR hereby leases to the LESSEE, and LESSEE leases from LESSOR, that certain real property described on the attached Exhibit "B", together with an easement for utilities and right of way purposes over and across the Exhibit "A" property (the "Leased Premises"), all as necessary for the construction and operation of LESSEE'S communications tower. In addition, LESSOR acknowledges that LESSEE is the holder of that certain Utility Easement dated April 29, 1977, and recorded in Book 683 at Page 399 of the records of the County Clerk of Washington County, Oklahoma (the "Easement"). Lessor covenants that Lessee is hereby assigned the right to utilize the Easement for its use in its construction and operation of its communications tower and access to the Leased Premises. The right to utilize the Easement shall be considered part of the Leased Premises.

LESSEE is allowed pursuant to the terms of this Lease Agreement to install, operate and maintain, replace and remove

a communication tower, communications equipment, and related cables, wires, conduits, antennae, air conditioning equipment, and other appurtenances as it may from time to time require with respect to the construction and operation of its communication tower.

2. The term of this Lease Agreement shall be for five years, beginning on the date of initial construction of the communications tower on the Leased Premises. LESSEE shall provide LESSOR written notice of such initial construction. In addition thereto, Lessee shall have five successive five year option terms which said renewal option terms shall automatically extend the term of the Lease Agreement unless LESSEE within 90 days of the end of the initial term of the Lease Agreement or of any renewal option term provides written notice to LESSOR of LESSEE'S intention to terminate the Lease Agreement.

3. LESSEE shall pay rental to LESSOR during the term of the Lease and any renewal term thereof on a monthly basis pursuant to the chart below set forth:

TERM	MONTHLY RENTAL IF ONLY ONE TENANT PRESENT	MONTHLY RENTAL IF MORE THAN ONE TENANT PRESENT
Original Term	\$400	\$576
Renewal Term 1	\$440	\$634
Renewal Term 2	\$484	\$697
Renewal Term 3	\$532	\$767
Renewal Term 4	\$585	\$844
Renewal term 5	\$644	\$928

4. It is understood and agreed that LESSEE'S ability to utilize the Leased Premises is contingent upon it obtaining, before the commencement date of the Lease Agreement, all of the certificates, permits, and other approvals that may be required by any federal, state or local authorities as well as satisfactory soil boring tests which will permit LESSEE to use of the Leased Premises as set forth above. LESSEE shall make due and timely application for all such necessary certificates, permits and other approvals which

shall be obtained at LESSEE'S sole expense. LESSEE shall have access to the Leased Premises prior to the commencement date of the Lease Agreement to conduct at Lessee's sole cost and expense any such inspections or other soil boring tests necessary to establish the suitability of the Leased Premises as a site for the communications tower.

LESSOR shall cooperate with LESSEE in its effort to obtain the approvals described in the paragraph and shall take no action which would adversely affect the status of the Leased Premises with respect to the proposed use thereof by LESSEE. In the event that any of such applications are finally rejected or LESSEE, in its reasonable discretion, believes such application approval will be too costly, time consuming or there is a reasonable likelihood in the opinion of LESSEE that said application will be rejected or if any certificate, permit, license or approval issued to LESSEE is canceled or otherwise withdrawn or terminated by governmental authority so that in the opinion of LESSEE in its sole discretion it will be unable to use the Leased Premises for its specified purposes, the LESSEE shall have the right to terminate this Lease Agreement. Notice of said termination shall be given to the LESSOR in writing by certified mail, return receipt requested at the address above set forth. All rental paid for the Leased Premises prior to said termination date shall be retained by the LESSOR. Upon such termination, this Lease Agreement shall become null and void, and the parties shall have no further obligations, including the payment of money, to each other.

5. If all or any part of the Leased Premises or if all or any part of the LESSOR'S property rights subject to this Lease Agreement is taken by eminent domain by jurisdictions having the legal right to take said premises, and if said taking, in the sole discretion of the LESSEE, renders the Leased Premises partially or wholly unusable for its intended purposes, then at LESSEE'S option this Lease Agreement may be declared null and void and no further force and effect and there shall be no further payments of rent except that which may have been due and payable at the time of said taking.

6. LESSEE shall indemnify the LESSOR and hold Lessor harmless against any claim of liability or loss from personal injury or property damage, which may arise out of LESSEE'S negligence or willful misconduct in connection with the Leased

Premises, excepting, however, such claims or damages as may be attributable in whole or in part to the acts or omissions of the LESSOR, or its agents, servants and/or contractors. LESSOR shall indemnify LESSEE against any claim of liability or loss from personal injury or property damage which may arise out of LESSOR'S negligence or willful misconduct in connection with the Leased Premises, excepting, however, such claims or damages as may be attributable in whole or in part to the acts or omissions of the LESSEE, or its agents, servants and/or contractors.

7. LESSOR represents and warrants to LESSEE that LESSOR: (i) is not presently engaged in, (ii) does not presently have actual knowledge of, (iii) has not at any time in the past engaged in, and (iv) has no actual knowledge that any third person or entity has engaged in or permitted any operations or activities upon, or any use or occupancy of, the Leased Premises, on any portion thereof, for the purpose of, or in any way involving the handling, manufacturing, treatment storage, use, transportation, spillage, leakage, dumping, discharge, or disposal (whether legal or illegal), accidental or intentional, of any hazardous substances or wastes regulated under any local, state or federal law. Prior to, during and after the term of this Lease, LESSOR indemnifies and holds LESSEE harmless from any and all claims of liability under any Environmental Regulations, except for claims arising in whole or in part, out of LESSEE'S use or occupancy of the Leased Premises.

LESSEE represents, warrants, and covenants to LESSOR that LESSEE shall at no time during the term of this Lease Agreement use or permit the Leased Premises to be used in violation of any Environmental Regulations. LESSEE shall indemnify and hold LESSOR harmless from any and all claims of liability under any Environmental Regulations arising out of LESSEE'S use or occupancy of the Leased Premises.

For the purposes of these provisions, the term "Environmental Regulations" shall mean any law, statute, regulation, order or rule now or hereafter promulgated by any Governmental Authority, whether local, state or federal, relating to air pollution, water pollution, noise control and/or transporting, storing, handling, discharge, disposal or recovery of on-site or off-site hazardous substances or materials, as same may be amended from time to time, including

without limitation the following: (i) the Clean Air Act (42 U.S.C. §§ 7401 et seq.); (ii) Marine Protection, Research and Sanctuaries Act (33 U.S.C. §§ 1401-1445); (iii) the Clean Water Act (33 U.S.C. §§ 1251 et seq.); (iv) RCRA, as amended by the Hazardous and Solid Waste Amendments of 1984 (42 U.S.C. §§ 6901 et seq.); (v) CERCLA, as amended by the Superfund Amendments and Reauthorization Act of 1986 (42 U.S.C. §§ 9601 et seq.); (vi) TSCA; (vii) the Federal Insecticide, Fungicide and Rodenticide Act as amended (7 U.S.C. §§ 135 et seq.); (viii) the Safe Drinking Water Act (42 U.S.C. §§ 300 (f) et seq.); (ix) OSHA; (x) the Hazardous Liquid Pipeline Safety Act (49 U.S.C. §§ 2001 et seq.); (xi) the Hazardous Materials Transportation Act (49 U.S.C. §§ 1801 et seq.); (xii) the Noise Control Act of 1972 (42 U.S.C. §§ 4901 et seq.); (xiii) EPCRA; (xiv) National Environmental Policy Act (42 U.S.C. §§ 4321- 4347).

8. LESSEE shall assume and pay all of its utility costs and expenses incurred in connection with the construction and operation of communications tower and any appurtenant buildings on the Leased Premises.

9. LESSOR shall be responsible for payment of all ad valorem taxes levied upon the Leased Premises, if any. LESSEE shall be responsible for all taxes levied upon the leasehold improvements on the Leased Premises.

10. LESSEE upon termination of this Agreement, shall within a reasonable time, said time to not exceed six months in duration, remove its personal property and restore the Leased Premises as nearly as is reasonably possible to its original condition, reasonable wear and tear excepted.

11. Any sale or transfer by the LESSOR of all or part of the Leased Premises to a purchaser or transferee other than LESSEE shall be under and subject to the terms of this Lease Agreement and LESSEE'S right's hereunder.

12. This Lease Agreement may be sold, assigned, or transferred by LESSEE at any time without the consent of LESSOR.

13. In the event LESSEE or its contractors or agents cause damage to LESSOR'S existing facilities or otherwise damages any portion of the Exhibit "A" property, such damages



LESSOR:

City of Bartlesville  
401 S. Johnstone  
Bartlesville, Oklahoma 74003

20. The parties hereto declare that each has read and understands each and every term, condition and covenant contained in this Lease Agreement and in any document incorporated by reference. This Lease Agreement includes the entire agreement between the parties relating hereto and supersedes all prior or contemporaneous negotiations, commitments, representation, writings and/or oral understandings or agreement. Any addition to, variation or modification of this Lease Agreement shall be void and ineffective unless in writing signed by the parties hereto.

IN WITNESS WHEREOF, the parties hereto have duly executed this instrument the day and year first above written.

LESSOR

CITY OF BARTLESVILLE

Mia Buef  
City Clerk

By Dale R. Copeland  
Mayor



LESSEE

KCD TOWERS, LLC

By Kevin Potter  
Kevin Potter, Manager

EXHIBIT "A"

Beginning 100 feet North of the SE corner of the NE/4 SW/4; thence North 400 feet; thence West 200 feet; thence South 400 feet; thence East 200 feet to the point of beginning, containing 1.84 acres in Section 28, Township 26 North, Range 13 East, Washington County, Oklahoma

EXHIBIT "B"

The West 120 feet of the North 120 feet of the following tract:

Beginning 100 feet North of the SE corner of the NE/4 SW/4; thence North 400 feet; thence West 200 feet; thence South 400 feet; thence East 200 feet to the point of beginning, containing 1.84 acres in Section 28, Township 26 North, Range 13 East, Washington County, Oklahoma



**TO:** Mike Bailey, City Manager  
**FROM:** Shellie McGill, HR Director  
**DATE:** November 28, 2018  
**SUBJECT:** Pharmacy Renewal Agreement with RX Benefits

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The City has been self-insured for pharmacy and health insurance for over 10 years. As we have honed these benefit offerings, we have established a contract best benefitting the City for each benefit with the assistance of our consultant, HUB International.

In 2018, the City entered into an agreement with RxBenefits for Pharmacy benefits. The City is happy with our experience, and would like to renew our contract with them for 2019.

The attached contract has a few changes for 2019 that include:

- Reduced pricing on pharmacy
- Increased amounts on rebates
- No change to fees
- Language was added to the contract to include information about the product but there is no change to the way the benefit works for the City of Bartlesville.

We believe renewing with our current carrier, RxBenefits, is in the best interest of both the City and its employees. I have attached the Administrative Services Agreement executed effective January 1, 2018, along with the Addendum to Administrative Services Agreement effective January 1, 2019. The document spells out the terms and conditions of our agreement, has been approved by the City Attorney, and is ready for execution.

Please place the contract on the next City Council agenda for consideration.



**ADDENDUM TO ADMINISTRATIVE SERVICES AGREEMENT**

**THIS ADDENDUM TO ADMINISTRATIVE SERVICES AGREEMENT** (this "Addendum"), entered into effective as of January 1, 2019 (the "Addendum Effective Date"), is made by and between **RxBenefits, Inc. f/k/a Prescription Benefits, Inc.** ("Administrator"), and **City of Bartlesville** ("Client"). The parties, intending to be legally bound, hereby agree as follows:

1. Administrator and Client are parties to that certain Administrative Services Agreement dated January 1, 2018 (the "Agreement").

2. Administrator and Client hereby execute this Addendum for the purpose of documenting that Exhibit A (Client Application) to the Agreement has been amended and restated to reflect, among other things, new pricing terms. Such amended and restated Exhibit A (Client Application) shall be attached and affixed to the Agreement as Exhibit A (Client Application) in lieu of the prior Exhibit A (Client Application) upon execution of this Addendum by the parties' authorized representatives below and shall be in full force and effect as said Exhibit A from and after the Addendum Effective Date.

3. Except for the amendment and restatement of Exhibit A (Client Application) effected hereby, the Agreement shall not otherwise be modified, altered or amended in any respect and is hereby ratified and incorporated herein.

**IN WITNESS WHEREOF**, the undersigned parties have entered into and executed this Addendum effective as of the Addendum Effective Date.

ADMINISTRATOR:

**RxBenefits, Inc.**

By: \_\_\_\_\_

Name: Lauren Simmons

Title: Director of Compliance and Legal Affairs

CLIENT:

**City of Bartlesville**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**EXHIBIT A**  
**CLIENT APPLICATION**

**[IMPORTANT – PLEASE READ CAREFULLY: Client should carefully review Sections A, B and C of this Exhibit A below which have been completed by Administrator in order to ensure the accuracy and completeness of such information. Client shall promptly notify Administrator of any inaccuracy or omission with respect to such terms and conditions, if applicable (including, without limitation, the Client Information in Section A). Client should also carefully review and complete Section D of this Exhibit A below.]**

**A. INFORMATION ABOUT CLIENT**

**Client's Name:** City of Bartlesville

**Client's Mail Address:** 401 S. Johnstone Avenue, Bartlesville, OK 74003

**Client's Phone:** (918) 338-4282

**Primary Contact:** \_\_\_\_\_

**Send Invoices and Confidential and Standard Reports to:**

\_\_\_\_\_

**B. PLAN DESIGN; PLAN PARTICIPANT COST SHARE**

**Plan Participant Cost Share:**

**Please see current Summary of Benefits.**

Client represents and warrants that the design of Client's Plan as reflected in a Plan design document for Client ("PDD"), accurately reflects the applicable terms of Client's Plan for purposes of this Agreement. Client shall provide Administrator with ninety (90) days prior written notice of any proposed changes to the design of Client's Plan (including the PDD), which changes shall be consistent with the scope and nature of the services to be provided by Administrator under this Agreement. Client agrees that it is responsible for Losses resulting from any failure to implement Plan design changes which are not communicated in writing to Administrator. In addition, Client shall notify Plan Participants of any Plan design changes prior to the effective date of any such changes.

C. **FINANCIAL TERMS; ADDITIONAL SERVICES AND PROGRAMS**

**PRICING TERMS**

**January 1, 2019**

1. **Retail, Mail, Specialty & Rebates (Minimum Guaranteed Pricing):**

<b>Retail 30 Pharmacy Network</b>	
<b>Brand Drugs</b>	AWP – 18.25% + \$0.75 dispensing fee
<b>Effective Overall Generic Guarantee (ingredient cost)</b>	AWP – 82.25% + \$0.75 dispensing fee
<b>Retail 90 Pharmacy Network</b>	
<b>Brand Drugs</b>	AWP – 20.00% + \$0.00 dispensing fee
<b>Effective Overall Generic Guarantee (ingredient cost)</b>	AWP – 83.25% + \$0.00 dispensing fee
<b>Mail Service Pharmacy</b>	
<b>Brand Drugs</b>	AWP – 25.25% + \$0.00 dispensing fee
<b>Effective Overall Generic Guarantee (ingredient cost)</b>	AWP – 85.25% + \$0.00 dispensing fee
<b>Specialty- Exclusive Network</b>	
<b>Exclusive</b>	AWP – 19.000% + \$0.00 dispensing fee
<b>Rebates (3-Tier Select Formulary)</b>	
<b>Retail 30 Fixed Guarantee</b>	\$108.00 Per Net Paid Brand Claim
<b>Retail 90 Fixed Guarantee</b>	\$280.00 Per Net Paid Brand Claim
<b>Mail Fixed Guarantee</b>	\$405.00 Per Net Paid Brand Claim
<b>Specialty Fixed Guarantee</b>	\$865.00 Per Net Paid Brand Claim
<b>Transaction Fees</b>	
<b>Transaction Fee per claim</b>	\$0.65
<b>Clinical Advantage Program Fees</b>	
<b>Transaction Fee per claim</b>	N/A

**FOOTNOTES:**

- Shipping fees and/or postage will be increased if PBM's third party carrier increases its charges to PBM for shipping fees and/or postage costs.
- Any new Specialty Drug(s) will be dispensed at the Specialty Drug rate set forth above, unless otherwise notified by PBM.

**The pricing set forth in the Table in Section 1 above is subject to and/or contingent upon the following:**

- Prices may vary in certain states for reasons such as most favored nations laws, other state or local legal requirements, geographic location, or other factors beyond the control of Administrator. In those situations, some Claims may be exempt from reconciliation of the proposed retail network pricing guarantees set forth above in the pricing table. All Claims may be aggregated for purposes of such rates.
- Participating Pharmacy rates may vary and the amount paid by PBM to the Participating Pharmacy may not be equal to the amount billed to Client, and PBM shall retain the difference.
- The Participating Pharmacy may collect from the Plan Participant the lowest of the applicable Cost Share, the discounted price, or the Participating Pharmacy's U&C price.

- Compounds, 340B claims, OTC claims<sup>1</sup>, Limited Distribution<sup>2</sup>, usual and customary claims (U&C), Direct Member Reimbursement Claims, Coordination of Benefit Claims, vaccines, long term care (LTC) ans/or claims with ancillary charges, in-house or specially contracted pharmacies (if applicable) and claims filled outside the OptumRx Network may be excluded from the guarantees. Additionally, claims in Puerto Rico, Guam, Northern Mariana Islands, Virgin Islands, Hawaii, Massachusetts, Alaska, and rural pharmacies may be excluded from the pricing guarantees. Specialty claims and/or claims with a high-dollar undiscounted AWP value may be excluded from the non-specialty pricing guarantees. Furthermore, if this Agreement is terminated prior to the end of a given contract year, then Administrator is not required to meet the financial guarantees set forth above.
- Guarantees for pricing components are measured and reconciled in the aggregate. Any dollar savings generated in excess of one component may be used to offset a short fall for any other component.
- PBM negotiates rebates based on market share over its aggregate book of business and not on behalf of any client. Rebates are measured in the aggregate and shall be based upon net paid brand claims submitted on behalf of Administrator's client(s), allocable to Administrator's client(s). The two-tier rebate guarantees above apply to all qualified two-tier plan designs and compliance with PBM's applicable formulary, including utilization management programs. The three-tier rebate guarantees above apply to a qualified three tier plan design with a minimum of \$10 difference in copayment, or 10% difference in coinsurance, between preferred and non-preferred drugs and the 100% compliance of Administrator's client(s) with PBM's applicable formulary, including utilization management programs. Rebate claims exclude ineligible claims, such as claims with invalid service provider identification or prescription numbers; claims where, after meeting the deductible, the Plan Participant's cost-sharing amount under the applicable benefit Plan requires the Plan Participant to pay more than 50 percent of the claim; claims for devices without a prescription drug component; claims for re-packaged NDCs; stale dated claims over 180 days old; compounds; claims from 340B which typically receive a discount or rebate directly from drug manufacturers under section 340B of the Public Health Service Act, or claims from entities eligible for federal supply schedule prices (e.g., Department of Veterans Affairs, U.S. Public Health Service, Department of Defense); or claims that are not for prescription drugs (except for insulin or diabetic supplies). PBM and affiliated or unaffiliated third party contractors may retain reasonable administrative fees for its role in securing Rebates.

**2. Clinical Services and Programs / General Ancillary Services.**

**2.1 General Ancillary Services:**

Paper Claim Fees	\$2.50 Per Processed Paper Claim plus the Base Admin. Fee
Eligibility – Direct Access	Included
Concurrent Drug Utilization Review Programs	Included
Standard Formulary Management Services	Included
Group Set Up Fees	Included
Ad Hoc Reports / Custom Reporting	\$125 per hour
Plan Participant ID Cards – Subsequent Mailings, Replacements, Additional for College age Dependents (Note: Initial ID Cards are included in the financial offer. However, postage, shipping & handling for initial ID Cards is not.)	\$1.50 per ID Card for standard card w/ logo plus postage, shipping & handling
Manual Eligibility Maintenance	\$0.50 per record
P&T Support – Custom Formularies	\$180 per hour
Step Therapy Edits	\$0.03 per claim
Therapeutic Interchange Program	\$3.00 per intervention or 50/50 shared savings

<sup>1</sup> “Over-the-Counter (OTC)” means those Prescription Drug Claims for Covered Drugs that a Member is typically able to obtain without a prescription or may require a prescription for higher strengths and/or concentrations such as but not limited to multivitamins, water soluble vitamins, etc.

<sup>2</sup> “Limited Distribution Claims” means those prescription drug products including but not limited to Specialty medications that enter the market with exclusivity and/or supply limitations or restrictions that limit marketplace competition.

Explanation of Benefits (EOB)	\$3.00 each plus postage, shipping & handling
Audit Administration	25% of recovered amount
Plan Participant Communication – Mailing	Postage, shipping & handling
Standard Plan Participant Communication – Printing	Cost
Custom Mailings	Production Cost
Financial Accumulator Integration for combined medical/Rx plans (Batch Method)	Included
24-hour Call Center support for Plan Participant calls	Included
Postage	Included
Prior Authorization Administrative Overrides	Included
Card Re-Issuance	Charges passed through from PBM
Disease State Management Programs	TBD
Physician Education	TBD
Coordination of Benefits	No Charge if standard
High Dollar Claim Review (HDCR)	\$0.75 per claim minimum (Not Elected)
Low Clinical Value Exclusions (LCV)	\$0.30 per claim minimum (Not Elected)
Prior Authorization Clinical Overrides	\$50 per PA
Prior Authorization Plan Tech Overrides	\$50 per PA
First Level Appeals	\$100 per appeal
Second Level Appeal	Cost plus \$50 per appeal

2.2 **Additional Optional Services:** Charges for additional Optional Services not otherwise identified and priced in this Exhibit A (Client Application) shall be quoted upon request and/or as applicable.

2.3 **Prior Authorization and Appeals:**

**Appeals.** Charges for Appeals not otherwise identified and priced in this Exhibit A (Client Application) shall be quoted upon request and/or as applicable.

**First Level Appeals.** The first level appeal review is limited to determination of Plan Participant eligibility and coverage of prescription drug benefits as set forth in the Benefit Plan provided to PBM by Client. The first level appeal review shall not include a review of medical necessity. PBM shall have the authority, responsibility and discretion to (i) determine eligibility for benefits under the Client's Plan; (ii) to make factual determinations and to interpret the provisions of the Client's Plan to make benefit determinations on claims for Plan benefits; (iii) review appeals of denied claims; and (iv) notify the Plan Participant or the Plan Participant's authorized representative of its claim decisions. PBM's determination shall be the conclusive result for first level appeals. For First Level Appeal reviews, PBM agrees to serve as a fiduciary solely for the purpose of reviewing appeals relating to the determination of Plan Participant eligibility and coverage of prescription drug benefits in accordance with the terms of the Client's Plan.

**Second Level Appeals.** PBM has agreements in place with independent vendors who review appeals resulting from a denial of authorization of prescription benefits where the Plan Participant is entitled to obtain a medical review of the denial by a medical specialist. The decision of the independent vendor shall be final, subject to judicial review for abuse of discretion.

**Third Level Appeals.** PBM has contracted with three state-appointed external review agencies to handle Third Level Appeals. PBM will provide the complete case file, according to the requirements, to the appointed external review agency.

### 3. Administrator Clinical Programs.

- **Low Clinical Value.** If elected, the Low Clinical Value (“LCV”) exclusion option prevents unnecessary spending by removing LCV medications from the formulary without impact to client rebates while providing equal or more effective medicines at a lower cost. LCV medications are drugs that treat common conditions that do not provide any additional or superior therapeutic value when compared to currently existing therapies already in the marketplace. These medications are excluded in addition to any products that would normally be excluded by PBM Formulary. This exclusion occurs without affecting rebate minimum guarantees or contracted discount rates. Administrator reserves the right to amend, from time to time, the list of low clinical value medications. The list of low clinical value medications may be updated quarterly. Client may request a current list of LCV medications.
- **High Dollar Claim Review.** If elected, Administrator’s High Dollar Claim Review program (“HDCR”), will provide Client with umbrella protection against high-cost prescription claims for approved formulary drugs. Prescription claims over the threshold dollar amount are flagged prior to payment and reviewed for clinical appropriateness. This additional level of clinical oversight protects against unnecessary spending, saving clients money and providing improved visibility into claim reviews, decision processes, and cost savings. The following may apply:
  - RxBenefits manages the clinical review process for high dollar claims, providing oversight of the process. We communicate trends and savings results to clients through detailed reporting and analytics.;
  - Reviews range from 2 hours to no more than 72 hours from the time the review is initiated, depending on prescriber activity. If the prescriber does not respond within 24 hours, the reviewer will attempt contact once daily for three days.;
  - Following a clinical review, one of four actions will occur: the medication is **approved**, the medication claim is **denied**, the doctor may decide to **withdraw** and prescribe a different medication, or the reviewer can **dismiss** the claim due to lack of communication from the prescriber; or
  - If denied, an appeal process is available.
- **Foundational Utilization Management.** UM is a bundling of evidence-based clinical programs commonly used to provide appropriate clinical oversight of prescription drug claims. UM ensures the correct clinical evaluation processes are in place. Appropriate QL promotes FDA-approved dispensing guidelines by ensuring appropriate quantities are dispensed. ST ensures the most clinically appropriate item is used first as part of adhering to accepted guidelines. When faced with two similar agents, the lowest cost option is promoted first. PA ensure FDA-approved guidelines with respect to indications are being met. Utilizing the PBM or customized criteria, RxBenefits has carved out the QL/ST exception review process as well as all specialty and non-specialty PA reviews to be independently reviewed and documented utilizing a documentation system that allows for ease of auditing through increased visibility of clinical decisions. This component requires that a client elect a standard Utilization Management Programs promoted by Administrator. NOTE: Must have HDCR component in place to elect this component. The following may apply:
  - Reviews range from 2 hours to no more than 72 hours from the time the review is initiated, depending on prescriber activity. If the prescriber does not respond within 24 hours, the reviewer will attempt contact once daily for three days.;
  - Following a clinical review, one of four actions will occur: the medication is **approved**, the medication claim is **denied**, the doctor may decide to **withdraw** and prescribe a different medication, or the reviewer can **dismiss** the claim due to lack of communication from the prescriber; or
  - If denied, an appeal process is available.
- If elected, PBM’s Manufacturer Assistance Program for Specialty Medications (“MAP”), consists of 1 or 2 components when available, dependent on the specific plan design: (1) Accumulator Protection using Manufacturer Copay assistance dollars to help lower member out-of-pocket costs and client costs where funds are not applied to member deductible and member out-of-pocket maximum totals; and (2) Accumulator Protection Plus Variable Cost-

Share, where plan changes can maximize available assistance funds to offset plan costs and cover the members' cost-share but does not apply to their deductible and out-of-pocket maximum, yielding high savings potential, or Therapeutic Interchange Programs where the specialty pharmacy will move members to preferred agents in order to allow the usage of copay assistance funds from manufacturers. Requires exclusive specialty pharmacy relationship.

4. **Rebate Acknowledgment; No Representation; Rebate Limitations.** Client acknowledges that Administrator is not making any representation, warranty or guaranty of any kind or nature, either express, implied or otherwise, regarding the amount of Rebates to be paid or remitted to Client pursuant to this Agreement, except as specifically set forth in writing herein. In addition, Client waives, releases and forever discharges PBM and Administrator from any Losses arising from a pharmaceutical company's (a) failure to pay Rebates; (b) breach of an agreement related to Rebates; or (c) negligence or misconduct. Client acknowledges that whether and to what extent pharmaceutical companies are willing to provide Rebates to Client may depend upon a variety of factors, including the content of the PDL, the Plan's design features, Client meeting criteria for Rebates, and the extent of participation in PBM's formulary management programs, as well as PBM/Administrator receiving sufficient information regarding each Claim for submission to pharmaceutical companies for Rebates. Client acknowledges and agrees that PBM may, but shall not be required to, initiate any collection action to collect any Rebates from a pharmaceutical company. In the event PBM does initiate collection action against a pharmaceutical company to collect Rebates, PBM may offset any reasonable costs, including reasonable attorneys' fees and expenses, arising from any such action. Notwithstanding any provision of this Agreement to the contrary, Administrator shall only be responsible for the payment of Rebates to Client pursuant to the terms of this Agreement if such Rebates are actually received by Administrator during the Term of this Agreement. In no event shall Administrator be obligated to pay Rebates to Client until Administrator receives payment for the same Rebates from PBM. In the event Client terminates the Agreement outside the terms and conditions in the Agreement, Client forfeits the right to receive any Rebates received by Administrator on Client's behalf after the date of such termination. Client acknowledges that Administrator shall not be obligated to pay Client any Rebates described herein until this Agreement is signed by Client.

5. **Miscellaneous.**

- 5.1 **Plan Participant Cost Share.** Administrator may, but shall not be obligated to, dispense or cause to be dispensed a prescription even if the prescription is not accompanied by the applicable Plan Participant Cost Share described above in this Exhibit A. Administrator will refund any amount submitted by a Plan Participant in excess of the Plan Participant's applicable Plan Participant Cost Share. In the event a Plan Participant submits an insufficient Plan Participant Cost Share and the Plan Participant fails to remit the balance of the Plan Participant Cost Share amount to Administrator (or its designee) within thirty (30) days of Administrator's (or its designee's) request, then Administrator shall have the right to invoice Client for, and Client shall have an obligation to pay Administrator (or its designee), the amount of the uncollected Plan Participant Cost Share(s). Client shall, in turn, have the right to recover uncollected Plan Participant Cost Shares from its Plan Participants at Client's determination. Shipping of prescriptions submitted without the appropriate Plan Participant Cost Share may be delayed.
- 5.2 **Drug Classification and Pricing: AWP.** With respect to drug classification and pricing, the Parties acknowledge and understand that (i) PBM will use indicators of Medi-Span Master Drug Database (Medi-Span), and their associated files, as updated regularly by Medi-Span, or another nationally available reporting service of pharmaceutical drug information in determining the classification of drugs (e.g., legend vs. over-the-counter, brand vs. generic, multi-source vs. single-source) for purposes of this Agreement, (ii) PBM is entitled to rely on Medi-Span or any other nationally available reporting service of pharmaceutical prices selected by PBM to determine AWP for purposes of establishing pricing provided under this Agreement, and (iii) PBM does not establish AWP. Client further acknowledges that (w) Administrator does not establish drug classifications, (x) Administrator does not establish AWP, (y) neither PBM nor Administrator shall have any liability to Client or its Plan Participants arising from the use of Medi-Span or any other nationally available reporting service and (z) if the reporting source for determining AWP relating to Administrator and Client should not continue to support AWP, Administrator and Client will

cooperate with PBM to negotiate pricing hereunder to maintain the parties' respective economic position under this Agreement and otherwise as of the Effective Date of this Agreement.

5.3 Formulary Management.

5.3.1 The parties acknowledge that Client shall adopt as part of Client's Plan design and as its formulary, the PDL and Prescribing Guide. Changes made by PBM to the PDL or the Prescribing Guide may be based upon, among other things, new products, customer safety, clinical appropriateness, efficacy, cost effectiveness, changes in availability of products, new clinical information and other considerations, changes in the pharmaceutical industry, introduction of generics, new legislation and regulations.

5.3.2 PBM may implement Drug Interchange program(s) which has/have been approved by PBM's pharmacy and therapeutics committee for selected prescriptions under which PBM's mail service pharmacy shall contact Prescribers, as appropriate, to obtain approval for the Drug Interchange. In accordance with PBM's standard policies, PBM shall credit Administrator or Plan Participant, as appropriate, for any mail prescription returned to PBM upon rejection by the Plan Participant of the Drug Interchange. Client acknowledges that the adoption of therapeutic interventions may result in an increase of Rebates payable by pharmaceutical manufacturers pursuant to their agreements with PBM.

5.3.3 Client acknowledges the Prescriber shall have final authority over the drug prescribed to a Plan Participant, regardless of benefit coverage.

5.3.4 PBM may implement Drug Interchange programs, as approved by its pharmacy and therapeutics committee, for Participating Pharmacies to promote the use of the PDL or Prescribing Guide by encouraging Participating Pharmacies to: (i) identify appropriate opportunities for converting a prescription from a non-PDL or Prescribing Guide drug to a clinically comparable drug on the PDL or Prescribing Guide; and (ii) contact the Plan Participant and the Prescriber to request that the prescription be changed to a clinically comparable drug on the PDL or Prescribing Guide. Participating Pharmacies may be compensated by PBM for the services they provide in connection with Drug Interchange programs.

5.4 Generic Drug Substitution Program. Generic Drug substitution will be conducted through PBM's Participating Pharmacies under a program which substitutes Brand Drugs with Generic Drug equivalents, where available clinically appropriate, unless (a) the prescribing healthcare practitioner issues the prescription with a "dispense as written" notation, or (b) the Participating Pharmacy has been notified by the Plan Participant or otherwise to dispense Brand Drug only. Generic Drug messaging to Participating Pharmacies intended to promote point-of-sale Generic Drug substitution of multi-source Brand Drugs will be provided by PBM. The Parties acknowledge that a pharmacist may override such messaging if the prescribing healthcare practitioner or the Plan Participant has notified the Participating Pharmacy to dispense the Brand Drug only.

5.5 RESERVATION OF RIGHTS. Administrator expressly reserves (and Client hereby confirms, acknowledges and agrees to such reservation) the right to modify or amend financial provisions in this Agreement (including without limitation this Client Application/Exhibit A) in the event of:

5.5.1 A change in the scope of services to be performed by Administrator or PBM or the assumptions upon which the financial provisions included in this Agreement are based (including PBM's pricing provided to Administrator) and/or any government imposed or industry wide change that would impede Administrator's ability to provide the pricing described in this Agreement, including without limitation any prohibition or restriction on the right of Administrator or any third party's ability to receive rebates from PBM and/or pharmaceutical manufacturers.

5.5.2 Implementation or addition of a high deductible health plan/consumer-driven health plan option;

- 5.5.3 Implementation or addition of a 100% Plan Participant paid plan;
  - 5.5.4 A change in the coverage of Medicare eligible Plan Participants, irrespective of the resulting change in total number of Plan Participants, as defined in this Agreement; or
  - 5.5.5 A change to the methodology by which AWP is calculated or reported.
  - 5.5.6 A change in PBM's PDL or the PBM Prescribing Guide or Administrator's alignment with such PDL or PBM Prescribing Guide. In any event, Administrator will use its commercially reasonable efforts to provide Client with 30 days' notice prior to addition or removal of a drug from the PDL or PBM's Prescribing Guide. In the event safety concerns or regulatory action require PBM to remove a drug sooner, Administrator shall notify Client of the removal of a drug from the PDL or the Prescribing Guide within three (3) business days.
  - 5.5.7 Termination of Administrator's contractual arrangement with PBM.
- 5.6 Provision of Information. Client acknowledges that Administrator shall not be held responsible for any obligation if Client, or Client's designee (including, without limitation, any Plan Participant), fails to provide Administrator with accurate, timely and complete information as needed to meet such obligation.

**D. EXECUTION BY CLIENT**

Client hereby represents and warrants that the information contained in Section A of this Client Application is true and correct in all respects and Client hereby agrees to the specific terms, conditions and financial arrangements set out in Sections B and C of this Client Application. Client agrees that if any information in Section A changes, Client will give Administrator prompt notice of such changes. Furthermore, Client understands that this Client Application (Exhibit A) is a part of the Administrative Services Agreement between Client and Administrator to which it is attached and incorporated into by reference and that Client is bound by all terms and conditions of such Administrative Services Agreement.

All capitalized terms used in this Client Application but not specifically defined herein shall have the meanings given to such terms in the Administrative Services Agreement to which this Client Application is attached and made a part of.

*[Signature Page Follows]*

**IN WITNESS WHEREOF**, Client has caused this Client Application (Exhibit A to the Agreement) to be executed as of the Effective Date. In the event this Client Application is amended by the Parties after the Effective Date, the Parties may substitute such amended Client Application for the former Client Application, provided the Parties set forth the date from and after which such amended Client Application shall be effective. The Parties further agree that they will attach such amended Client Application to this Agreement and provide a copy of this Agreement with the amended Client Application (Exhibit A) to Administrator and Client for their respective records. Any such amended Client Application must be signed by Client's authorized representative and agreed to and accepted by Administrator's authorized representative.

**CLIENT:**  
**City of Bartlesville**

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Its: \_\_\_\_\_

Acknowledged, agreed to and accepted by:

**ADMINISTRATOR:**  
**RxBenefits, Inc.**

By: \_\_\_\_\_

Printed Name: Lauren Simmons

Its: Director of Compliance and Legal Affairs

**ADMINISTRATIVE SERVICES AGREEMENT**

**by and between**

**RxBenefits, Inc.**

**and**

**City of Bartlesville**

**EFFECTIVE AS OF: January 1, 2018**

## ADMINISTRATIVE SERVICES AGREEMENT

**THIS ADMINISTRATIVE SERVICES AGREEMENT**, dated effective as of 12:01 a.m. local time in Birmingham, Alabama on January 1, 2018 ("Effective Date"), is made and entered by and between **RxBenefits, Inc.**, an Alabama corporation ("Administrator"), and City of Bartlesville ("Client"). Administrator and Client are sometimes referred to herein individually as a "Party" and collectively as the "Parties."

### Recitals

A. Client has indicated a desire to enter into a contractual relationship with Administrator in order to procure the administration of prescription drug benefits to Client's Plan Participants (defined below) by Client's execution of this Agreement (defined below), including without limitation the Client application attached to this Agreement and incorporated herein by reference as Exhibit A ("Client Application");

B. Administrator desires to administer the prescription drug benefits specified in the Client's Plan described herein in a ministerial capacity, subject to all the terms and conditions thereof; and

C. Administrator has entered into an agreement with an independent, third-party pharmacy benefit manager, OptumRx, Inc. (hereinafter referred to as "OptumRx" or "PBM"), for the purpose of being able to provide a network of pharmacies and related pharmacy benefit management programs and services for utilization by Client and its Plan Participants as administered through Administrator working in conjunction with Client, all as more fully provided for in this Agreement.

### Agreement

**NOW, THEREFORE** in consideration of the mutual covenants, duties and obligations made by the Parties herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties, intending to be legally bound, hereby agree as follows:

#### ARTICLE I – CERTAIN DEFINITIONS

A. The initially capitalized terms below in this Section A of Article I shall have the following meanings when used in this Agreement. In addition, there are other initially capitalized terms that are defined in other parts of this Agreement and such terms shall have the meanings ascribed to them in such other parts of this Agreement whenever they are used in this Agreement.

"AWP" means the "average wholesale price" of a prescription drug as set forth by Medi-Span on the date dispensed or any other nationally available reporting service of pharmaceutical prices as utilized by PBM as a pricing source for prescription drug pricing.

"Agreement" means this Administrative Services Agreement between Administrator and Client, the Client Application and all other exhibits, supplements, amendments, addenda and/or schedules to this Administrative Services Agreement.

"Brand Drug" shall mean any drug, as identified by PBM using the Medi-Span Master Drug Database (Medi-Span) indicators, and their associated files, or indicators provided by another nationally available reporting service of pharmaceutical drug information that adjudicates at the Brand Drug Cost Share logic consistent with the Plan.

"Claims" means prescription drug claims processed through PBM's on-line claims adjudication system or otherwise processed in accordance with this Agreement in connection with Client's Plan.

"Claims Cycle" means the frequency by which Claims are billed. Clients on the RxClaim adjudication platform are billed twice a month.

"Contract Year" means the full twelve (12) month period commencing on the Effective Date and each full consecutive twelve (12) month period thereafter that this Agreement remains in effect.

“Cost Share” means the amount which a Plan Participant is required to pay for a prescription, which may be a deductible, a percentage of the prescription price, a fixed amount and/or other charge or penalty.

“Drug Interchange” means any substitution initiated by PBM of a prescription drug that is not on the PDL or the Prescribing Guide, as defined herein, for a clinically comparable drug on the PDL or Prescribing Guide. Drug Interchange shall not include any substitution initiated by PBM that is (a) due to a drug utilization review; (b) due to Plan Participant safety reasons; (c) due to market unavailability of the originally prescribed drug; (d) a Generic Drug substitution of a Brand Drug; or (e) due to the originally prescribed drug not being covered by the Plan.

“ERISA” means the Employee Retirement Income Security Act of 1974, as amended, and the regulations promulgated thereunder.

“Generic Drug” means a prescription drug, whether identified by its chemical, proprietary, or non-proprietary name, that is therapeutically equivalent and interchangeable with drugs having an identical amount of the same active ingredient(s) and approved by the FDA and which is identified as such using indicators from Medi-Span on their provided (M,N,O,Y) codes. In addition, any drug that adjudicates at the Generic Drug Cost Share logic consistent with the Plan will be considered a Generic drug. For purposes of this Agreement, all single source Generic Drugs will be included in the Generic Drug pricing guarantee. The Parties agree that when a drug is identified as a Generic Drug it shall be considered a Generic Drug for all purposes under this Agreement.

“HIPAA” means the Health Insurance Portability and Accountability Act of 1996, as amended, and the regulations promulgated thereunder.

“Losses” means all claims, causes of action, judgments, penalties, fines, liabilities, demands, damages, losses, costs, fees or expenses of any kind, including, without limitation, reasonable attorneys’ fees and associated expenses.

“Maximum Allowable Cost” or “MAC” means the unit price that has been established by PBM for a multi-source drug (i.e., a drug with more than two sources) included on the MAC drug list applicable to Client, which list may be amended from time to time by PBM in maintaining its generic pricing program. Client acknowledges that the MAC list applicable to Client is not the same as the MAC list published by the Centers for Medicare and Medicaid Services (formerly known as the Health Care Financing Administration).

“Participating Pharmacy” shall mean mail service pharmacies and retail pharmacies that participate in the national retail network established by PBM.

“PDL” means the PBM Performance Drug List, which is a list of preferred pharmaceutical products, created and maintained by PBM, as amended from time to time, which: (a) has been approved by PBM’s pharmacy and therapeutics committee; and (b) reflects PBM’s recommendations as to which pharmaceutical products should be given favorable consideration by plans and their participants.

“PPACA” means the Patient Protection and Affordable Care Act, as amended from time to time, and the regulations promulgated thereunder.

“Plan” means the health benefit plan(s) sponsored by Client that the prescription drug benefit is/are a part.

“Plan Administrator” means the Plan sponsor or committee designated by the Plan sponsor with respect to the Plan, as contemplated by Section 3 (16)(A) of ERISA.

“Plan Participant” means each individual who Client identifies in the eligibility file to be eligible for prescription drug benefits under its Plan.

“Prescriber” means a health care practitioner licensed or authorized by law to issue an order for a prescription drug.

**“Prescribing Guide”** means the PBM Prescribing Guide, as modified and published from time to time, which has been approved by PBM’s pharmacy and therapeutics committee.

**“Protected Health Information”** or **“PHI”** shall have the meaning given such term by HIPAA, but limited to that information created or received by PBM in its capacity as a subcontractor to Administrator or by Administrator in its capacity as a business associate to the Plan.

**“Rebates”** means retrospective discounts or other payments based upon the utilization of a pharmaceutical manufacturer’s Brand Drug pursuant to a valid prescription and exclusive of services fees and purchase discounts. PBM shall retain other earned revenue which is deemed separate and apart from “Rebates.”

**“Representatives”** with respect to a Party means that Party’s directors, officers, manager’s employees, agents and other representatives.

**“Specialty Drugs”** means medications that (i) treat unique populations, (ii) require close therapy management and monitoring, (iii) require special handling and/or storage, (iv) are produced through biotechnologies, (v) are expensive and may involve complex reimbursement processes, or (vi) are generally administered as injections or infusions.

**“Term”** shall mean the time period between the Effective Date and the termination or expiration of this Agreement, including the Initial Term, as extended by any Renewal Term (as such terms are defined in Article VI.A).

**“Usual and Customary”** or **“U&C”** means the price for a pharmaceutical that a Participating Pharmacy would charge to the general public as submitted by the Participating Pharmacy.

## **ARTICLE II – ADMINISTRATIVE SERVICES PROVIDED**

- A. Administrator shall administer the prescription drug benefits provided by the Client’s Plan, subject to all of the terms and conditions of this Agreement, as the same may be amended from time to time.
- B. Administrator shall provide such assistance as may reasonably be necessary to Client’s personnel in enrollment of eligible employees and former employees and dependents eligible under the Plan. Administrator shall maintain up-to-date eligibility status records on all enrolled Plan Participants as submitted by Client for purposes of appropriate adjudication of Claims under the Plan.
- C. Administrator shall issue (or cause to be issued) prescription drug cards to each Plan Participant-employee who is enrolled in Client’s Plan and who is declared eligible by Client, as evidence of such Plan Participant-employee’s entitlement to prescription drug card benefits under the Plan.
- D. Upon reasonable request, Administrator shall provide Client with costs projections and analyses of Claims and such other statistical data as may reasonably be requested by Client in connection with Client’s management, oversight and control of the Plan.
- E. Administrator shall invoice Client for the Claims due to be paid and shall collect Claims due, plus monthly administration fees and any other fees payable by Client under Article IV hereof and/or the Client Application.

## **ARTICLE III – DUTIES OF CLIENT**

- A. Client shall be solely responsible for determining the eligibility of its employees and their dependents to participate and receive benefits under the Plan.
- B. Administrator has established and shall maintain a website located at [www.rxbenefits.com](http://www.rxbenefits.com) (the **“Website”**) through which Client shall have the ability to access, revise and update the eligibility and enrollment

information of Client's Plan Participants. Client agrees that it shall be solely responsible for effecting timely revisions and updates to the enrollment information through the Website (or, in the alternative, through a secure file transfer protocol (ftp) site or via secure electronic data file in a format acceptable to Administrator delivered to Administrator via electronic mail) and shall be responsible for the accuracy of the enrollment information and any and all revisions and updates to the enrollment information. Upon becoming aware of errors in the enrollment information, Client shall promptly correct the information as necessary through the Website or via other acceptable alternative means provided for above in this Article III.B. Administrator shall not be responsible for Claims payments made to Plan Participants or ineligible and former employees of Client who are no longer or, if applicable, should never have been Plan Participants, based on information that is or was inaccurate, was not updated or not updated on a timely basis, or otherwise revised as required by Client or this Agreement. Administrator agrees that revisions and updates to the enrollment or other applicable Plan Participant or Claim information made as described above before 2:00 p.m. local time in Birmingham, Alabama will be considered for purposes of this Agreement revised and updated on the next business day, while revisions and updates made after 2:00 p.m. local time in Birmingham, Alabama will be considered for purposes of this Agreement revised and updated on the second business day following the day such revisions and updates were made. For emergency revisions and updates that need to be effective on the same day and not the next business day, Client must call in or fax such revisions and updates to Administrator during Administrator's normal business hours and follow up with Administrator as appropriate to ensure such revisions and updates become effective on the same day. In addition, to the extent such emergency revisions are communicated by Client to Administrator orally (e.g., via telephone), Client agrees (and it shall be Client's sole responsibility) to provide Administrator with a written description in reasonable detail setting forth the emergency revisions and/or updates within 48 hours after such emergency revisions/updates were orally communicated by Client to Administrator.

- C. Administrator will provide unique alphanumeric passwords ("Passwords") to Client that will permit Client to access, revise, and update the enrollment information on the Website. Client will distribute the Passwords to the individuals named on the list of authorized users (the "Users"), which is included in Section A of the Client Application. Client is responsible for all uses of the Passwords, whether or not authorized by Client. Client is responsible for maintaining the confidentiality of the Passwords and ensuring that the Users maintain such confidentiality also. Client agrees to immediately notify Administrator of any unauthorized use of the Passwords of which Client becomes aware or has a reasonable basis to believe to have occurred. Client shall indemnify, defend and hold harmless Administrator and its Representatives from and against all Losses resulting from, arising out of or relating to any unauthorized use or access, except where such Losses result solely from the willful or intentional act or misconduct or negligence of Administrator. To amend the list of Users, Client must notify Administrator in writing of such amendment(s). Within one (1) business day after the business day on which Administrator receives such amendment(s) in writing from Client, Administrator will deactivate the Password(s) issued to any deleted User(s) and will activate and issue new Password(s) for any new User(s) identified by Client. Notwithstanding anything in this Agreement to the contrary, Administrator shall not (and Client acknowledges and understands that Administrator shall not) be liable or otherwise held responsible for fraudulent Claims submitted by any Plan Participant, other third party acting or purporting to act on any Plan Participant's behalf or any unauthorized party using any Plan Participant's prescription drug card, information or otherwise.
- D. Client expressly understands, acknowledges and agrees that any and all information, data, documentation or software disclosed by Administrator and/or PBM in the course of conducting its business and performing administrative and related services for Plan Participants and/or Client are confidential and proprietary to, and a valuable trade secret of, Administrator and/or PBM and that any disclosure or unauthorized use - that is, any use other than to evaluate Administrator's performance under this Agreement - will cause irreparable harm and damage to Administrator and/or PBM. Client shall not, directly or indirectly, release or disclose or otherwise use or attempt to use any patient-specific prescription information, cost and/or pricing data, terms and/or information, trade secrets, proprietary software and technical processing, financial or other confidential information of Administrator and/or PBM obtained by Client from Administrator and/or PBM (regardless of the reason such information was provided or obtained) to any other party or for the benefit of any other party without the prior written consent of Administrator and/or PBM, which consent may be withheld by Administrator and/or PBM in their sole and absolute discretion.

- E. Client expressly represents and warrants that (i) it has provided notice to its employees and their dependents regarding participation in the Plan and Client's disclosure or anticipated disclosure of employee or dependent confidential information to Administrator in connection with the Plan and applicable law, and (ii) it has obtained all required consents and/or other approvals or authorizations (either in writing or through opt-out procedures) from each Plan Participant regarding such disclosures to Administrator for purposes of this Agreement and the services provided to Client and Plan Participants hereunder, and relating to the use and disclosure of information by Administrator or other applicable parties, including without limitation Protected Health Information under HIPAA as permitted under this Agreement or as otherwise reasonably necessary to effect and/or carry out the purposes and intent of this Agreement and the services to be performed and rendered by Administrator, PBM, Client or other applicable third parties with respect to this Agreement. Further, Client hereby authorizes PBM to contract with pharmaceutical companies for Rebates as a group purchasing organization for the Plan. PBM and/or Administrator may use, disclose, reproduce or adapt information obtained in connection with this Agreement, including Claims as well as eligibility information, which is not identifiable on a Plan Participant basis. PBM and/or Administrator shall maintain the confidentiality of this information to the extent required by applicable law, and may not use the information in any way prohibited by applicable law.
- F. Should Client identify erroneous, mistaken or incorrect Claims payments made by Administrator, refunds in the amount of any such erroneous Claims payments to Client shall be made by Administrator within 30 days after receipt by Administrator of written notice from Client identifying such errors and providing reasonable documentation to support them. Client acknowledges, covenants and agrees that such refunds made by Administrator as provided in this Article III.F shall be the sole and exclusive remedy of Client and any Plan Participant against Administrator, its Representatives or any third party (including PBM) resulting from any such erroneous, mistaken or incorrect Claims payments made by or to Administrator, and Client further covenants and agrees to hold harmless and indemnify Administrator and its Representatives for any Losses beyond such refunds claimed by any party from Administrator. The Parties acknowledge that Administrator may seek to recover any overpayments from the Plan Participants, the providers of service or any other party unjustly enriched as a result of such overpayments at any time after notice or awareness of any such error.
- G. Without limiting the generality or scope of any other provision of this Agreement, Administrator shall not be held responsible or liable for any performance standard or obligation required of it hereunder if Client (or Client's designee(s)) or any Plan Participant fails to provide Administrator with accurate, timely and complete information as necessary and/or required to meet any such performance standard or obligation under this Agreement or otherwise.

#### ARTICLE IV – FINANCIAL ARRANGEMENT

- A. Administrator will invoice Client for the Prescription Charges paid during the immediately prior Claims Cycle in accordance with the Claim Cycle billing applicable to Client's adjudication platform (e.g., twice a month for the RxClaim adjudication platform and monthly for all other services other than Claims) (collectively, "Charges").
- B. Administrator will invoice Client for the Transaction Fees (defined below), regardless of the amount of Claims activity, if any. All invoices will be due and payable seven (7) days from receipt by Client and shall in no event be received by Administrator later than the due date stated in the invoice. Refer to Article V, below, for rules applicable to late payment of invoices. Client shall not (and acknowledges that it shall not) have any right to offset any disputed amounts or amounts due and/or payable or purported to be due and/or payable from Administrator and/or PBM from any payments of Client except as specifically approved in writing by Administrator.
- C. In addition to Transaction Fees and Program Fees payable to Administrator by Client and PBM Service Fees, Implementation Fees and/or other monies that Administrator may receive from PBM (each as set forth herein or in the Client Application), Administrator's charges to Client for Claims will include the sum of the Prescription Charges (defined below) with respect to such Claims that Administrator has paid or is obligated to pay to PBM on behalf of Client. For purposes of this Agreement, the "Prescription Charges" with respect to a particular Claim shall be an amount equal to:

- (a) the lesser of: (i) the sum of (x) the ingredient cost of the drug, plus (y) the pharmacy dispensing fee for such drug (each as set forth on the Client Application); or (ii) the pharmacy's U&C amount for such drug; plus
- (b) state tax, where applicable; minus
- (c) any co-pay and/or deductible amount which the Plan Participant is obligated to pay with respect to such Claim under the Client's Plan or other applicable benefits program.

In addition to and without limiting the foregoing, any sales, use or other tax or assessment, including without limitation any surcharge or similar fee imposed under applicable law on any health care provider, Client, Plan Participant, service, supply or product provided or to be provided under this Agreement, will be the responsibility of Client and will be added to any invoices to Client hereunder as applicable.

- D. Administrator may charge Client administration fees (a) per Plan Participant-employee per calendar month payable on a monthly basis, and/or (b) per Claim made by Plan Participants payable on a bi-monthly basis (collectively, the "Transaction Fees"). The Transaction Fees to be paid by Client to Administrator under this Agreement are as specified in the Client Application.
- E. Client acknowledges that there are certain clinical programs and related prescription drug services (e.g., formulary management, generic substitution programs, concurrent drug utilization review, prior authorizations, appeals, etc.) made available by PBM and other strategic partners of Administrator and administered by Administrator for the benefit of Client and its Plan Participants which Client may elect, in its discretion and subject to mutual agreement with Administrator, to include as part of the prescription drug benefits and services made available by Client to its Plan Participants under this Agreement (collectively, "Clinical Programs" and "Optional Services"). Client further acknowledges and agrees that (a) any such Clinical Programs and Optional Services it elects to include as part of its Plan may require the payment of additional charges as set forth in the Client Application (collectively, the "Program Fees") and (b) a portion of any such Program Fees paid by Client may be retained by Administrator.
- F. Rebates actually received by Administrator from PBM during the Term for Claims attributable directly to Client's Plan Participants will be paid or remitted to Client or the Plan in accordance with and subject to the terms and conditions agreed upon by the Parties in the Client Application (Exhibit A). Furthermore, Client acknowledges and understands that except for the Rebates payable to Client on Claims for Brand Drugs pursuant to Section C.1 (Minimum Guaranteed Pricing) of the Client Application (Exhibit A): (i) PBM may retain all or a portion of any formulary rebate fees received from pharmaceutical companies or otherwise prior to making payment of Rebates, if any, to Administrator or other monetary amounts with respect to prescription drugs that are not covered under the Plan; and (ii) PBM will retain any discounts paid to it with respect to Specialty Drugs, and no such discounts will be paid or remitted to Administrator or Client. The Parties further acknowledge and understand that rebates will not be paid to the Parties with respect to any Claims reimbursed on a unit basis by Medicaid agencies or other federal or state health care programs.
- G. Client acknowledges and is aware that Administrator, pursuant to its contractual agreement with PBM: (i) is paid by PBM an administrative services credit payment per mail and retail Claim administered by Administrator on behalf of each Plan Participant in the Plan (the "PBM Service Credit"); and (ii) may also receive from PBM a one-time per Plan Participant implementation and marketing credit payment designed to reimburse Administrator for actual expenses and out-of-pocket costs incurred by Administrator to market and implement PBM products and services and transition Client (and its Plan Participants) to PBM's benefit offerings (the "Implementation Credit"). It shall be Administrator's responsibility to obtain and collect such PBM Service Credit and any Implementation Credit directly from PBM and Client shall have no responsibility (payment or otherwise) with respect to such credits payable by PBM. The PBM Service Credit and Implementation Credit are the sole and exclusive responsibility of PBM to credit and compensate to Administrator. The Parties acknowledge and agree that (1) Administrator shall be responsible for any and all transition and implementation costs it incurs (exclusive of any Implementation Credit received by it as described above) with respect to the marketing and transition of Client (and its Plan Participants) to benefit offerings administered by Administrator for Client, and (2) Client shall be responsible for any and all

transition and implementation costs it incurs with respect to the transition and implementation of such benefit offerings. To the extent applicable to the Parties, it is the Parties' intention that, for purposes of the Federal Anti-Kickback Statute and any required government reporting, the PBM Service Credit and Implementation Credit shall constitute and shall be treated by Administrator and Client as a discount against the price of drugs within the meaning of 42 U.S.C. § 1320a-7b(b)(3)(A). By executing this Agreement, each of Administrator and Client hereby agrees that the PBM Service Credit and any Implementation Credit shall be so treated and reported, as and to the extent applicable to each such Party.

- H. Client acknowledges that Administrator may, in its sole discretion, compensate brokers and/or third-party consultants from monies received or due to be received by Administrator under the provisions of this Agreement.
- I. Upon reasonable advance written request by Client through its authorized Representative, Administrator agrees to provide Client with any additional information or data within Administrator's possession or control, including without limitation specific payment or financial information, relating to this Agreement and the terms hereof, both in connection with the execution of this Agreement by the Parties as of the Effective Date and thereafter during the Term of this Agreement, whether or not in connection with any filing with respect to Client's Plan or otherwise required of Client or the Plan under applicable law, provided that such information will be made available by Administrator at mutually convenient and reasonable times, intervals and places and at no out-of-pocket cost or expense to Administrator. In the event any information requested by Client pursuant to this Article IV.I constitutes Confidential Information such disclosure will be made in accordance with the terms and conditions of Article VIII.I. In the event any information requested by Client pursuant to this Article IV.I is subject to an obligation or covenant of confidentiality, Administrator agrees to exercise its commercially reasonable efforts (provided, however, that such efforts shall not require Administrator to incur any out-of-pocket cost or expense) to obtain permission or consent to disclose to Client any such information in Administrator's possession and/or control, subject to Client's execution of a confidentiality agreement with Administrator and any other applicable party in a form reasonably acceptable to Administrator and any such other applicable party.

#### ARTICLE V – LATE PAYMENT

- A. If the Charges for Claims, the Transaction Fees or any Program Fees specified in this Agreement are not paid by Client and received by Administrator by the due date of the applicable invoice, then Client shall pay Administrator a service charge equal to five percent (5%) (or the maximum amount allowable under applicable law if such amount is less than 5%) of all then past due amounts. In addition to such service charge, any past due amounts (inclusive of service charges) will incur interest beginning on the due date and continuing thereafter until fully paid at a rate of ten percent (10%) per annum (or the maximum amount allowable under applicable law if such amount is less than ten percent (10%)).
- B. Furthermore, if payment of the Charges for Claims, the Transaction Fees or any Program Fees payable by Client are not received by the due date of the applicable invoice, Administrator may, at its option, cease or suspend the provision of administrative services provided by Administrator under this Agreement (including suspension of Claims processing), and deactivate all prescription drug cards issued to the Plan Participants. Consult Article VI for Administrator's option and right to terminate this Agreement at any time if Client fails to make full and timely payment of such Charges and fees (including any applicable service charges and interest) to Administrator.
- C. If at any time Administrator reasonably determines that Client may have difficulty meeting its financial commitments under this Agreement, Administrator may request from Client financial information, reasonable assurances, or both, satisfactory to Administrator as to Client's ability to timely and fully meet its commitments and responsibilities hereunder. Such assurances may include, without limitation, Administrator requiring Client to make a deposit in such amount reasonably sufficient in Administrator's judgment to secure Client's payment obligations. If Client provides Administrator with such a deposit, Administrator may apply the deposit to past due balances and shall return the remaining deposit, if any, after the termination of this Agreement and the payment of all amounts payable to Administrator hereunder. Any deposit made by Client hereunder shall not be deemed a Plan asset.

- D. Administrator's failure to charge or collect a service charge and/or interest from Client shall not waive or otherwise limit in any respect any future right of Administrator under this Agreement to charge or collect a service charge and/or interest from Client.

#### ARTICLE VI – TERM AND TERMINATION

- A. The initial term of this Agreement shall commence on the Effective Date and shall continue in effect, unless sooner terminated as provided herein, for a period of one (1) year after the Effective Date (the "Initial Term"). Unless either Party gives the other Party written notice of its intention to terminate (given in the manner prescribed in Article VIII.B below) at least ninety (90) days in advance of the expiration of then applicable Initial Term or Renewal Term (as the case may be), the Term of this Agreement shall automatically renew and extend for additional one (1) year renewal terms (each, a "Renewal Term") without any additional act on the part of either Party (unless sooner terminated as provided herein and subject to the consequences of any such termination). Administrator may terminate this Agreement at any time if its contractual arrangement with PBM terminates by giving at least ninety (90) days prior written notice of the termination of this Agreement to Client.
- B. Either Party may terminate this Agreement upon written notice to the other Party if, as a result of any change in law, the rights or obligations of the requesting Party would be materially and adversely affected. Any such termination shall be effective on the day immediately preceding the effective date of such change in law, subject to the provisions of immediately following sentence. Notwithstanding the foregoing sentence, the Parties hereby agree to use prompt, good faith efforts to renegotiate the terms of this Agreement. If the Parties successfully conclude such negotiations prior to the effective date of the change in law, this Agreement shall not terminate and shall be amended to reflect the negotiated terms mutually agreed upon by the Parties. In the event the Parties are unable to successfully conclude and reach mutual agreement through such good faith negotiations, this Agreement shall terminate as provided above and herein.
- C. On and after the date of termination of this Agreement, Administrator shall be obligated to complete such administrative services provided for in this Agreement as have been commenced prior to the date of termination. Therefore, Claims incurred or reported after the date of termination are the sole responsibility of Client and are not the responsibility of Administrator. Furthermore, termination of this Agreement shall not relieve Client of its obligation to pay Administrator for any outstanding Claims, charges, fees (including without limitation any applicable service charges), interest and reasonable collection costs and attorneys' fees incurred by Administrator associated with such collections. Upon termination of this Agreement, Administrator shall not have any obligation to transition Claims files and/or histories (or other information prior to such information being scrubbed of PBM's or Administrator's confidential, proprietary or trade secret information) to the extent that they contain PBM and/or Administrator cost, pricing and/or other proprietary, financial information to Client's new prescription benefit manager or any other third party. With respect to any files requested by Client or its new prescription benefit manager, any associated charges shall be the responsibility of Client.
- D. Administrator may, in its sole and absolute discretion, suspend performance or terminate this Agreement at any time without giving any advance notice, written or otherwise, to Client (or to any other party) and without penalty or liability for any Losses if (1) Client fails to make timely payment of the Charges for Claims, the Transaction Fees or any Program Fees owed to Administrator in accordance with the terms and conditions of this Agreement or, if requested, does not provide a deposit to Administrator as provided in Article V.C above, (2) Client makes an assignment for the benefit of creditors, (3) Client is the subject of a voluntary or involuntary petition for bankruptcy or is adjudicated insolvent or bankrupt, or (4) a receiver or trustee is appointed for any portion of Client's property.
- E. Termination of this Agreement shall not terminate either Party's rights and obligations under Article III.C, Article III.D, Article IV (Financial Arrangement), Article V (Late Payment), Article VI.C, Article VII (Indemnification), Article VIII.B (Notices), Article VIII.C (Applicable Law; Venue; Consent to Jurisdiction), Article VIII.D (Entire Agreement; Construction), Article VIII.F (Relationship of the Parties), Article VIII.I (Confidential and Proprietary Information), Article IX (ERISA, COBRA & HIPAA Duties) and the Client

Application (as amended, if applicable), and all such rights and obligations shall expressly survive any such termination.

#### ARTICLE VII – INDEMNIFICATION

- A. Except as otherwise provided in this Agreement, Client and Administrator agree to hold harmless and to indemnify each other and each other's Representatives from and against any Losses arising out of or related to the indemnifying Party's breach or violation of this Agreement.
- B. Client acknowledges that: (1) Administrator and its Representatives do not bear any liability for Losses under the Plan; (2) Administrator and its Representatives do not insure nor underwrite the liability of Client under the Plan; and (3) Administrator's execution of this Agreement shall not be deemed as the assumption by Administrator or its Representatives of any responsibilities, obligations or duties other than those required of Administrator pursuant to the express terms and conditions of this Agreement.
- C. Client further agrees to hold harmless and to indemnify Administrator and its Representatives from and against all Losses arising out of or in connection with (1) Client's default in the performance of any duty, requirement or obligation of Client under this Agreement, the Plan or otherwise owed to Client's employees and their dependents (whether or not in relation to this Agreement or the Plan), (2) the acts or omissions of any Representative of Client (whether or not in relation to this Agreement or the Plan) or (3) any representations, warranties, covenants or statements, whether written, oral or otherwise, made by Client to its Representatives and/or their dependents.
- D. Each Party's liability to the other Party and its Representatives hereunder shall not exceed the actual proximate Losses caused by or arising from the indemnifying Party's breach or violation of, or failure to perform, any term or provision of this Agreement. In no event shall either Party or any of its Representatives be liable to the other Party or any of its Representatives or any other third parties for any indirect, special, incidental, consequential, exemplary or punitive damages (in each case, to the fullest extent that such damages may be waived by contract under applicable law), or any damages for lost profits relating to a relationship with a third party, however caused or arising, whether or not they have been informed of the possibility of their occurrence, and regardless of the cause of action.

#### ARTICLE VIII – GENERAL PROVISIONS

- A. **Changes in Agreement.** This Agreement may be amended at any time, without prior notice to any Plan Participant, by mutual written agreement executed by Administrator (through its duly authorized Representative) and Client (through its duly authorized Representative). No employee, agent or other Representative of Administrator is authorized to amend or vary the terms and conditions of this Agreement or to make any agreement or promise not specifically contained herein or to waive any provision hereof other than by the means prescribed above in this Article VIII.A.
- B. **Notices.** Any notices to be given hereunder shall be deemed sufficiently given when in writing and (1) actually delivered to the Party to be notified or (2) placed in an envelope directed to the Party to be notified at the following addresses and deposited in the United States mail by certified or registered mail, postage prepaid:

If to Administrator at:                      RxBenefits, Inc.  
Attn: Lauren Simmons  
3500 Blue Lake Drive, Suite 200  
Birmingham, AL 35243

If to Client at:                                      City of Bartlesville  
Attn: \_\_\_\_\_  
401 S. Johnstone Ave.  
Bartlesville, OK 74003

Such addresses may be changed by either Party by written notice as to the new notice address given to the other Party as provided in this Article VIII.B. Client shall act as agent of its employees (and such employees' dependents, as and whenever applicable) to receive all notices to them hereunder and to notify the employees and their participating dependents affected thereby. It also shall be the responsibility of Client to notify all employees (and their dependents) of the expiration or termination of this Agreement by a Party pursuant to Article VI or otherwise. In the case of changes in, or termination of, the Agreement, notice to or by Client shall be deemed to constitute notice to all employees of Client and their dependents, and no further notice need be given by Administrator to any employee or dependent in order to effectuate any change in, or termination of, this Agreement or the benefits or coverage provided for herein or made available hereby.

- C. **Applicable Law; Venue; Consent to Jurisdiction.** This Agreement shall be governed by, and construed and interpreted in accordance with, the internal laws of the State of Alabama without regard to conflicts of law principles thereof. The Parties agree that the exclusive venue for any action, suit, claim, counterclaim, cross-claim or otherwise with respect to this Agreement and/or the subject matter hereof shall be in the Federal and state courts sitting in Shelby County, Alabama (the "Alabama Courts"), and each Party knowingly and voluntarily hereby submits and consents to the jurisdiction of said courts over such Party and hereby expressly waives and releases any and all defenses, claims or other rights or remedies it may have or may assert or allege to establish that jurisdiction or venue in the Alabama Courts is in error, improper or otherwise invalid in any respect. As such, each Party agrees that any such Alabama Courts shall have *in personam* jurisdiction over it and consents to service of process in any manner authorized by Alabama law. Each Party further covenants not to sue the other Party (or such other Party's Representatives) in any court or jurisdiction other than the Alabama Courts.
- D. **Entire Agreement; Construction.**
1. This Agreement (as defined in Article I (Certain Definitions)) constitutes the entire agreement and understanding of the Parties and supersedes any prior oral or written communication between the Parties with respect to the subject matter hereof. All Recitals to this Agreement set forth above and all Exhibits attached hereto are hereby incorporated into and made a part of this Agreement.
  2. In the event any provision of this Agreement shall be determined invalid or unenforceable, such invalidity or unenforceability shall not invalidate or render unenforceable the entire Agreement, but rather this Agreement shall be construed as if not containing the particular invalid or unenforceable provision or provisions and the rights and obligations of the Parties shall be construed and enforced accordingly; provided, that if the invalidation or unenforceability of such provision(s) shall, in the reasonable, good faith opinion of either Party, have a material adverse effect on such Party's rights or obligations under this Agreement, then the Agreement may be terminated by such Party upon thirty (30) days advance written notice by such Party to the other Party.
  3. The Parties hereto agree that no provisions of this Agreement or any related document shall be construed for or against or interpreted to the advantage or disadvantage of any Party hereto by any court or otherwise by reason of any Party's having or being deemed to have structured or drafted such provision, each Party hereby expressly acknowledging its participation and/or its right and ability to participate, in the structuring and drafting hereof. The Parties further acknowledge that: (i) this Agreement is the product of good faith, arm's length negotiations between them; (ii) such Parties possess substantially equal bargaining power; and (iii) each Party has had the opportunity to obtain the advice of legal counsel regarding the negotiation and execution of this Agreement.
  4. This Agreement is not a third party beneficiary contract, nor shall this Agreement create (or be construed or deemed to create) any rights or remedies, whether legal, equitable or otherwise, on behalf of Plan Participants or any other third parties as against Administrator.
  5. This Agreement is not a contract of insurance and Administrator is not an insurer or underwriter of Client's liability under, or with respect to, the Plan. Except as otherwise provided in this Agreement, Client has and will retain the ultimate responsibility for payment of Claims and other expenses under the Plan.

6. The article and section headings contained in this Agreement are solely for the purpose of reference, are not part of the agreement of the parties and shall not in any way affect the meaning or interpretation of this Agreement.
- E. **Authority; Counterparts.** The signatories to this Agreement each represents and warrants that he/she has full corporate or company power and authority to sign this Agreement on behalf of his/her respective Party and to legally bind and obligate such Party by so signing. Additionally, upon such signature by such authorized signatory(ies) of Client in each signature block of this Agreement (and the Client Application and Business Associate Agreement made a part of this Agreement), Client represents, warrants, covenants and agrees that it has the necessary power and authority, corporate, company or otherwise (and that all necessary action has been taken for Client), to enter into this Agreement and such other agreements and to consummate the transactions provided for herein and therein. This Agreement may be executed simultaneously in any number of counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument. Facsimile signatures or signatures transmitted by electronic mail shall be deemed to be original signatures for all purposes.
- F. **Relationship of the Parties.**
1. Administrator and Client are, and shall at all times be, solely independent contractors. Neither Party nor its Representatives is, nor shall such Party or its Representatives be construed to be, by any Party to this Agreement or by any third party, an employee, joint venturer, partner, principal, agent, master, servant, fiduciary or other Representative of the other Party. Neither Party is authorized to assume or create any obligations, duties or liabilities, express or implied, on behalf of or in the name of the other Party, except as otherwise expressly provided to the contrary in this Agreement. Furthermore, Client acknowledges, agrees and understands that Administrator, on the one hand, and PBM and any other contracting parties of Administrator, on the other hand, are unaffiliated entities and independent parties who are solely independent contractors of one another.
  2. Client acknowledges that (i) Client shall be responsible, in its sole discretion, for the selection of any consultants or experts to provide advice to Client as to liabilities under the Plan or duties or obligations of the Plan or Client under applicable law or otherwise, and (ii) Client is not contracting hereunder with Administrator for the provision of any such advice by Administrator. To the contrary, the Parties expressly acknowledge that Administrator will not provide such advice to Client, and that neither Party has any obligation or responsibility to advise the other Party about such other Party's compliance or noncompliance with any law, regulation, statute, rule or otherwise (including without limitation under ERISA, the Internal Revenue Code, the Public Health Service Act and/or any regulation with respect to any of the foregoing).
  3. Client expressly acknowledges and agrees that: (i) Administrator is not (nor shall it be deemed to be at any time) a "fiduciary" under ERISA, the Internal Revenue Code, the Public Health Service Act and/or any regulations thereunder, applicable state law, common law or otherwise for any purposes whatsoever pursuant to this Agreement or otherwise; and (ii) Administrator is not (nor shall it be deemed to be at any time) the administrator of the Plan for any purpose; (iii) Client (and not Administrator) possesses and expressly retains at all times during this Agreement and thereafter the sole and absolute authority and responsibility to design, amend, terminate, modify, in whole or in part, all or any portion of the Plan, including without limitation the sole and absolute authority to control and administer the Plan and any assets of the Plan, and such authority and responsibility cannot be delegated to the Administrator; and (iv) Client (and not Administrator) has complete discretionary, binding and final authority to construe the terms of the Plan, to interpret ambiguous Plan language, to make factual determinations regarding the payment of Claims or provision of benefits, to review denied Claims and to resolve complaints by Plan Participants.

**G. Compliance with Laws; Force Majeure.**

1. Each Party hereby certifies and shall perform its duties and obligations under this Agreement in a manner that complies with all laws applicable to such Party and its performance hereunder, including without limitation the federal anti-kickback statute set forth at 42 U.S.C. § 1320a-7b(b) ("Anti-Kickback Statute") or the federal "Stark Law" set forth at 42 U.S.C. § 1395nn ("Stark Law") as and to the extent applicable to each such Party. Each Party is responsible for obtaining its own legal advice concerning its compliance with applicable laws. If Administrator's performance of its duties and obligations under this Agreement is made materially more burdensome or expensive due to a change in federal, state or local laws or regulations or the interpretation or enforcement thereof, the Parties shall, at the option of Administrator, negotiate promptly and in good faith an appropriate adjustment to the fees, costs, expenses and/or charges paid to Administrator hereunder or other amendment to this Agreement reasonably necessary in light of the change in law or regulation or the interpretation or enforcement thereof. If the Parties cannot agree on such adjusted amounts or amended terms, then either Party may terminate this Agreement upon thirty (30) days prior written notice to the other Party.
2. Neither PBM nor Administrator shall be obligated at any time to provide the prescription drug benefit and related services identified in this Agreement to Client or Client's Plan Participants if Client or, if applicable, Plan Participants, are located in a state requiring a prescription benefit manager to be a fiduciary to Client or Plan Participants, in any capacity, contrary to or inconsistent with the terms and conditions specifically identified in this Agreement. In the event any state law or regulation requires PBM or Administrator to be a fiduciary to Client or a Plan Participant contrary to or inconsistent with the terms and conditions identified in this Agreement, Administrator may elect not to provide such prescription drug benefit and related services identified in this Agreement to the impacted Plan Participants upon thirty (30) days prior written notice to Client.
3. Each Party, upon giving prompt written notice thereof to the other Party, shall not be liable for delay or failure to perform hereunder, if such delay or failure is due to causes beyond the reasonable control of such Party (a "Force Majeure Event"). For purposes of this Agreement, a Force Majeure Event may include, but shall not be limited to, acts of God, fire, explosion, earthquake, war, terrorism, malicious mischief, accident, transportation tie-up, riot or civil insurrection, embargo, strike or labor disturbance, slowdown or labor stoppage of any kind or act of any government, foreign or domestic. Each Party shall have the option, but not the obligation, to terminate this Agreement in its entirety if the other Party fails to perform any material obligation of this Agreement because of the occurrence of a Force Majeure Event and either (i) the other Party does not cure such breach within thirty (30) days after the occurrence of the Force Majeure Event, or (ii) such failure is not reasonably subject to cure within such period. The non-breaching Party must provide written notice of termination to the breaching Party.

**H. Access to Information; Audit Rights; Government Agency Submitted Claims.**

1. Administrator and Client will allow each other reasonable access at reasonable times to administrative information relating to this Agreement and the Parties' respective duties, obligations and benefits described herein, upon the giving of reasonable advance notice by the requesting Party (subject to any limitations with respect to information that is not in the possession or control of Administrator or is otherwise subject to a covenant of confidentiality in favor of a third party). The requesting Party agrees to execute a confidentiality agreement in form and content satisfactory to the disclosing Party as a condition precedent to being permitted such access to such information.
2. Client, or a mutually acceptable third party retained by Client, may conduct, with at least sixty (60) days prior written notice and at Client's sole cost and expense, an annual Claims audit and such audit shall be limited to an audit of Administrator's data that directly relates to Claims billings for the prior Agreement year; provided, however, no audit pursuant hereto may be initiated more than once in any twelve (12) month period nor more than eighteen (18) months after the date of expiration or termination of this Agreement. The scope and manner of such a Claims audit (including

applicable guidelines and timelines) shall be as reasonably determined by Administrator and communicated to Client sufficiently in advance of any such audit. Client agrees that it will execute (and shall cause any mutually acceptable third party taking part in any such audit to execute) a confidentiality agreement in form and content reasonably acceptable to Administrator prior to conducting any such audit. In the event of an audit by a mutually acceptable third party, Administrator and Client shall be provided with a copy of any proposed audit report or other written materials documenting such audit, and Administrator will have a reasonable opportunity to comment on any such report or written materials documenting such audit before such are finalized. Upon finalization of audit results and agreement between Client and Administrator on any identified adjustments or discrepancies, if any, the period under review will be considered closed by the Parties and such agreed upon adjustment payments, if any, shall be paid by the appropriate party within thirty (30) days of execution by the Parties of an appropriate release document covering the audit period. The audited period may not be re-audited once the audit is complete. Client acknowledges that it shall not be entitled to audit documents that Administrator is barred from disclosing by applicable law or pursuant to an obligation of confidentiality to a third party or that are not under the direction or control of Administrator.

3. Client acknowledges that government agencies, including without limitation federal and state governmental payors, may seek eligibility or similar data from Administrator or PBM regarding Plan Participants and may submit to Administrator or PBM claims for reimbursement for prescription drug benefits provided to such government agencies (or their agents) to Plan Participants ("Government Claims"). Client authorizes (a) Administrator and PBM to provide such data as requested by government agencies, including without limitation federal and state governmental payors, and/or their authorized agents and (b) Administrator and/or PBM to process such Government Claims. Client acknowledges that Administrator may advance payment for Government Claims on behalf of Client during the Term of this Agreement. Client shall reimburse Administrator, in accordance with Client's payment obligations under this Agreement, for all amounts advanced by Administrator for payment of Government Claims. Client acknowledges that Government Claims submitted by or on behalf of a state Medicaid Agency or other governmental payor shall be paid by or on behalf of Client if submitted within three (3) years from the original date of fill unless a longer period is required by applicable law. In addition, Government Claims submitted by or on behalf of a state Medicaid agency or other governmental payor may not be denied on the basis of the format of the Government Claim or failure to present proper documentation at the point-of-sale. Client shall also reimburse Administrator for any adjustments or reconciliations to previously processed Government Claims that may be payable to government agencies in accordance with applicable laws and regulations. The administrative fee for processing Government Claims shall be invoiced at the paper submitted claim rate already agreed to by the Parties or as otherwise agreed upon in writing by Administrator and Client. Administrator reserves the right to (a) terminate these services upon ninety (90) days prior notice to Client or (b) delegate these services to a third party claims processor other than PBM. Notwithstanding any provision of this Agreement to the contrary, Client acknowledges and agrees that Client shall be solely responsible for processing and making payment of any Government Claims applicable to Client and its Plan Participants received after the effective date of the termination or expiration of this Agreement.

I. **Confidential and Proprietary Information.**

1. The term "Confidential Information" includes, but is not limited to, this Agreement or any information of either Client or Administrator (including without limitation its designees) (whether oral, written, electronic, visual or fixed in any tangible medium of expression) relating to either party's services, operations, systems, programs, inventions, techniques, suppliers, customers and prospective customers, contractors, costs and pricing data, trade secrets, know-how, processes, plans, designs and other information of or relating to either party's business. Confidential Information does not include Protected Health Information, the use and disclosure of which is governed by Article IX.C (including Exhibit B) of this Agreement. Without limiting the foregoing in any way, Client acknowledges and agrees, for itself and its Representatives, that the following financial fields constitute Confidential Information of Administrator for purposes of this Agreement

and shall not be disclosed by Client to any third parties without the express, prior written consent of Administrator: (a) total AWP; (b) ingredient cost; (c) dispensing fees; (d) drug cost; (e) patient amount paid; (f) total amount paid; (g) sales tax; (h) U&C charges; (i) specialty indicator; and (j) brand/generic indicator.

2. Administrator and Client shall not disclose or make use of any Confidential Information except as permitted under this Agreement without the prior written consent of the non-disclosing party, which consent may be conditioned upon the execution of a confidentiality agreement. Each party may disclose Confidential Information of the other party only to its authorized Representatives who have a need to know the Confidential Information in order to accomplish the purpose of this Agreement and who (i) have been informed of the confidential and proprietary nature of the Confidential Information; and (ii) with respect to Representatives, have agreed in writing not to disclose it to others and to treat it in accordance with the requirements of this Section. Administrator or Client, as applicable, shall be responsible to the other Party for any breach of this Agreement by its respective Representatives.
  3. The foregoing shall not apply to such Confidential Information to the extent: (i) the information is or becomes generally available or known to the public through no fault of the receiving party; (ii) the information was already known by or available to the receiving party prior to the disclosure by the other party on a non-confidential basis; (iii) the information is subsequently disclosed to the receiving party by a third party who is not under any obligation of confidentiality to the disclosing party; (iv) the information has already been or is hereafter independently acquired or developed by the receiving party without violating any confidentiality agreement or other similar obligation; or (v) the information is required to be disclosed pursuant to a court order. Except in accordance with the requirements of this Article VIII.I.3, neither Party nor its Representatives may disclose, or permit to be disclosed, Confidential Information of the other party as an expert witness in any proceeding, or in response to a request for information by oral questions, interrogatories, document requests, subpoena, civil investigative demand, formal or informal investigation by any government agency, judicial process or otherwise. If either Party, or any of its respective Representatives, is requested to disclose the Confidential Information of the other party for any of the reasons described in the preceding sentence such Party shall give prompt prior written notice to the other Party to allow the other party to seek an appropriate protective order or modification of any requested disclosure. The receiving party agrees to reasonably cooperate with the disclosing party in any action by the disclosing party to obtain a protective order or other appropriate remedy. If the receiving party is ultimately legally compelled to disclose such Confidential Information, the receiving party shall disclose only the minimum required pursuant to and in order to comply with the court order or other legal compulsion.
  4. Without limiting any other rights and remedies available under this Agreement or otherwise, any unauthorized disclosure or use of Confidential Information would cause Administrator or Client, as applicable, immediate and irreparable injury or loss that may not be adequately compensated with money damages. Accordingly, if either Party fails to comply with this Article VIII.I, the other Party will be entitled to seek to obtain specific performance including immediate issuance of a temporary restraining order or preliminary injunction enforcing this Agreement, and to judgment for Losses caused by the breach, and to seek to obtain any other remedies provided by law or in equity.
- J. **Government Programs.** To the extent required by applicable law or regulation or contractual commitment, Client shall fully and accurately disclose and report to Medicare, Medicaid or other government health care programs any discount or rebate received under this Agreement, whether reflected in the fees for the products and services or otherwise provided hereunder, as discounts against the price of the drugs under all applicable state or federal programs that provide reimbursement for products or services provided by or on behalf of PBM and/or Administrator.
- K. **Assignment.** Neither party may assign this Agreement without the prior written consent of the other party, provided such consent will not be unreasonably withheld. However, Administrator may assign this Agreement or delegate the duties to be performed by or behalf of Administrator under this Agreement without

the consent of Client, as part of the sale of all, or substantially all, of the assets of Administrator or similar sale or disposition of Administrator that would, upon consummation, be deemed to constitute an assignment of this Agreement under applicable law.

- L. **Intellectual Property.** Any rights in information, innovations, ideas, discoveries, products, creative works and the like (whether or not copyrightable or patentable), suggestions, communications, data, reports and results conceived, derived, reduced to practice, made or developed by either Party or PBM as a result of the services under this Agreement shall be the sole property of the Party or PBM developing such.

#### ARTICLE IX – ERISA, COBRA AND HIPAA DUTIES

- A. **ERISA.** If Client's offering of the prescription drug program provided for in this Agreement constitutes part of a "welfare plan" within the meaning of Section 3(1) of the ERISA, it is understood and agreed that the duties of Client and Administrator are as follows:
1. **Plan and Summary Description:** It shall be the duty of Client (and not the duty of Administrator) to furnish any Plan, summary plan description or summary of material modifications to participants and beneficiaries as required by ERISA and any regulations under it. It shall be the duty of Administrator to provide Client, upon request, with a summary of benefits available under the Plan for use in conjunction with the summary plan description and the summary of material modifications.
  2. **Annual and Summary Annual Reports:** It shall be the duty of Client to furnish any annual reports to participants and/or governmental agencies as required by ERISA, the Internal Revenue Code and any regulations thereunder. It shall be the duty of Administrator to send to Client, upon Client's reasonable request, such information which Administrator has within its possession as will permit Client to make the annual reports. It shall be the duty of Client to provide the Plan Participants with summary annual reports as required by ERISA and any regulations under it.
  3. **Plan Administrator:** It is expressly understood and agreed by the Parties to this Agreement that any and all duties assigned by ERISA and any regulations thereunder to the Plan Administrator including, but not limited to, those duties specified in the Plan shall be deemed for purposes of this Agreement as duties of Client and not those of Administrator.
- B. **Continuation Coverage.** It is also expressly understood and agreed by the Parties to this Agreement that compliance with the continuation coverage requirements imposed on group health plans by ERISA, the Internal Revenue Code and the Public Health Service Act and the regulations thereunder shall be the sole obligation of Client under this Agreement and not the obligation of Administrator. In addition, the Parties acknowledge that any notices required by the amendments to ERISA by COBRA (P.L. 99-272, as amended) to be given by the Plan Administrator to participants and beneficiaries shall be the obligation of Client and not the obligation of Administrator. Further, Administrator will not accept payment directly from any former employee (or dependent of such former employee) that is eligible for continuation coverage under the Plan. It shall be the responsibility of Client (and not Administrator), or such other third party administrator handling the group health plan of which the prescription drug program is a part, to collect the premiums due from the employee or former employee (or dependent of such employee or former employee) for continuation coverage and to satisfy any and all other COBRA duties and responsibilities relating thereto.
- C. **HIPAA and Privacy and Security.**
1. Client shall be responsible for any and all duties and responsibilities applicable to Client under HIPAA and similar state law that may apply to the prescription drug program offered under this Agreement at any time, including but not limited to those provisions applicable to Client relating to portability, non-discrimination, privacy and security. The Parties agree to sign a HIPAA Business Associate Agreement in the form attached hereto as **Exhibit B** or such other form as the Parties may mutually agree.

2. Claims, as well as eligibility information, which is de-identified in accordance with HIPAA and other applicable law, and which is not identifiable on a Plan Participant basis, may be used, disclosed, reproduced, adapted or sold by PBM and/or Administrator. Such de-identified data may be provided to nationally recognized data integration firms to support appropriate administration of PBM's drug management programs as this benchmarking data enables PBM to compare against other drug population sets and seek to improve programs and services for clients or otherwise.

*[Signature Page Follows]*

IN WITNESS WHEREOF, Administrator and Client have caused this Agreement to be executed and delivered by their respective authorized representatives as of the Effective Date.

**Administrator:**

**Client:**

RxBenefits, Inc.

City of Bartlesville

By: Lauren Simmons

By: Dale W. Copeland

Printed Name: Lauren Simmons

Printed Name: DALE W. COPELAND

Its: Director of Compliance and Legal Affairs

Its: MAYOR

[Exhibit A (Client Application) Follows]



**EXHIBIT A**  
**CLIENT APPLICATION**

**[IMPORTANT – PLEASE READ CAREFULLY: Client should carefully review Sections A, B and C of this Exhibit A below which have been completed by Administrator in order to ensure the accuracy and completeness of such information. Client shall promptly notify Administrator of any inaccuracy or omission with respect to such terms and conditions, if applicable (including, without limitation, the Client Information in Section A). Client should also carefully review and complete Section D of this Exhibit A below.]**

**A. INFORMATION ABOUT CLIENT**

**Client's Name:** City of Bartlesville  
**Client's Mail Address:** 401 S. Johnstone Ave., Bartlesville, OK 74003  
**Client's Phone:**  
**Primary Contact:**  
**Send Invoices and Confidential and Standard Reports to:**

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**B. PLAN DESIGN; PLAN PARTICIPANT COST SHARE**

**Plan Participant Cost Share:**

**Please see current Summary of Benefits.**

Client represents and warrants that the design of Client's Plan as reflected in a Plan design document for Client ("PDD"), accurately reflects the applicable terms of Client's Plan for purposes of this Agreement. Client shall provide Administrator with ninety (90) days prior written notice of any proposed changes to the design of Client's Plan (including the PDD), which changes shall be consistent with the scope and nature of the services to be provided by Administrator under this Agreement. Client agrees that it is responsible for Losses resulting from any failure to implement Plan design changes which are not communicated in writing to Administrator. In addition, Client shall notify Plan Participants of any Plan design changes prior to the effective date of any such changes.

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AND CONSTITUTES TRADE SECRETS OF OPTUMRX AND RXBENEFITS**

**C. FINANCIAL TERMS; ADDITIONAL SERVICES AND PROGRAMS**

**1. Retail, Mail, Specialty & Rebates (Minimum Guaranteed Pricing):**

<b>Retail 30 Pharmacy Network</b>	
<b>Brand Drugs</b>	AWP – 17.50% + \$0.75 dispensing fee
<b>Effective Overall Generic Guarantee (ingredient cost)</b>	AWP – 80.75% + \$0.75 dispensing fee
<b>Mail Service Pharmacy</b>	
<b>Brand Drugs</b>	AWP – 24.75% + \$0.00 dispensing fee
<b>Effective Overall Generic Guarantee (ingredient cost)</b>	AWP – 84.00% + \$0.00 dispensing fee
<b>Specialty-Exclusive Network</b>	
	AWP – 18.00% + \$0.00 dispensing fee
<b>Rebates (3-Tier Select Formulary)</b>	
<b>Retail 30 Fixed Guarantee</b>	\$80.00 Per Net Paid Brand Claim
<b>Mail Fixed Guarantee</b>	\$271.00 Per Net Paid Brand Claim
<b>Specialty Fixed Guarantee</b>	\$831.00 Per Net Paid Brand Claim
<b>Transaction Fees</b>	
<b>Transaction Fee per claim</b>	\$0.65

**FOOTNOTES:**

- Shipping fees and/or postage will be increased if PBM's third party carrier increases its charges to PBM for shipping fees and/or postage costs.
- The Specialty Drug rate noted above does not include ancillary charges such as nursing and per diems (e.g., pumps, supplies, etc.) which may apply to certain infused Specialty Drugs. Any new Specialty Drug(s) will be dispensed at the Specialty Drug rate set forth above, unless otherwise notified by PBM.

**The pricing set forth in the Table in Section 1 above is subject to and/or contingent upon the following:**

- Prices may vary in certain states for reasons such as most favored nations laws, other state or local legal requirements, geographic location, or other factors beyond the control of Administrator. In those situations, some Claims may be exempt from reconciliation of the proposed retail network pricing guarantees set forth above in the pricing table. All Claims may be aggregated for purposes of such rates.
- Participating Pharmacy rates may vary and the amount paid by PBM to the Participating Pharmacy may not be equal to the amount billed to Client, and PBM shall retain the difference.
- The Participating Pharmacy may collect from the Plan Participant the lowest of the applicable Cost Share, the discounted price, or the Participating Pharmacy's U&C price.
- Compounds, 340B claims, Indian Health Services and/or Tribal claims, Direct Member Reimbursement Claims, Coordination of Benefit Claims, Long Term Care claims, Home Infusion claims, vaccines, in-house or specially contracted pharmacies (if applicable) and claims filled outside the OptumRx Network will be excluded from the guarantees. Additionally, claims in Puerto Rico, Guam, Northern Mariana Islands, Virgin Islands, Hawaii, Massachusetts, Alaska, and rural pharmacies will be excluded from the pricing guarantees. Specialty claims will be excluded from the non-specialty pricing guarantees.
- Guarantees for pricing components are measured and reconciled in the aggregate. Any dollar savings generated in excess of one component may be used to offset a short fall for any other component.
- PBM negotiates rebates based on market share over its aggregate book of business and not on behalf of any client. Rebates are measured in the aggregate and shall be based upon net paid brand claims submitted on behalf of Administrator's client(s), allocable to Administrator's client(s). The two-tier rebate guarantees above apply to all qualified two-tier plan designs and compliance with PBM's applicable formulary, including utilization management programs. The three-tier rebate guarantees above apply to a qualified three tier plan design with a minimum of \$10 difference in copayment, or 10% difference in coinsurance, between preferred and non-preferred drugs and the 100% compliance of Administrator's client(s) with PBM's applicable formulary, including utilization management programs. The rebate guarantees above apply to all qualified plan designs and compliance, without deviation, with PBM's applicable formulary and formulary

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exclusions as well as any changes PBM makes to its formulary and formulary exclusions; and implementation of the step therapies required by PBM in the following therapeutic classes: Rheumatoid Arthritis, Ankylosing Spondylitis, Plaque Psoriasis, Psoriatic Arthritis, Hepatitis-C, Multiple Sclerosis, and PCSK9. Rebate claims exclude ineligible claims, such as claims with invalid service provider identification or prescription numbers; claims where, after meeting the deductible, the Plan Participant's cost-sharing amount under the applicable benefit Plan requires the Plan Participant to pay more than 50 percent of the claim; claims for devices without a prescription drug component; claims for re-packaged NDCs; stale dated claims over 180 days old; compounds; claims from 340B which typically receive a discount or rebate directly from drug manufacturers under section 340B of the Public Health Service Act, or claims from entities eligible for federal supply schedule prices (e.g., Department of Veterans Affairs, U.S. Public Health Service, Department of Defense); or claims that are not for prescription drugs (except for insulin or diabetic supplies). PBM and affiliated or unaffiliated third party contractors may retain reasonable administrative fees for its role in securing Rebates.

2. **Clinical Services and Programs / General Ancillary Services.**

2.1 **General Ancillary Services:**

**General Ancillary Services**

Paper Claim Fees	\$2.50 Per Processed Paper Claim plus the Base Admin. Fee
Concurrent Drug Utilization Review Programs	Included
Standard Formulary Management Services	Included
Group Set Up Fees	Included
Prior Authorization Administrative Overrides	Included
Disease State Management Programs	TBD
Physician Education	TBD
Prior Authorization Clinical Overrides	\$50 per PA
Prior Authorization Plan Tech Overrides	\$50 per PA
Audit Administration (Desktop)	25% of recovered amount
<b>Specialty Pharmacy Miscellaneous</b>	
24-hour Call Center support for participant calls	Included
Postage	Included
Eligibility – Direct Access	Included
Standard Formulary Management Services	Included
Group Set Up Fees	Included
Coordination of Benefits	No Charge if standard / Enhanced priced as % of savings
24-hour Call Center support for participant calls	Included
Postage	Included
Prior Authorization Administrative Overrides	No charge when sole source specialty provider
<b>Accumulator Fees</b>	
Batch Method	\$0.10 per Plan Participant per month
Near Real Time Method	\$0.15 per Plan Participant per month

2.2 **Additional Optional Services:** Charges for additional Optional Services not otherwise identified and priced in this **Exhibit A** (Client Application) shall be quoted upon request and/or as applicable.

2.3 **Appeals:** Charges for Appeals not otherwise identified and priced in this **Exhibit A** (Client Application) shall be quoted upon request and/or as applicable.

**First Level Appeals.** The first level appeal review is limited to determination of Plan Participant eligibility and coverage of prescription drug benefits as set forth in the Benefit Plan provided to PBM by Client. The first level appeal review shall not include a review of medical necessity. PBM

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shall have the authority, responsibility and discretion to (i) determine eligibility for benefits under the Client's Plan; (ii) to make factual determinations and to interpret the provisions of the Client's Plan to make benefit determinations on claims for Plan benefits; (iii) review appeals of denied claims; and (iv) notify the Plan Participant or the Plan Participant's authorized representative of its claim decisions. PBM's determination shall be the conclusive result for first level appeals. For First Level Appeal reviews, PBM agrees to serve as a fiduciary solely for the purpose of reviewing appeals relating to the determination of Plan Participant eligibility and coverage of prescription drug benefits in accordance with the terms of the Client's Plan.

**Second Level Appeals.** PBM has agreements in place with independent vendors who review appeals resulting from a denial of authorization of prescription benefits where the Plan Participant is entitled to obtain a medical review of the denial by a medical specialist. The decision of the independent vendor shall be final, subject to judicial review for abuse of discretion.

**Third Level Appeals.** PBM has contracted with three state-appointed external review agencies to handle Third Level Appeals. PBM will provide the complete case file, according to the requirements, to the appointed external review agency.

3. **Rebate Acknowledgment; No Representation; Rebate Limitations.** Client acknowledges that Administrator is not making any representation, warranty or guaranty of any kind or nature, either express, implied or otherwise, regarding the amount of Rebates to be paid or remitted to Client pursuant to this Agreement, except as specifically set forth in writing herein. In addition, Client waives, releases and forever discharges PBM and Administrator from any Losses arising from a pharmaceutical company's (a) failure to pay Rebates; (b) breach of an agreement related to Rebates; or (c) negligence or misconduct. Client acknowledges that whether and to what extent pharmaceutical companies are willing to provide Rebates to Client may depend upon a variety of factors, including the content of the PDL, the Plan's design features, Client meeting criteria for Rebates, and the extent of participation in PBM's formulary management programs, as well as PBM/Administrator receiving sufficient information regarding each Claim for submission to pharmaceutical companies for Rebates. Client acknowledges and agrees that PBM may, but shall not be required to, initiate any collection action to collect any Rebates from a pharmaceutical company. In the event PBM does initiate collection action against a pharmaceutical company to collect Rebates, PBM may offset any reasonable costs, including reasonable attorneys' fees and expenses, arising from any such action. Notwithstanding any provision of this Agreement to the contrary, Administrator shall only be responsible for the payment of Rebates to Client pursuant to the terms of this Agreement if such Rebates are actually received by Administrator during the Term of this Agreement.

4. **Miscellaneous.**

- 4.1 **Plan Participant Cost Share.** Administrator may, but shall not be obligated to, dispense or cause to be dispensed a prescription even if the prescription is not accompanied by the applicable Plan Participant Cost Share described above in this **Exhibit A**. Administrator will refund any amount submitted by a Plan Participant in excess of the Plan Participant's applicable Plan Participant Cost Share. In the event a Plan Participant submits an insufficient Plan Participant Cost Share and the Plan Participant fails to remit the balance of the Plan Participant Cost Share amount to Administrator (or its designee) within thirty (30) days of Administrator's (or its designee's) request, then Administrator shall have the right to invoice Client for, and Client shall have an obligation to pay Administrator (or its designee), the amount of the uncollected Plan Participant Cost Share(s). Client shall, in turn, have the right to recover uncollected Plan Participant Cost Shares from its Plan Participants at Client's determination. Shipping of prescriptions submitted without the appropriate Plan Participant Cost Share may be delayed.
- 4.2 **Drug Classification and Pricing: AWP.** With respect to drug classification and pricing, the Parties acknowledge and understand that (i) PBM will use indicators of Medi-Span Master Drug Database (Medi-Span), and their associated files, as updated regularly by Medi-Span, or another nationally available reporting service of pharmaceutical drug information in determining the classification of drugs (e.g., legend vs. over-the-counter, brand vs. generic, multi-source vs. single-source) for

purposes of this Agreement, (ii) PBM is entitled to rely on Medi-Span or any other nationally available reporting service of pharmaceutical prices selected by PBM to determine AWP for purposes of establishing pricing provided under this Agreement, and (iii) PBM does not establish AWP. Client further acknowledges that (w) Administrator does not establish drug classifications, (x) Administrator does not establish AWP, (y) neither PBM nor Administrator shall have any liability to Client or its Plan Participants arising from the use of Medi-Span or any other nationally available reporting service and (z) if the reporting source for determining AWP relating to Administrator and Client should not continue to support AWP, Administrator and Client will cooperate with PBM to negotiate pricing hereunder to maintain the parties' respective economic position under this Agreement and otherwise as of the Effective Date of this Agreement.

#### 4.3 Formulary Management.

4.3.1 The parties acknowledge that Client shall adopt as part of Client's Plan design and as its formulary, the PDL and Prescribing Guide. Changes made by PBM to the PDL or the Prescribing Guide may be based upon, among other things, new products, customer safety, clinical appropriateness, efficacy, cost effectiveness, changes in availability of products, new clinical information and other considerations, changes in the pharmaceutical industry, introduction of generics, new legislation and regulations.

4.3.2 PBM may implement Drug Interchange program(s) which has/have been approved by PBM's pharmacy and therapeutics committee for selected prescriptions under which PBM's mail service pharmacy shall contact Prescribers, as appropriate, to obtain approval for the Drug Interchange. In accordance with PBM's standard policies, PBM shall credit Administrator or Plan Participant, as appropriate, for any mail prescription returned to PBM upon rejection by the Plan Participant of the Drug Interchange. Client acknowledges that the adoption of therapeutic interventions may result in an increase of Rebates payable by pharmaceutical manufacturers pursuant to their agreements with PBM.

4.3.3 Client acknowledges the Prescriber shall have final authority over the drug prescribed to a Plan Participant, regardless of benefit coverage.

4.3.4 PBM may implement Drug Interchange programs, as approved by its pharmacy and therapeutics committee, for Participating Pharmacies to promote the use of the PDL or Prescribing Guide by encouraging Participating Pharmacies to: (i) identify appropriate opportunities for converting a prescription from a non-PDL or Prescribing Guide drug to a clinically comparable drug on the PDL or Prescribing Guide; and (ii) contact the Plan Participant and the Prescriber to request that the prescription be changed to a clinically comparable drug on the PDL or Prescribing Guide. Participating Pharmacies may be compensated by PBM for the services they provide in connection with Drug Interchange programs.

4.4 Generic Drug Substitution Program. Generic Drug substitution will be conducted through PBM's Participating Pharmacies under a program which substitutes Brand Drugs with Generic Drug equivalents, where available clinically appropriate, unless (a) the prescribing healthcare practitioner issues the prescription with a "dispense as written" notation, or (b) the Participating Pharmacy has been notified by the Plan Participant or otherwise to dispense Brand Drug only. Generic Drug messaging to Participating Pharmacies intended to promote point-of-sale Generic Drug substitution of multi-source Brand Drugs will be provided by PBM. The Parties acknowledge that a pharmacist may override such messaging if the prescribing healthcare practitioner or the Plan Participant has notified the Participating Pharmacy to dispense the Brand Drug only.

4.5 RESERVATION OF RIGHTS. Administrator expressly reserves (and Client hereby confirms, acknowledges and agrees to such reservation) the right to modify or amend financial provisions in this Agreement (including without limitation this Client Application/Exhibit A) in the event of:

- 4.5.1 A change in the scope of services to be performed by Administrator or PBM or the assumptions upon which the financial provisions included in this Agreement are based (including PBM's pricing provided to Administrator) and/or any government imposed or industry wide change that would impede Administrator's ability to provide the pricing described in this Agreement, including without limitation any prohibition or restriction on the right of Administrator or any third party's ability to receive rebates from PBM and/or pharmaceutical manufacturers.
  - 4.5.2 Implementation or addition of a high deductible health plan/consumer-driven health plan option;
  - 4.5.3 Implementation or addition of a 100% Plan Participant paid plan;
  - 4.5.4 A change in the coverage of Medicare eligible Plan Participants, irrespective of the resulting change in total number of Plan Participants, as defined in this Agreement; or
  - 4.5.5 A change to the methodology by which AWP is calculated or reported.
  - 4.5.6 A change in PBM's PDL or the PBM Prescribing Guide or Administrator's alignment with such PDL or PBM Prescribing Guide. In any event, Administrator will use its commercially reasonable efforts to provide Client with 30 days' notice prior to addition or removal of a drug from the PDL or PBM's Prescribing Guide. In the event safety concerns or regulatory action require PBM to remove a drug sooner, Administrator shall notify Client of the removal of a drug from the PDL or the Prescribing Guide within three (3) business days.
  - 4.5.7 Termination of Administrator's contractual arrangement with PBM.
- 4.6 **Provision of Information.** Client acknowledges that Administrator shall not be held responsible for any obligation if Client, or Client's designee (including, without limitation, any Plan Participant), fails to provide Administrator with accurate, timely and complete information as needed to meet such obligation.

D. **EXECUTION BY CLIENT**

Client hereby represents and warrants that the information contained in Section A of this Client Application is true and correct in all respects and Client hereby agrees to the specific terms, conditions and financial arrangements set out in Sections B and C of this Client Application. Client agrees that if any information in Section A changes, Client will give Administrator prompt notice of such changes. Furthermore, Client understands that this Client Application (Exhibit A) is a part of the Administrative Services Agreement between Client and Administrator to which it is attached and incorporated into by reference and that Client is bound by all terms and conditions of such Administrative Services Agreement.

All capitalized terms used in this Client Application but not specifically defined herein shall have the meanings given to such terms in the Administrative Services Agreement to which this Client Application is attached and made a part of.

IN WITNESS WHEREOF, Client has caused this Client Application (Exhibit A to the Agreement) to be executed as of the Effective Date. In the event this Client Application is amended by the Parties after the Effective Date, the Parties may substitute such amended Client Application for the former Client Application, provided the Parties set forth the date from and after which such amended Client Application shall be effective. The Parties further agree that they will attach such amended Client Application to this Agreement and provide a copy of this Agreement with the amended Client Application (Exhibit A) to Administrator and Client for their respective records. Any such amended Client Application must be signed by Client's authorized representative and agreed to and accepted by Administrator's authorized representative.



CLIENT:

City of Bartlesville

By: \_\_\_\_\_

Printed Name: Dale W. Copeland

Its: Mayor 1/2/2018

Acknowledged, agreed to and accepted by:

ADMINISTRATOR:

RxBenefits, Inc.

By: \_\_\_\_\_

Printed Name: Lauren Simmons

Its: Director of Compliance and Legal Affairs

[Exhibit B (Form of Business Associate Agreement) Follows]

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**EXHIBIT B**  
**BUSINESS ASSOCIATE AGREEMENT**

**THIS BUSINESS ASSOCIATE AGREEMENT** (this "Agreement"), by and between City of Bartlesville's Health Plan (the "Plan") and City of Bartlesville (the "Company") (the Plan and the Company are collectively referred to herein as the "Company"), and RxBenefits, Inc. (the "Business Associate"), is effective as of January 1, 2018.

***RECITALS***

**WHEREAS**, due to the services (the "Services") performed by the Business Associate with respect to the Plan, Protected Health Information ("PHI") and Electronic Protected Health Information subject to the Privacy Regulations and the Security Regulations, promulgated by the United States Department of Health and Human Services ("HHS") under the Health Insurance Portability and Accountability Act of 1996 (the "Regulations"), may be transmitted, created, received, and/or maintained; and

**WHEREAS**, to the extent required by the Regulations, the Business Associate and the Company desire to comply with the "Business Associate" requirements of the Regulations and to memorialize their agreements with respect to such compliance.

***AGREEMENT***

**NOW, THEREFORE**, for and in consideration of the mutual covenants and conditions set forth herein, and other good and valuable consideration, the receipt and adequacy of which hereby are acknowledged, the Business Associate and the Company agree as follows:

1. **Definitions.** Unless otherwise defined herein, capitalized terms shall have the same meanings as set forth in the Regulations.

2. **Restrictions on Use and Disclosure of PHI.** The Business Associate may Use PHI only to perform the permitted and required Uses and Disclosures as provided by this Agreement or as Required By Law. The Business Associate shall make reasonable efforts to limit PHI that is subject to this Agreement to the minimum amount that is necessary to accomplish the intended purpose of a required or permitted Use or Disclosure under this Agreement. To the extent practicable, Business Associate agrees that each use, disclose, or request of PHI shall be limited to PHI in a limited data set, as that term is defined at 45 C.F.R. § 164.514(e)(2). The Business Associate shall not Use or Disclose PHI received from the Company or any participant in the Plan in any manner that would constitute a violation of the Regulations if the Company made the same Use or Disclosure, except that the Business Associate may Use or Disclose such PHI for the Business Associate's proper management and administration and legal responsibilities.

The Business Associate may Disclose PHI for the purposes described in this Section 2 only in the following circumstances: such Disclosure is Required By Law; or the Business Associate obtains reasonable assurances from the person to whom the PHI is Disclosed that it will be held confidentially and Used or further Disclosed only as Required By Law or for the purpose for which it was Disclosed to the person, and the person agrees to notify the Business Associate of any instances of which it is aware in which the confidentiality of the PHI has been breached.

3. **Agents and Subcontractors Bound by Agreement.** If any agent or subcontractor of the Business Associate (other than the Business Associate's Workforce) will have access to PHI that is received from, or created or received by the Business Associate on behalf of the Company, then the Business Associate will enter into an agreement with such agent or subcontractor whereby the agent or subcontractor agrees to be bound by the terms of this Agreement with respect to PHI.

**NOT FOR DISTRIBUTION. THE INFORMATION CONTAINED HEREIN IS CONFIDENTIAL, PROPRIETARY  
AND CONSTITUTES TRADE SECRETS OF OPTUMRX AND RXBENEFITS**

4. **Safeguards for Protection of PHI; Report of Unauthorized Use or Disclosure.** The Business Associate agrees that it will implement and use appropriate safeguards to prevent any Use or Disclosure of PHI in violation of this Agreement. The Business Associate agrees that it will report to the Company any Use or Disclosure of PHI, of which the Business Associate becomes aware, that is in violation of this Agreement. The Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to the Business Associate of a Use or Disclosure of PHI by the Business Associate in violation of this Agreement.

5. **Cooperation by the Business Associate.** The Business Associate agrees to cooperate with the Company in providing an accounting of Disclosures of PHI received under this Agreement as requested by an individual to whom it relates, except to the extent the Regulations provide otherwise. In the event that Business Associate uses or maintains an electronic health record, Business Associate agrees that such accounting shall include disclosures made to carry out treatment, payment, and health care operations through the use of such electronic health record. Upon receiving a request for an accounting of disclosures directly from an individual who has received an accounting of disclosures from Company, which provided a list of all business associates acting on behalf of the Plan, including Business Associate, Business Associate agrees to provide an accounting of its disclosures of PHI to such individual as required by the Privacy Regulations. In response to such a request from an individual, Business Associate may elect to provide either (i) an accounting of disclosures that includes disclosures of subcontractors and/or agents acting on behalf of Business Associate or (ii) an accounting of disclosures that are made by the Business Associate as well as a list of all subcontractors and/or agents acting on behalf of Business Associate, including contact information such as mailing address, phone, and email address. The Business Associate shall respond to requests from the Company for the information described in this Section 5 and make available such information to the Company within a reasonable period of time to enable the Company to timely respond to any request.

The Company agrees that the Business Associate will not maintain any Designated Record Sets on its behalf and that the Business Associate assumes no responsibility to respond to individuals' requests for access or amendments as provided in Sections 164.524 and 164.526 of the Regulations.

Business Associate agrees that the requirements of the Privacy Regulations shall be applicable to Business Associate in the performance of its obligations pursuant to the Agreement.

Business Associate agrees that it shall not directly or indirectly receive remuneration in exchange for any PHI, unless a valid authorization, as that term is defined at 45 C.F.R. § 164.508, is obtained or the purpose of the exchange meets one of the exceptions set forth in 45 C.F.R. 164.502(a)(5)(ii).

6. **Documenting Disclosures.** In order to cooperate with the Company in accordance with Section 5 above, the Business Associate agrees to document all Disclosures of PHI and information related to such Disclosures as would be required for the Company to respond to an individual's request for an accounting of Disclosures of PHI under Section 164.528 of the Regulations. Such documentation shall include: (a) the date of the Disclosure; (b) the name of the entity or person who received the PHI and, if known, the address of such entity or person; (c) a brief description of the PHI Disclosed; and (d) a brief statement of the purpose of the Disclosure (which would reasonably inform an individual of the basis for the Disclosure).

7. **HHS.** The Business Associate agrees to make its internal practices, books and records relating to the Use and Disclosure of PHI received from or created or received by the Business Associate on behalf of the Company available to the Company and the Secretary of HHS for purposes of determining the Company's compliance with the Regulations. Notwithstanding this Section 7, no attorney-client privilege or other privilege shall be deemed waived by the Company or the Business Associate.

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8. **Termination.** Company and Business Associate shall each have the right to immediately terminate this agreement upon the violation by the other of a material term of this Agreement or of the Regulations, including violations relating specifically to the permitted and required Uses and Disclosures of PHI by the Company or Business Associate; provided, however, that the breaching party shall be provided the opportunity to cure the breach to the satisfaction of the other within a reasonable period of time. If the breaching-party does not cure the default, the non-breaching party shall be entitled to terminate this Agreement or if it is not feasible to terminate this Agreement, report the problem to the Secretary of HHS.

Upon termination of this Agreement, the Business Associate and the Company agree to determine whether the return or destruction of PHI received from, or created or received by the Business Associate under this Agreement is feasible. If such return or destruction is mutually determined to be feasible, the Business Associate shall promptly return or destroy all such PHI received from or created or received by the Business Associate under this Agreement. If such return or destruction is mutually determined to not be feasible, the protections of this Agreement shall continue to apply to such PHI after termination (including the Business Associate's obligations in Section 5), and further Uses and Disclosures of such PHI shall be restricted to only those purposes that make the return or destruction of the information infeasible. If mutual agreement is not made as to the feasibility of any return or destruction of PHI, the parties agree to use mediation to resolve this issue.

9. **Term of Agreement.** The term of this Agreement shall be such period of time as the Business Associate is performing the Services. In the event that such Services are terminated, this Agreement also shall terminate, except that the provisions of Sections 8 and 15 shall survive any termination of this Agreement.

10. **Notice.** All written communications, demands, and notices between the parties hereto must be posted by first class mail, postage paid or express mail to the following addresses:

To the Business Associate:

RxBenefits, Inc.  
Attn: Lauren Simmons  
3500 Blue Lake Drive, Suite 200  
Birmingham, Alabama 35243

To the Company:

City of Bartlesville  
Attn: \_\_\_\_\_  
401 S. Johnstone Ave.  
Bartlesville, OK 74003

11. **Entire Agreement.** This Agreement supersedes all previous contracts and constitutes the entire agreement of whatever kind or nature existing between the parties with respect to the subject matter hereof, and no party shall be entitled to benefits other than those specified herein. As between the parties, no oral statement or prior written material not specifically incorporated herein shall be of any force and effect; and the parties specifically acknowledge that in entering into and executing this Agreement, the parties rely solely upon the representations and agreements contained in this Agreement and no others. This Agreement may be amended only by an instrument in writing executed by the parties hereto and may be supplemented only by documents delivered in accordance with the express terms hereof.

12. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but which together shall constitute one and the same instrument.

13. **No Third Party Beneficiaries.** Nothing express or implied in this Agreement is intended to confer, nor shall anything herein or therein confer, upon any person other than the Company and the

Business Associate and their respective successors or assigns in interest, any rights, remedies, obligations, or liabilities whatsoever.

14. **Modification For Change in Law.** Upon the occurrence of changes or amendments to the Regulations or other law that affect the legality of or any provision in this Agreement, the Company and the Business Associate agree to modify this Agreement to comport with such changes or amendments. Any such modification of this Agreement shall be in writing and signed by the Company and the Business Associate.

15. **Indemnification.** Each party to this Agreement hereby agrees to indemnify, defend, and hold harmless the other party (including, but not limited to, its directors, employees, officers, and agents) from and against any and all claims, causes of action, liabilities, damages, costs, or expenses (including, but not limited to, attorneys' fees) incurred by the party as a result of the other party's (or any party acting by or through the party) gross negligence or willful misconduct or failure to perform any of its duties or obligations under this Agreement.

16. **Security.** The Business Associate shall:

(a) Implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the Electronic Protected Health Information that it creates, receives, maintains, or transmits on behalf of the Company as required by the Regulations;

(b) Ensure that any agent, including any subcontractor, to whom the Business Associate provides such Electronic Protected Health Information agrees in writing to implement reasonable and appropriate safeguards to protect it;

(c) Report to the Company any security incident of which the Business Associate becomes aware;

(d) Make its policies and procedures and documentation required by the Regulations relating to such administrative, physical, and technical safeguards, available to the Company and the Secretary of HHS for purposes of determining the Company's compliance with the Regulations;

(e) Acknowledge its obligation to comply with the Security Regulations in using and disclosing Electronic Protected Health Information, including but not limited to 45 C.F.R. §§ 164.308 (Administrative safeguards), 164.310 (Physical safeguards), 164.312 (Technical safeguards), and 164.316 (Policies and procedures and documentation requirements) of the Security Regulations.

(f) Notify the Company without unreasonable delay in writing of the occurrence of a breach, as that term is defined at 45 C.F.R. § 164.402, of which Business Associate becomes aware. Business Associate shall also promptly provide Company such other information required to be provided to individuals under 45 C.F.R. § 164.404(c) as it becomes available after such breach.

17. **Governing Law.** This Agreement shall be governed by and construed under the laws of the State of Alabama without regard to the principles of conflicts of laws of said state.

*[Signature page follows]*

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IN WITNESS WHEREOF, the parties herein have caused this Business Associate Agreement to be executed by their duly authorized representatives as of the date first written above.

PLAN:

City of Bartlesville's Health Plan

By: Dale Copeland

Its: Mayor

COMPANY:

City of Bartlesville

By: Dale Copeland

Its: Mayor

BUSINESS ASSOCIATE:

RxBenefits, Inc.

By: Lauren Simmons

Its: Director of Compliance and Legal Affairs



**TO:** Mike Bailey, City Manager  
**FROM:** Terry Lauritsen, Director of Water Utilities  
**Cc:** Micah Siemers, Director of Engineering  
**DATE:** November 26, 2018  
**SUBJECT:** Approval of a professional Service Contract with Meshek & Associates for professional services for the installation and configuration of ESRI's ArcGIS Enterprise Software

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With the implementation of the Tyler System to integrate all the business functions of the City under one software platform, the next phase of the implementation requires an upgrade of the City's ArcGIS software to utilize the mapping components of these Tyler modules. The City has utilized ESRI's ArcGIS software for over 10 years and is the mapping platform for the on-line version, which is currently hosted by a 3<sup>rd</sup> party vendor. The upgrade of the City's ArcGIS software will allow full functionality of the Tyler software, provide better accessibility for City staff and ultimately reduce the cost in publishing this information on-line for public viewing. Currently, the City pays a 3<sup>rd</sup> party vendor approximately \$4,500 per year to host the City's GIS web site.

Meshek and Associates has provided professional services for the City since 2004 for several engineering and GIS related projects. Meshek is certified by ESRI as a Silver Level Business Partner for the implementation and configuration of their ArcGIS software. Due to their expertise in this software and previous work for the City, staff requested a proposal to provide professional services to implement the ArcGIS Enterprise Software platform. The contract provides that Meshek will install and implement the Enterprise Software platform, as well as provide training and support for \$12,000. The software is purchased from ESRI for \$9,091 and referenced in their proposal, which is attached. The installation, intergration and training will take approximately 3 weeks to complete. These services will be paid through the water and wastewater operating budgets.

Staff recommends approval of the professional service contract with Meshek and Associates.

Please schedule this item for Council consideration at its December 3<sup>rd</sup> meeting.



**SERVICE AGREEMENT BETWEEN OWNER AND ENGINEER**

**OWNER INFORMATION:**

Owner (company) name: City of Bartlesville  
Address: 401 S Johnstone Avenue  
City: Bartlesville State: Oklahoma Zip: 74003  
Contact: Mr. Terry Lauritsen Title: \_\_\_\_\_  
Telephone: 918-338-4251 Fax: \_\_\_\_\_ Email: tllaurit@cityofbartlesville.org

**Nature of Owner:**

Individual/Sole Proprietorship  Corporation  Limited Liability Company  Limited Partnership  Partnership  Other: City  
State of formation (if an entity) or residence (if an individual): Oklahoma  
Tax ID/SSN \_\_\_\_\_

**ENGINEER INFORMATION:**

Engineer (company) name: Meshek & Associates, LLC  
Address 1437 South Boulder Avenue, Suite 1550  
City: Tulsa State: OK Zip: 74119  
Contact: Michael Couch Title: GIS Principal  
Telephone: 918-392-5620 Fax: 918-392-5621 Email: mcouch@meshekengr.com

**Nature of Engineer:**

Individual/Sole Proprietorship  Corporation  Limited Liability Company  Limited Partnership  Partnership  Other: \_\_\_\_\_  
State of formation (if an entity) or residence (if an individual): Oklahoma  
Tax ID/SSN: 73-1322397

All invoices must be addressed and delivered to "Attn: Accounts Payable" at the appropriate address.

**TERM/TERMINATION:**

THIS IS AN AGREEMENT effective as of \_\_\_\_\_ (“Effective Date”) between  
\_\_\_\_\_  
City of Bartlesville (“Owner”) and  
\_\_\_\_\_  
Meshek & Associates, LLC (“Engineer”).

Owner's Project, of which Consultant's services under this Agreement are a part, is generally identified as follows:

\_\_\_\_\_ GIS Server Deployment and ERP Integration Support \_\_\_\_\_ (“Project”).

Engineer's Services under this Agreement are generally identified as follows:

Installation and configuration of Esri's ArcGIS Enterprise software; training and on-call support for City staff.

**AGREEMENT:**

Owner and Engineer further agree as follows:

1.01 *Basic Agreement and Period of Service*

- A. Engineer shall provide, or cause to be provided, the services set forth in this Agreement. If authorized by Owner, or if required because of changes in the Project, Engineer shall furnish services in addition to those set forth above. Owner shall pay Engineer for its services as set forth in Paragraphs 7.01 and 7.02.
- B. Engineer shall complete its services within a reasonable time.

2.01 *Payment Procedures*

A. *Invoices:* Engineer shall prepare invoices in accordance with its standard invoicing practices and submit the invoices to Owner on a monthly basis. Invoices are due and payable within 30 days of receipt. If Owner fails to make any payment due Engineer for services and expenses within 90 days after receipt of Engineer's invoice, Engineer may, after giving seven days written notice to Owner, suspend services under this Agreement until Engineer has been paid in full all amounts due for services, expenses, and other related charges. Owner waives any and all claims against Engineer for any such suspension.

3.01 *Termination*

- A. The obligation to continue performance under this Agreement may be terminated:
  - 1. For cause,

- a. By either party upon 30 days written notice in the event of substantial failure by the other party to perform in accordance with the Agreement's terms through no fault of the terminating party.
- b. By Engineer:
  - 1) upon seven days written notice if Owner demands that Engineer furnish or perform services contrary to Engineer's responsibilities as a licensed professional; or
  - 2) upon seven days written notice if the Engineer's services for the Project are delayed for more than 90 days for reasons beyond Engineer's control.

Engineer shall have no liability to Owner on account of a termination by Engineer under Paragraph 3.01.A.1.b.

- c. Notwithstanding the foregoing, this Agreement will not terminate as a result of a substantial failure under Paragraph 3.01.A.1.a if the party receiving such notice begins, within seven days of receipt of such notice, to correct its substantial failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt of notice; provided, however, that if and to the extent such substantial failure cannot be reasonably cured within such 30 day period, and if such party has diligently attempted to cure the same and thereafter continues diligently to cure the same, then the cure period provided for herein shall extend up to, but in no case more than, 60 days after the date of receipt of the notice.
- 2. For convenience, by Owner effective upon Engineer's receipt of written notice from Owner.
- B. The terminating party under Paragraph 3.01.A may set the effective date of termination at a time up to 30 days later than otherwise provided to allow Engineer to complete tasks whose value would otherwise be lost, to prepare notes as to the status of completed and uncompleted tasks, and to assemble Project materials in orderly files.
- C. In the event of any termination under Paragraph 3.01, Engineer will be entitled to invoice Owner and to receive full payment for all services performed or furnished in accordance with this Agreement and all reimbursable expenses incurred through the effective date of termination.

4.01 ***Successors, Assigns, and Beneficiaries***

- A. Owner and Engineer are hereby bound and the successors, executors, administrators, and legal representatives of Owner and Engineer (and to the extent permitted by Paragraph 3.01.B the assigns of Owner and Engineer) are hereby bound to the other party to this Agreement and to the successors, executors, administrators, and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements, and obligations of this Agreement.
- B. Neither Owner nor Engineer may assign, sublet, or transfer any rights under or interest (including, but without limitation, moneys that are due or may become due) in this Agreement without the written consent of the other, except to the extent that any

assignment, subletting, or transfer is mandated or restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement.

- C. Unless expressly provided otherwise, nothing in this Agreement shall be construed to create, impose, or give rise to any duty owed by Owner or Engineer to any contractor, subcontractor, supplier, other individual or entity, or to any surety for or employee of any of them. All duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of Owner and Engineer and not for the benefit of any other party.

5.01 ***General Considerations***

- A. The standard of care for all professional consulting and related services performed or furnished by Engineer under this Agreement will be the care and skill ordinarily used by members of the subject profession practicing under similar circumstances at the same time and in the same locality. Engineer makes no warranties, express or implied, under this Agreement or otherwise, in connection with Engineer's services. Subject to the foregoing standard of care, Engineer and its engineers may use or rely upon design elements and information ordinarily or customarily furnished by others, including, but not limited to, specialty contractors, manufacturers, suppliers, and the publishers of technical standards.
- B. Engineer shall not at any time supervise, direct, control, or have authority over any contractor's work, nor shall Engineer have authority over or be responsible for the means, methods, techniques, sequences, or procedures of construction selected or used by any contractor, or the safety precautions and programs incident thereto, for security or safety at the Project site, nor for any failure of a contractor to comply with laws and regulations applicable to such contractor's furnishing and performing of its work.
- C. This Agreement is to be governed by the law of the state or jurisdiction in which the Project is located.
- D. Engineer neither guarantees the performance of any contractor nor assumes responsibility for any contractor's failure to furnish and perform its work in accordance with the contract between Owner and such contractor. Engineer is not responsible for variations between actual construction bids or costs and Engineer's opinions or estimates regarding construction costs.
- E. Engineer shall not be responsible for the acts or omissions of any contractor, subcontractor, or supplier, or of any of their agents or employees or of any other persons (except Engineer's own employees) at the Project site or otherwise furnishing or performing any construction work; or for any decision made regarding the construction contract requirements, or any application, interpretation, or clarification of the construction contract other than those made by Engineer.
- F. All documents prepared or furnished by Engineer are instruments of service, and Engineer retains an ownership and property interest (including the copyright and the right of reuse) in such documents, whether or not the Project is completed. Owner

shall have a limited license to use the documents on the Project, extensions of the Project, and for related uses of the Owner, subject to receipt by Engineer of full payment for all services relating to preparation of the documents and subject to the following limitations: (1) Owner acknowledges that such documents are not intended or represented to be suitable for use on the Project unless completed by Engineer, or for use or reuse by Owner or others on extensions of the Project, on any other project, or for any other use or purpose, without written verification or adaptation by Engineer; (2) any such use or reuse, or any modification of the documents, without written verification, completion, or adaptation by Engineer, as appropriate for the specific purpose intended, will be at Owner's sole risk and without liability or legal exposure to Engineer or to its officers, directors, members, partners, agents, employees, and engineers; (3) Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and engineers from all claims, damages, losses, and expenses, including attorneys' fees, arising out of or resulting from any use, reuse, or modification of the documents without written verification, completion, or adaptation by Engineer; and (4) such limited license to Owner shall not create any rights in third parties.

- G. The parties acknowledge that Engineer's scope of services does not include any services related to a Hazardous Environmental Condition (the presence of asbestos, PCBs, petroleum, hazardous substances or waste as defined by the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§9601 et seq., or radioactive materials). If Engineer or any other party encounters a Hazardous Environmental Condition, Engineer may, at its option and without liability for consequential or any other damages, suspend performance of services on the portion of the Project affected thereby until Owner: (1) retains appropriate specialist engineers or contractors to identify and, as appropriate, abate, remediate, or remove the Hazardous Environmental Condition; and (2) warrants that the Site is in full compliance with applicable Laws and Regulations.
- H. Owner and Engineer agree to negotiate each dispute between them in good faith during the 30 days after notice of dispute. If negotiations are unsuccessful in resolving the dispute, then the dispute shall be mediated. If mediation is unsuccessful, then the parties may exercise their rights at law.

**6.01 Total Agreement**

- A. This Agreement (including any expressly incorporated attachments), constitutes the entire agreement between Owner and Engineer and supersedes all prior written or oral understandings. This Agreement may only be amended, supplemented, modified, or canceled by a duly executed written instrument.

**7.01 Basis of Payment—Lump Sum**

- A. Using the procedures set forth in Paragraph 2.01, Owner shall pay Engineer as follows:

1. A Lump Sum amount of \$ 12,000.

*(Note that a separate payment to Esri of \$9,091 is required for the software first; see attached original Meshek proposal and Esri quote)*

B. The portion of the compensation amount billed monthly for Engineer's services will be based upon Engineer's estimate of the percentage of the total services actually completed during the billing period.

7.02 ***Additional Services:*** For additional services of Engineer's employees engaged directly on the Project, Owner shall pay Engineer an amount equal to the cumulative hours charged to the Project by each class of Engineer's employees times standard hourly rates for each applicable billing class; plus, reimbursable expenses and Engineer's sub-consultants' charges, if any. Engineer's standard hourly rates are attached as Exhibit A.

**SIGNATURES:**

By signing below, each undersigned acknowledges that it has read and understands, and agrees to be legally bound by this Professional Services Agreement. If a person is signing below on behalf of an entity or another person, the person signing represents and warrants that he or she has been properly authorized and empowered to sign this Professional Services Agreement on behalf of that entity or other person and to bind that entity or other person to this Professional Services Agreement. This Agreement may be executed in any number of counterparts, each of which will be considered an original but all of which will constitute one and the same instrument.

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**City of Bartlesville**

**Meshek & Associates, LLC**

By: \_\_\_\_\_

By: Michael Couch

Printed Name: \_\_\_\_\_

Printed Name: Michael Couch

Title: \_\_\_\_\_

Title: GIS Principal

Date: \_\_\_\_\_

Date: 11/20/2018

Engineer's License No.: 1487 (OK)

**Exhibit A**  
**Consultant's Standard Hourly Rates**

**A. Standard Hourly Rates:**

1. Standard Hourly Rates are set forth in this Exhibit A and include salaries and wages paid to personnel in each billing class plus the cost of customary and statutory benefits, general and administrative overhead, non-project operating costs, and operating margin or profit.
2. The Standard Hourly Rates apply only as specified in Paragraphs 7.01 and 7.02, and are subject to annual review and adjustment.

**B. Schedule of Hourly Rates:**

Hourly rates for services performed on or after the Effective Date are:

Allowance for Office Work:

Project Principal II	\$ 240/hour
Project Principal I	\$ 210/hour
Project Manager	\$ 125/hour
Project Engineer	\$ 115/hour
Engineer Intern	\$ 100/hour
Design CAD Technician	\$ 90/hour
LiDAR Survey Crew	\$ 250/hour
LiDAR Data Processor	\$ 125/hour
3 Man Survey Crew	\$ 200/hour
2 Man Survey Crew	\$ 175/hour
Survey Crew Chief II	\$ 120/hour
Survey Crew Chief I	\$ 80/hour
Survey Crew Technician	\$ 60/hour
GIS Project Principal	\$ 175/hour
GIS Project Manager	\$ 130/hour
GIS Specialist II	\$ 130/hour
GIS Specialist I	\$ 105/hour
GIS Analyst	\$ 90/hour
GIS Technician	\$ 65/hour
Contract Administrator	\$ 130/hour
Clerical	\$ 70/hour

Allowance for Travel:

Total mileage traveled for field and office visits  
@ Current IRS rate.

Allowance for Expenses:

Expenses billed @ actual cost.

## Exhibit B Required Insurance Limits and Coverages for Engineers

Before commencing work, Engineer must provide a Certificate of Insurance certifying that the insurance limits and coverages, with the appropriate endorsements, all as outlined below are in effect.

<b>Commercial General Liability</b>	\$1,000,000 Each Occurrence \$1,000,000 General Aggregate * Must include coverage for blanket contractual liability for the obligations assumed under contract
<b>Comprehensive Automobile Liability</b>	\$1,000,000 Combined Single Limit Each Occurrence * Coverage must extend to all owned, non-owned, leased, hired or borrowed vehicles and must include coverage for blanket contractual liability for the obligations assumed under contract
<b>Workers' Compensation</b>	Statutory Limits where Services are to be performed * Must include coverage for Longshoremen's and Harbor Workers' Compensation, if applicable, and coverage for Federal Employers' Liability Act, if applicable
<b>Employer's Liability</b>	\$1,000,000 Each Occurrence \$1,000,000 Disease per Employee * * An Umbrella liability policy, which follows form, may be used to obtain the aforementioned limits
<b>Professional Liability</b> (If applicable)	\$1,000,000 Each Occurrence \$2,000,000 General Aggregate

### Certificate Holder and Endorsement Requirements

- Owner shall be listed as Certificate Holder.
- Engineer and the Consultants identified in the Purchase Order for a Specific Project shall be listed on Owner's general liability policies of insurance as additional insureds.

### Other Requirements

- All policies required shall be written by a reputable insurance company reasonably acceptable to Company or with a Best's Guide Rating of A- and Class VII or better, and authorized to do business in the state(s) in which Engineer is performing for Company.
- Failure to provide evidence as required shall entitle, but not require, Owner to terminate immediately. Acceptance of a certificate that does not comply with this document shall not operate as a waiver of Engineer's obligations hereunder.

November 20, 2018

Mr. Terry Lauritsen  
 City of Bartlesville  
 401 S Johnstone Ave  
 Bartlesville, OK 74003

Reference: GIS Server Deployment and ERP Integration Support

Dear Mr. Lauritsen:

Meshek & Associates, LLC (Meshek) appreciates the opportunity to work with the City of Bartlesville to deploy a GIS server hosting Esri's ArcGIS Enterprise, and to assist in integrating with 3<sup>rd</sup>-party ERP applications. We have developed a scope and fee for this project detailed below.

**Figure 1: Demo Viewer Setup and Hosting Recommendations**

General Task Description	Cost
1. Esri: ArcGIS Enterprise 10.6.1 Workgroup Standard – 4 Cores	\$9,091
2. Meshek: ArcGIS Enterprise Installation and ERP Integration Labor	\$9,000
3. Meshek: On-Site Training and On-Call Support	\$3,000
<b>Total (Entire Project):</b>	<b>\$21,091</b>
<b>Total (Meshek Fee Only):</b>	<b>\$12,000</b>

- 1. Esri: ArcGIS Enterprise 10.6.1 Workgroup Standard – 4 Cores:** This is a passthrough expense to Esri for the software license to be installed on the hosting GIS server. It is a key component of the total project, but the purchase and expense is owed to Esri and not to Meshek. The supporting quote is attached; please note for future budgets the increase in the City's existing Esri maintenance agreement this purchase will add (\$2,525, the total at the bottom of the quote).
- 2. Meshek: ArcGIS Enterprise Installation and ERP Integration Labor:** This represents the cost in our labor to be on-site for the installation process. We would perform, in the presence of (or by directing, as desired) City staff, the installation and configuration of the software and the initial design of GIS map and feature services hosted via the software. We would also advise on data and map service configuration for integration with ERP software. We anticipate this to be as much as a 5-day process requiring full-day on-site deployments within the City's offices.

- 3. Meshek: On-Site Training and On-Call Support:** This represents the cost in our labor to provide training to City staff on the ongoing support and maintenance of the GIS server once the installation is complete. We would also anticipate the need for providing on-call support by phone, email, or in-person, and have included that in the fee.

It is our understanding the actual deployment will occur in January 2019 at the earliest, after the City's IT department has been able to secure the necessary hardware. As mentioned above, we would anticipate final installation of the Esri software to be completed within one week's worth of labor.

We are excited for the opportunity to work with the City of Bartlesville. Please feel free to contact me directly at 918.392.5620 ext. 222, or via email at [mcouch@meshekengr.com](mailto:mcouch@meshekengr.com), for any further discussions or questions.

Sincerely,



Michael Couch  
GIS Principal  
(918) 392-5620 x222  
[mcouch@meshekengr.com](mailto:mcouch@meshekengr.com)



# Quotation # 20540329

Date: November 14, 2018

Environmental Systems Research Institute, Inc.  
380 New York St  
Redlands, CA 92373-8100  
Phone: 909-793-2853 Fax: 909-307-3049  
DUNS Number: 06-313-4175 CAGE Code: 0AMS3

Customer # 262066 Contract # 307918

City of Bartlesville  
Planning & Community Development Dept  
401 S Johnstone Ave  
Bartlesville, OK 74003-6619

ATTENTION: Chad Armstrong  
PHONE: 918-338-4258  
FAX: (918) 338-4259

**To expedite your order, please attach a copy of this quotation to your purchase order.**  
**Quote is valid from: 11/14/2018 To: 02/12/2019**

Material	Qty	Description	Unit Price	Total
160452	1	ArcGIS Enterprise Workgroup Standard Up to Two Cores License	4,545.00	4,545.00
160895	2	ArcGIS GIS Server Workgroup Standard Additional Core License	2,273.00	4,546.00
			Item Total:	9,091.00
			Subtotal:	9,091.00
			Sales Tax:	0.00
			Estimated Shipping & Handling(2 Day Delivery) :	0.00
			Contract Pricing Adjust:	0.00
			<b>Total:</b>	<b>\$9,091.00</b>

Once your order is processed, you will receive an email with your software authorization number along with instructions on how to download the software and complimentary data & maps from <https://my.esri.com>

The purchase of a new ArcGIS Enterprise license includes 12 months of software maintenance. Maintenance includes technical support and software updates (visit <http://www.esri.com/software/maintenance> to learn more). There is an annual maintenance fee to continue support and upgrades. The estimated cost of annual maintenance for subsequent years has been included in the optional items section of this quote for your convenience.

The following items are optional items listed for your convenience.  
These items are not included in the totals of this quotation.

Material	Qty	Description	Unit Price	Total
161322	1	ArcGIS Enterprise Workgroup Standard Up to Two Cores Maintenance	1,263.00	1,263.00
161423	2	ArcGIS GIS Server Workgroup Standard Additional Core Maintenance	631.00	1,262.00

Esri may charge a fee to cover expenses related to any customer requirement to use a proprietary vendor management, procurement, or invoice program.

**For questions contact:** Erin Fair

**Email:** [efair@esri.com](mailto:efair@esri.com)

**Phone:** (909) 793-2853 x1263

The items on this quotation are subject to and governed by the terms of this quotation, the most current product specific scope of use document found at <https://assets.esri.com/content/dam/esrisites/media/legal/product-specific-terms-of-use/e300.pdf>, and your applicable signed agreement with Esri. If no such agreement covers any item quoted, then Esri's standard terms and conditions found at <https://assets.esri.com/content/dam/esrisites/media/legal/ma-full/ma-full.pdf> apply to your purchase of that item. Federal government entities and government prime contractors authorized under FAR 51.1 may purchase under the terms of Esri's GSA Federal Supply Schedule. Supplemental terms and conditions found at <https://www.esri.com/en-us/legal/terms/state-supplemental> apply to some state and local government purchases. All terms of this quotation will be incorporated into and become part of any additional agreement regarding Esri's offerings. Acceptance of this quotation is limited to the terms of this quotation. Esri objects to and expressly rejects any different or additional terms contained in any purchase order, offer, or confirmation sent to or to be sent by buyer. Unless prohibited by law, the quotation information is confidential and may not be copied or released other than for the express purpose of system selection and purchase/license. The information may not be given to outside parties or used for any other purpose without consent from Esri. Delivery is FOB Origin.

**If sending remittance, please address to: Esri, P.O. Box 741076, Los Angeles, CA 90074-1076**

**TO:** Mike Bailey, City Manager  
**FROM:** Terry Lauritsen, Director of Water Utilities  
**DATE:** November 26, 2018  
**SUBJECT:** Professional Service Contract with Keleher Architects for Architectural and Engineering design of the proposed renovation and expansion of the Water Utilities Building

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In October 2014, the City contracted with Keleher Architects for design services to develop conceptual layouts to either renovate/expand the existing water utilities building, or construct a new facility. These services were completed in late 2015 and the renovation/expansion of the current building was selected, which is shown on the following page.

One of the capital projects approved last fiscal year was the engineering design for the renovation/expansion of the Water Utilities Building, (construction is scheduled for funding in FY 2019). Due to Kelleher's work on the conceptual design and previous projects with the City, staff requested a proposal to perform the requested professional services. The contract provides that Keleher Architects will prepare construction documents for the building renovation and expansion, parking and entrance upgrades as well as design services for an expansion of an existing covered storage building. The contract provides that Keleher will complete the design services in 150 calendar days for a fee of \$82,000. The budget for the design services is \$90,000. The contract and scope of services are attached for your review.

Staff recommends approval of the professional service contract with Keleher Architects.

Please schedule this item for Council consideration at its December 3<sup>rd</sup> meeting.



 **AIA** Document B101™ – 2017**Standard Form of Agreement Between Owner and Architect**

**AGREEMENT** made as of the Twenty-ninth day of November in the year Two Thousand Eighteen  
*(In words, indicate day, month and year.)*

**BETWEEN** the Architect's client identified as the Owner:  
*(Name, legal status, address and other information)*

City of Bartlesville  
401 S. Johnstone  
Bartlesville, OK 74003  
Telephone Number: 918-338-4116

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

Keleher Architects  
401 S. Dewey Ave.  
Suite 216  
Bartlesville, OK 74003  
Telephone Number: 918-333-8855

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

Bartlesville Waste and Water Utilities Building Renovation  
1710 SW Adams Blvd.  
Bartlesville, OK 74003

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.

## TABLE OF ARTICLES

- 1 INITIAL INFORMATION
- 2 ARCHITECT'S RESPONSIBILITIES
- 3 SCOPE OF ARCHITECT'S BASIC SERVICES
- 4 SUPPLEMENTAL AND ADDITIONAL SERVICES
- 5 OWNER'S RESPONSIBILITIES
- 6 COST OF THE WORK
- 7 COPYRIGHTS AND LICENSES
- 8 CLAIMS AND DISPUTES
- 9 TERMINATION OR SUSPENSION
- 10 MISCELLANEOUS PROVISIONS
- 11 COMPENSATION
- 12 SPECIAL TERMS AND CONDITIONS
- 13 SCOPE OF THE AGREEMENT

### ARTICLE 1 INITIAL INFORMATION

§ 1.1 This Agreement is based on the Initial Information set forth in this Section 1.1.

*(For each item in this section, insert the information or a statement such as "not applicable" or "unknown at time of execution.")*

§ 1.1.1 The Owner's program for the Project:

*(Insert the Owner's program, identify documentation that establishes the Owner's program, or state the manner in which the program will be developed.)*

Per attached proposal dated Nov 19th, 2018

§ 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.)*

§ 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.)*

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

- .1 Design phase milestone dates, if any:

Init.

March 30th, 2019

**.2 Construction commencement date:**

July 30, 2019

**.3 Substantial Completion date or dates:**

March 1st, 2020

**.4 Other milestone dates:**

**§ 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.)*

Unknown at this time

**§ 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 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.)*

Terry Lauritsen  
1710 SW Adams Blvd.  
Bartlesville, OK 74003  
Telephone Number: 918-338-4116

Email Address: [tlaurit@cityofbartlesville.org](mailto:tlaurit@cityofbartlesville.org)

**§ 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.)*

Terry Lauritsen

**§ 1.1.9** The Owner shall retain the following consultants and contractors:

*(List name, legal status, address, and other contact information.)*

**.1 Geotechnical Engineer:**

Belongia Consultants  
Dave Belongia  
2145 W. Concord Cir

Init.

Broken Arrow, OK 74012  
Telephone Number: 918-251-5708

**.2 Civil Engineer:**

Olsson Associates  
1717 S. Boulder Ave.  
Suite 600  
Tulsa, Ok 74119  
Telephone Number: 918-376-4294

**.3 Other, if any:**

*(List any other consultants and contractors retained by the Owner.)*

**§ 1.1.10** The Architect identifies the following representative in accordance with Section 2.3:  
*(List name, address, and other contact information.)*

Dan Keleher Jr.  
401 S. Dewey Ave.  
Suite 216  
Bartlesville, OK 74003  
Telephone Number: 918-333-8855

Mobile Number: 918-914-9265  
Email Address: dan@keleherarch.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:**

Phillips Slaughter Rose  
Paul Rose  
203 E. Main St.  
Jenks, OK 74037  
Telephone Number: 918-488-9995

**.2 Mechanical Engineer:**

TFK Engineering  
Thomas Keeter  
2604 W. Kenosha St.  
Suite 215  
Broken Arrow, OK 74012  
Telephone Number: 918-251-1055

**.3 Electrical Engineer:**

Init.

TFK Engineering  
Thomas Keeter  
2604 W. Kenosha St.

Suite 215  
Broken Arrow, OK 74012  
Telephone Number: 918-251-1055

§ 1.1.11.2 Consultants retained under Supplemental Services:

NA

§ 1.1.12 Other Initial Information on which the Agreement is based:

NA

§ 1.2 The Owner and Architect may rely on the Initial Information. Both parties, however, recognize that the Initial Information may materially change and, in that event, the Owner and the Architect shall appropriately adjust the Architect's services, schedule for the Architect's services, and the Architect's compensation. The Owner shall adjust the Owner's budget for the Cost of the Work and the Owner's anticipated design and construction milestones, as necessary, to accommodate material changes in the Initial Information.

§ 1.3 The parties shall agree upon protocols governing the transmission and use of Instruments of Service or any other information or documentation in digital form. The parties will use AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, to establish the protocols for the development, use, transmission, and exchange of digital data.

§ 1.3.1 Any use of, or reliance on, all or a portion of a building information model without agreement to protocols governing the use of, and reliance on, the information contained in the model and without having those protocols set forth in AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, and the requisite AIA Document G202™–2013, Project Building Information Modeling Protocol Form, shall be at the using or relying party's sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.

## ARTICLE 2 ARCHITECT'S RESPONSIBILITIES

§ 2.1 The Architect shall provide professional services as set forth in this Agreement. The Architect represents that it is properly licensed in the jurisdiction where the Project is located to provide the services required by this Agreement, or shall cause such services to be performed by appropriately licensed design professionals.

§ 2.2 The Architect shall perform its services consistent with the professional skill and care ordinarily provided by architects practicing in the same or similar locality under the same or similar circumstances. The Architect shall perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project.

§ 2.3 The Architect shall identify a representative authorized to act on behalf of the Architect with respect to the Project.

§ 2.4 Except with the Owner's knowledge and consent, the Architect shall not engage in any activity, or accept any employment, interest or contribution that would reasonably appear to compromise the Architect's professional judgment with respect to this Project.

§ 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.

Init.

§ 2.5.1 Commercial General Liability with policy limits of not less than Two Million Dollars and Zero Cents (\$ 2000000.00 ) for each occurrence and Four Million Dollars and Zero Cents (\$ 4000000.00 ) in the aggregate for bodily injury and property damage.

§ 2.5.2 Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Architect with policy limits of not less than One Million Dollars and Zero Cents (\$ 1000000.00 ) 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.

§ 2.5.3 The Architect may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided such primary and excess or umbrella liability insurance policies result in the same or greater coverage as the coverages required under Sections 2.5.1 and 2.5.2, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers.

§ 2.5.4 Workers' Compensation at statutory limits.

§ 2.5.5 Employers' Liability with policy limits not less than One Million Dollars and Zero Cents (\$ 1000000.00 ) each accident, One Million Dollars and Zero Cents (\$ 1000000.00 ) each employee, and One Million Dollars and Zero Cents (\$ 1000000.00 ) policy limit.

§ 2.5.6 Professional Liability covering negligent acts, errors and omissions in the performance of professional services with policy limits of not less than Two Million Dollars and Zero Cents (\$ 2000000.00 ) per claim and Four Million Dollars and Zero Cents (\$ 4000000.00 ) 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.

### 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.

Init.

§ 3.1.4 The Architect shall not be responsible for an Owner's directive or substitution, or for the Owner's acceptance of non-conforming Work, made or given without the Architect's written approval.

§ 3.1.5 The Architect shall contact governmental authorities required to approve the Construction Documents and entities providing utility services to the Project. The Architect shall respond to applicable design requirements imposed by those authorities and entities.

§ 3.1.6 The Architect shall assist the Owner in connection with the Owner's responsibility for filing documents required for the approval of governmental authorities having jurisdiction over the Project.

### § 3.2 Schematic Design Phase Services

§ 3.2.1 The Architect shall review the program and other information furnished by the Owner, and shall review laws, codes, and regulations applicable to the Architect's services.

§ 3.2.2 The Architect shall prepare a preliminary evaluation of the Owner's program, schedule, budget for the Cost of the Work, Project site, the proposed procurement and delivery method, and other Initial Information, each in terms of the other, to ascertain the requirements of the Project. The Architect shall notify the Owner of (1) any inconsistencies discovered in the information, and (2) other information or consulting services that may be reasonably needed for the Project.

§ 3.2.3 The Architect shall present its preliminary evaluation to the Owner and shall discuss with the Owner alternative approaches to design and construction of the Project. The Architect shall reach an understanding with the Owner regarding the requirements of the Project.

§ 3.2.4 Based on the Project requirements agreed upon with the Owner, the Architect shall prepare and present, for the Owner's approval, a preliminary design illustrating the scale and relationship of the Project components.

§ 3.2.5 Based on the Owner's approval of the preliminary design, the Architect shall prepare Schematic Design Documents for the Owner's approval. The Schematic Design Documents shall consist of drawings and other documents including a site plan, if appropriate, and preliminary building plans, sections and elevations; and may include some combination of study models, perspective sketches, or digital representations. Preliminary selections of major building systems and construction materials shall be noted on the drawings or described in writing.

§ 3.2.5.1 The Architect shall consider sustainable design alternatives, such as material choices and building orientation, together with other considerations based on program and aesthetics, in developing a design that is consistent with the Owner's program, schedule and budget for the Cost of the Work. The Owner may obtain more advanced sustainable design services as a Supplemental Service under Section 4.1.1.

§ 3.2.5.2 The Architect shall consider the value of alternative materials, building systems and equipment, together with other considerations based on program and aesthetics, in developing a design for the Project that is consistent with the Owner's program, schedule, and budget for the Cost of the Work.

§ 3.2.6 The Architect 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

§ 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

#### § 3.6.1 General

§ 3.6.1.1 The Architect shall provide administration of the Contract between the Owner and the Contractor as set forth below and in AIA Document A201™–2017, General Conditions of the Contract for Construction. If the Owner and Contractor modify AIA Document A201–2017, those modifications shall not affect the Architect's services under this Agreement unless the Owner and the Architect amend this Agreement.

§ 3.6.1.2 The Architect shall advise and consult with the Owner during the Construction Phase Services. The Architect shall have authority to act on behalf of the Owner only to the extent provided in this Agreement. The Architect shall not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, nor shall the Architect be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect shall be responsible for the Architect's negligent acts or omissions, but shall not have control over or charge of, and shall not be responsible for, acts or omissions of the Contractor or of any other persons or entities performing portions of the Work.

§ 3.6.1.3 Subject to Section 4.2 and except as provided in Section 3.6.6.5, the Architect's responsibility to provide Construction Phase Services commences with the award of the Contract for Construction and terminates on the date the Architect issues the final Certificate for Payment.

#### § 3.6.2 Evaluations of the Work

§ 3.6.2.1 The Architect shall visit the site at intervals appropriate to the stage of construction, or as otherwise required in Section 4.2.3, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine, in general, if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. On the basis of the site visits, the Architect shall keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and promptly report to the Owner (1) known deviations from the Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Contractor, and (3) defects and deficiencies observed in the Work.

§ 3.6.2.2 The Architect has the authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect shall have the authority to require inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not the Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, suppliers, their agents or employees, or other persons or entities performing portions of the Work.

**§ 3.6.2.3** The Architect shall interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests shall be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

**§ 3.6.2.4** Interpretations and decisions of the Architect shall be consistent with the intent of, and reasonably inferable from, the Contract Documents and shall be in writing or in the form of drawings. When making such interpretations and decisions, the Architect shall endeavor to secure faithful performance by both Owner and Contractor, shall not show partiality to either, and shall not be liable for results of interpretations or decisions rendered in good faith. The Architect's decisions on matters relating to aesthetic effect shall be final if consistent with the intent expressed in the Contract Documents.

**§ 3.6.2.5** Unless the Owner and Contractor designate another person to serve as an Initial Decision Maker, as that term is defined in AIA Document A201–2017, the Architect shall render initial decisions on Claims between the Owner and Contractor as provided in the Contract Documents.

### **§ 3.6.3 Certificates for Payment to Contractor**

**§ 3.6.3.1** The Architect shall review and certify the amounts due the Contractor and shall issue certificates in such amounts. The Architect's certification for payment shall constitute a representation to the Owner, based on the Architect's evaluation of the Work as provided in Section 3.6.2 and on the data comprising the Contractor's Application for Payment, that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and that the Contractor is entitled to payment in the amount certified. The foregoing representations are subject to (1) an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, (2) results of subsequent tests and inspections, (3) correction of minor deviations from the Contract Documents prior to completion, and (4) specific qualifications expressed by the Architect.

**§ 3.6.3.2** The issuance of a Certificate for Payment shall not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and suppliers and other data requested by the Owner to substantiate the Contractor's right to payment, or (4) ascertained how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

**§ 3.6.3.3** The Architect shall maintain a record of the Applications and Certificates for Payment.

### **§ 3.6.4 Submittals**

**§ 3.6.4.1** The Architect shall review the Contractor's submittal schedule and shall not unreasonably delay or withhold approval of the schedule. The Architect's action in reviewing submittals shall be taken in accordance with the approved submittal schedule or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time, in the Architect's professional judgment, to permit adequate review.

**§ 3.6.4.2** The Architect shall review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. Review of such submittals is not for the purpose of determining the accuracy and completeness of other information such as dimensions, quantities, and installation or performance of equipment or systems, which are the Contractor's responsibility. The Architect's review shall not constitute approval of safety precautions or construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

**§ 3.6.4.3** If the Contract Documents specifically require the Contractor to provide professional design services or certifications by a design professional related to systems, materials, or equipment, the Architect shall specify the appropriate performance and design criteria that such services must satisfy. The Architect shall review and take appropriate action on Shop Drawings and other submittals related to the Work designed or certified by the Contractor's design professional, provided the submittals bear such professional's seal and signature when submitted to the Architect. The Architect's review shall be for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect shall be entitled to

rely upon, and shall not be responsible for, the adequacy and accuracy of the services, certifications, and approvals performed or provided by such design professionals.

**§ 3.6.4.4** Subject to Section 4.2, the Architect shall review and respond to requests for information about the Contract Documents. The Architect shall set forth, in the Contract Documents, the requirements for requests for information. Requests for information shall include, at a minimum, a detailed written statement that indicates the specific Drawings or Specifications in need of clarification and the nature of the clarification requested. The Architect's response to such requests shall be made in writing within any time limits agreed upon, or otherwise with reasonable promptness. If appropriate, the Architect shall prepare and issue supplemental Drawings and Specifications in response to the requests for information.

**§ 3.6.4.5** The Architect shall maintain a record of submittals and copies of submittals supplied by the Contractor in accordance with the requirements of the Contract Documents.

### **§ 3.6.5 Changes in the Work**

**§ 3.6.5.1** The Architect may order minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. Subject to Section 4.2, the Architect shall prepare Change Orders and Construction Change Directives for the Owner's approval and execution in accordance with the Contract Documents.

**§ 3.6.5.2** The Architect shall maintain records relative to changes in the Work.

### **§ 3.6.6 Project Completion**

**§ 3.6.6.1** The Architect shall:

- .1 conduct inspections to determine the date or dates of Substantial Completion and the date of final completion;
- .2 issue Certificates of Substantial Completion;
- .3 forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract Documents and received from the Contractor; and,
- .4 issue a final Certificate for Payment based upon a final inspection indicating that, to the best of the Architect's knowledge, information, and belief, the Work complies with the requirements of the Contract Documents.

**§ 3.6.6.2** The Architect's inspections shall be conducted with the Owner to check conformance of the Work with the requirements of the Contract Documents and to verify the accuracy and completeness of the list submitted by the Contractor of Work to be completed or corrected.

**§ 3.6.6.3** When Substantial Completion has been achieved, the Architect shall inform the Owner about the balance of the Contract Sum remaining to be paid the Contractor, including the amount to be retained from the Contract Sum, if any, for final completion or correction of the Work.

**§ 3.6.6.4** The Architect shall forward to the Owner the following information received from the Contractor: (1) consent of surety or sureties, if any, to reduction in or partial release of retainage or the making of final payment; (2) affidavits, receipts, releases and waivers of liens, or bonds indemnifying the Owner against liens; and (3) any other documentation required of the Contractor under the Contract Documents.

**§ 3.6.6.5** Upon request of the Owner, and prior to the expiration of one year from the date of Substantial Completion, the Architect shall, without additional compensation, conduct a meeting with the Owner to review the facility operations and performance.

## **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.

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(Designate the Architect's Supplemental Services and the Owner's Supplemental Services required for the Project by indicating whether the Architect or Owner shall be responsible for providing the identified Supplemental Service. Insert a description of the Supplemental Services in Section 4.1.2 below or attach the description of services as an exhibit to this Agreement.)

Supplemental Services	Responsibility (Architect, Owner, or not provided)
§ 4.1.1.1 Programming	
§ 4.1.1.2 Multiple preliminary designs	
§ 4.1.1.3 Measured drawings	
§ 4.1.1.4 Existing facilities surveys	
§ 4.1.1.5 Site evaluation and planning	
§ 4.1.1.6 Building Information Model management responsibilities	
§ 4.1.1.7 Development of Building Information Models for post construction use	
§ 4.1.1.8 Civil engineering	
§ 4.1.1.9 Landscape design	
§ 4.1.1.10 Architectural interior design	
§ 4.1.1.11 Value analysis	
§ 4.1.1.12 Detailed cost estimating beyond that required in Section 6.3	
§ 4.1.1.13 On-site project representation	
§ 4.1.1.14 Conformed documents for construction	
§ 4.1.1.15 As-designed record drawings	
§ 4.1.1.16 As-constructed record drawings	
§ 4.1.1.17 Post-occupancy evaluation	
§ 4.1.1.18 Facility support services	
§ 4.1.1.19 Tenant-related services	
§ 4.1.1.20 Architect's coordination of the Owner's consultants	
§ 4.1.1.21 Telecommunications/data design	
§ 4.1.1.22 Security evaluation and planning	
§ 4.1.1.23 Commissioning	
§ 4.1.1.24 Sustainable Project Services pursuant to Section 4.1.3	
§ 4.1.1.25 Fast-track design services	
§ 4.1.1.26 Multiple bid packages	
§ 4.1.1.27 Historic preservation	
§ 4.1.1.28 Furniture, furnishings, and equipment design	
§ 4.1.1.29 Other services provided by specialty Consultants	
§ 4.1.1.30 Other Supplemental Services	

**§ 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.)

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Site Survey work is included in the fee

**§ 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.)*

**§ 4.1.3** If the Owner identified a Sustainable Objective in Article 1, the Architect shall provide, as a Supplemental Service, the Sustainability Services required in AIA Document E204™–2017, Sustainable Projects Exhibit, attached to this Agreement. The Owner shall compensate the Architect as provided in Section 11.2.

#### **§ 4.2 Architect's Additional Services**

The Architect may provide Additional Services after execution of this Agreement without invalidating the Agreement. Except for services required due to the fault of the Architect, any Additional Services provided in accordance with this Section 4.2 shall entitle the Architect to compensation pursuant to Section 11.3 and an appropriate adjustment in the Architect's schedule.

**§ 4.2.1** Upon recognizing the need to perform the following Additional Services, the Architect shall notify the Owner with reasonable promptness and explain the facts and circumstances giving rise to the need. The Architect shall not proceed to provide the following Additional Services until the Architect receives the Owner's written authorization:

- .1 Services necessitated by a change in the Initial Information, previous instructions or approvals given by the Owner, or a material change in the Project including size, quality, complexity, the Owner's schedule or budget for Cost of the Work, or procurement or delivery method;
- .2 Services necessitated by the enactment or revision of codes, laws, or regulations, including changing or editing previously prepared Instruments of Service;
- .3 Changing or editing previously prepared Instruments of Service necessitated by official interpretations of applicable codes, laws or regulations that are either (a) contrary to specific interpretations by the applicable authorities having jurisdiction made prior to the issuance of the building permit, or (b) contrary to requirements of the Instruments of Service when those Instruments of Service were prepared in accordance with the applicable standard of care;
- .4 Services necessitated by decisions of the Owner not rendered in a timely manner or any other failure of performance on the part of the Owner or the Owner's consultants or contractors;
- .5 Preparing digital models or other design documentation for transmission to the Owner's consultants and contractors, or to other Owner-authorized recipients;
- .6 Preparation of design and documentation for alternate bid or proposal requests proposed by the Owner;
- .7 Preparation for, and attendance at, a public presentation, meeting or hearing;
- .8 Preparation for, and attendance at, a dispute resolution proceeding or legal proceeding, except where the Architect is party thereto;
- .9 Evaluation of the qualifications of entities providing bids or proposals;
- .10 Consultation concerning replacement of Work resulting from fire or other cause during construction; or,
- .11 Assistance to the Initial Decision Maker, if other than the Architect.

**§ 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;

Init.

- .3 Preparing Change Orders and Construction Change Directives that require evaluation of Contractor's proposals and supporting data, or the preparation or revision of Instruments of Service;
- .4 Evaluating an extensive number of Claims as the Initial Decision Maker; or,
- .5 Evaluating substitutions proposed by the Owner or Contractor and making subsequent revisions to Instruments of Service resulting therefrom.

**§ 4.2.3** The Architect shall provide Construction Phase Services exceeding the limits set forth below as Additional Services. When the limits below are reached, the Architect shall notify the Owner:

- .1 Two ( 2 ) reviews of each Shop Drawing, Product Data item, sample and similar submittals of the Contractor
- .2 Six ( 6 ) visits to the site by the Architect during construction
- .3 One ( 1 ) inspections for any portion of the Work to determine whether such portion of the Work is substantially complete in accordance with the requirements of the Contract Documents
- .4 One ( 1 ) inspections for any portion of the Work to determine final completion.

**§ 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 Twenty-four ( 24 ) months of the date of this Agreement, through no fault of the Architect, extension of the Architect's services beyond that time shall be compensated as Additional Services.

## **ARTICLE 5 OWNER'S RESPONSIBILITIES**

**§ 5.1** Unless otherwise provided for under this Agreement, the Owner shall provide information in a timely manner regarding requirements for and limitations on the Project, including a written program, which shall set forth the Owner's objectives; schedule; constraints and criteria, including space requirements and relationships; flexibility; expandability; special equipment; systems; and site requirements.

**§ 5.2** The Owner shall establish the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Section 6.1; (2) the Owner's other costs; and, (3) reasonable contingencies related to all of these costs. The Owner shall update the Owner's budget for the Project as necessary throughout the duration of the Project until final completion. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Architect. The Owner and the Architect shall thereafter agree to a corresponding change in the Project's scope and quality.

**§ 5.3** The Owner shall identify a representative authorized to act on the Owner's behalf with respect to the Project. The Owner shall render decisions and approve the Architect's submittals in a timely manner in order to avoid unreasonable delay in the orderly and sequential progress of the Architect's services.

**§ 5.4** The Owner shall furnish surveys to describe physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as 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.

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§ 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.

§ 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

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construction are to be included in the Contract Documents; to recommend reasonable adjustments in the program and scope of the Project; and to include design alternates as may be necessary to adjust the estimated Cost of the Work to meet the Owner's budget. The Architect's estimate of the Cost of the Work shall be based on current area, volume or similar conceptual estimating techniques. If the Owner requires a detailed estimate of the Cost of the Work, the Architect shall provide such an estimate, if identified as the Architect's responsibility in Section 4.1.1, as a Supplemental Service.

**§ 6.4** If, through no fault of the Architect, the Procurement Phase has not commenced within 90 days after the Architect submits the Construction Documents to the Owner, the Owner's budget for the Cost of the Work shall be adjusted to reflect changes in the general level of prices in the applicable construction market.

**§ 6.5** If at any time the Architect's estimate of the Cost of the Work exceeds the Owner's budget for the Cost of the Work, the Architect shall make appropriate recommendations to the Owner to adjust the Project's size, quality, or budget for the Cost of the Work, and the Owner shall cooperate with the Architect in making such adjustments.

**§ 6.6** If the Owner's budget for the Cost of the Work at the conclusion of the Construction Documents Phase Services is exceeded by the lowest bona fide bid or negotiated proposal, the Owner shall

- .1 give written approval of an increase in the budget for the Cost of the Work;
- .2 authorize rebidding or renegotiating of the Project within a reasonable time;
- .3 terminate in accordance with Section 9.5;
- .4 in consultation with the Architect, revise the Project program, scope, or quality as required to reduce the Cost of the Work; or,
- .5 implement any other mutually acceptable alternative.

**§ 6.7** If the Owner chooses to proceed under Section 6.6.4, the Architect shall modify the Construction Documents as necessary to comply with the Owner's budget for the Cost of the Work at the conclusion of the Construction Documents Phase Services, or the budget as adjusted under Section 6.6.1. If the Owner requires the Architect to modify the Construction Documents because the lowest bona fide bid or negotiated proposal exceeds the Owner's budget for the Cost of the Work due to market conditions the Architect could not reasonably anticipate, the Owner shall compensate the Architect for the modifications as an Additional Service pursuant to Section 11.3; otherwise the Architect's services for modifying the Construction Documents shall be without additional compensation. In any event, the Architect's modification of the Construction Documents shall be the limit of the Architect's responsibility under this Article 6.

## **ARTICLE 7 COPYRIGHTS AND LICENSES**

**§ 7.1** The Architect and the Owner warrant that in transmitting Instruments of Service, or any other information, the transmitting party is the copyright owner of such information or has permission from the copyright owner to transmit such information for its use on the Project.

**§ 7.2** The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and shall retain all common law, statutory and other reserved rights, including copyrights. Submission or distribution of Instruments of Service to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the reserved rights of the Architect and the Architect's consultants.

**§ 7.3** The Architect grants to the Owner a nonexclusive license to use the Architect's Instruments of Service solely and exclusively for purposes of constructing, using, maintaining, altering and adding to the Project, provided that the Owner substantially performs its obligations under this Agreement, including prompt payment of all sums due pursuant to Article 9 and Article 11. The Architect shall obtain similar nonexclusive licenses from the Architect's consultants consistent with this Agreement. The license granted under this section permits the Owner to authorize the Contractor, Subcontractors, Sub-subcontractors, and suppliers, as well as the Owner's consultants and separate contractors, to reproduce applicable portions of the Instruments of Service, subject to any protocols established pursuant to Section 1.3, solely and exclusively for use in performing services or construction for the Project. If the Architect rightfully terminates this Agreement for cause as provided in Section 9.4, the license granted in this Section 7.3 shall terminate.

**§ 7.3.1** In the event the Owner uses the Instruments of Service without retaining the authors of the Instruments of Service, the Owner releases the Architect and Architect's consultant(s) from all claims and causes of action arising from such uses. The Owner, to the extent permitted by law, further agrees to indemnify and hold harmless the Architect and its consultants from all costs and expenses, including the cost of defense, related to claims and causes of action asserted by any third person or entity to the extent such costs and expenses arise from the Owner's use of the Instruments of Service under this Section 7.3.1. The terms of this Section 7.3.1 shall not apply if the Owner rightfully terminates this Agreement for cause under Section 9.4.

**§ 7.4** Except for the licenses granted in this Article 7, no other license or right shall be deemed granted or implied under this Agreement. The Owner shall not assign, delegate, sublicense, pledge or otherwise transfer any license granted herein to another party without the prior written agreement of the Architect. Any unauthorized use of the Instruments of Service shall be at the Owner's sole risk and without liability to the Architect and the Architect's consultants.

**§ 7.5** Except as otherwise stated in Section 7.3, the provisions of this Article 7 shall survive the termination of this Agreement.

## **ARTICLE 8 CLAIMS AND DISPUTES**

### **§ 8.1 General**

**§ 8.1.1** The Owner and Architect shall commence all claims and causes of action against the other and arising out of or related to this Agreement, whether in contract, tort, or otherwise, in accordance with the requirements of the binding dispute resolution method selected in this Agreement and within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Architect waive all claims and causes of action not commenced in accordance with this Section 8.1.1.

**§ 8.1.2** To the extent damages are covered by property insurance, the Owner and Architect waive all rights against each other and against the contractors, consultants, agents, and employees of the other for damages, except such rights as they may have to the proceeds of such insurance as set forth in AIA Document A201-2017, General Conditions of the Contract for Construction. The Owner or the Architect, as appropriate, shall require of the contractors, consultants, agents, and employees of any of them, similar waivers in favor of the other parties enumerated herein.

**§ 8.1.3** The Architect and Owner waive consequential damages for claims, disputes, or other matters in question, arising out of or relating to this Agreement. This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination of this Agreement, except as specifically provided in Section 9.7.

### **§ 8.2 Mediation**

**§ 8.2.1** Any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to mediation as a condition precedent to binding dispute resolution. If such matter relates to or is the subject of a lien arising out of the Architect's services, the Architect may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to resolution of the matter by mediation or by binding dispute resolution.

**§ 8.2.2** The Owner and Architect shall endeavor to resolve claims, disputes and other matters in question between them by mediation, which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of 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.)*

.1 Termination Fee:

To be Negotiated

.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.

Init.

§ 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 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)

\$82,000

Init.

.2 Percentage Basis  
*(Insert percentage value)*

(NaN) % 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)*

§ 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.)*

To be Negotiated

§ 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.)*

Hourly

§ 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 ( 10.00%), or as follows:  
*(Insert amount of, or basis for computing, Architect's consultants' compensation for Supplemental or Additional Services.)*

§ 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		percent (		%)
Design Development Phase	Twenty-five	percent (	25	%)
Construction Documents Phase	Sixty-five	percent (	65	%)
Procurement Phase	Zero	percent (		%)
Construction Phase	Ten	percent (	10	%)
<b>Total Basic Compensation</b>		<b>one hundred</b>	<b>percent (</b>	<b>100</b> <b>%)</b>

§ 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.)*

Init.

Employee or Category	Rate (\$0.00)
Project Manager	\$110.00 Per Hour
Staff Architect	\$75.00 Per Hour
Autocad Tech	\$60.00 Per Hour

### § 11.8 Compensation for Reimbursable Expenses

§ 11.8.1 Reimbursable Expenses are in addition to compensation for Basic, Supplemental, and Additional Services and include expenses incurred by the Architect and the Architect's consultants directly related to the Project, as follows:

- .1 Transportation and authorized out-of-town travel and subsistence;
- .2 Long distance services, dedicated data and communication services, teleconferences, Project web sites, and extranets;
- .3 Permitting and other fees required by authorities having jurisdiction over the Project;
- .4 Printing, reproductions, plots, and standard form documents;
- .5 Postage, handling, and delivery;
- .6 Expense of overtime work requiring higher than regular rates, if authorized in advance by the Owner;
- .7 Renderings, physical models, mock-ups, professional photography, and presentation materials requested by the Owner or required for the Project;
- .8 If required by the Owner, and with the Owner's prior written approval, the Architect's consultants' expenses of professional liability insurance dedicated exclusively to this Project, or the expense of additional insurance coverage or limits in excess of that normally maintained by the Architect's consultants;
- .9 All taxes levied on professional services and on reimbursable expenses;
- .10 Site office expenses;
- .11 Registration fees and any other fees charged by the Certifying Authority or by other entities as necessary to achieve the Sustainable Objective; and,
- .12 Other similar Project-related expenditures.

§ 11.8.2 For Reimbursable Expenses the compensation shall be the expenses incurred by the Architect and the Architect's consultants plus Ten percent ( 10.00 %) 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.)*

NA

### § 11.10 Payments to the Architect

#### § 11.10.1 Initial Payments

§ 11.10.1.1 An initial payment of Zero Dollars and Zero Cents (\$ 0.00 ) 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 Zero Dollars and Zero Cents (\$ 0.00 ) 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 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 Architect.

*(Insert rate of monthly or annual interest agreed upon.)*

Init.

3 % monthly

**§ 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.)*

None

## ARTICLE 13 SCOPE OF THE AGREEMENT

**§ 13.1** This Agreement represents the entire and integrated agreement between the Owner and the Architect and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both the Owner and Architect.

**§ 13.2** This Agreement is comprised of the following documents identified below:

- .1 AIA Document B101™-2017, Standard Form Agreement Between Owner and Architect

*(Paragraph Deleted)*

*(Paragraphs Deleted)*

This Agreement entered into as of the day and year first written above.

\_\_\_\_\_  
**OWNER** (Signature)

\_\_\_\_\_  
*(Printed name and title)*

\_\_\_\_\_  
**ARCHITECT** (Signature)

Dan Keleher Jr., Owner/Architect

\_\_\_\_\_  
*(Printed name, title, and license number, if required)*

Init.

**TO:** Mike Bailey, City Manager  
**FROM:** Terry Lauritsen, Director of Water Utilities  
**Cc:** Lisa Beeman, Director of Community Development  
Micah Siemers, Director of Engineering  
**DATE:** November 28, 2018  
**SUBJECT:** Professional Service Contract with Ambler Architects for professional services for the Architectural and Engineering Design of the Tower Center at Unity Square

---

One of the designated projects on the voter approved 2018 GO Bond issue is to develop a green space between the Price Tower and Community Center. The overall budget for the project is \$1.75MM.

With Council approval of the Tower Center concept on November 5, the next step is to design and issue construction documents for the proposed improvements. Due to Ambler Architect's involvement with the conceptual phase of the project, staff requested a proposal to provide these Architectural and Engineering design services for the proposed improvements, which is attached. The cost for the requested services is \$53,100, including estimated reimbursable expenses, and within the budget established for this phase of the project. The design services are anticipated to take approximately 60 days to complete.

Staff recommends approval of the professional service contract with Ambler Architects.

Please schedule this item for Council consideration at its December 3<sup>rd</sup> meeting.

# AIA<sup>®</sup> Document B101<sup>™</sup> - 2017

## Standard Form of Agreement Between Owner and Architect

AGREEMENT made as of the Fourth day of December in the year Two Thousand Eighteen  
(In words, indicate day, month and year.)

BETWEEN the Architect's client identified as the Owner:  
(Name, legal status, address and other information)

City of Bartlesville  
401 South Johnstone Avenue, Bartlesville, Oklahoma 74003  
Telephone Number: 918-338-4116

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

Ambler Architects»«»  
510 SE Dewey Ave, Suite 500  
Bartlesville, OK 74003

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

Tower Center at Unity Square»  
See Exhibit 'A' Attached

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.

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

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## TABLE OF ARTICLES

1	INITIAL INFORMATION
2	ARCHITECT'S RESPONSIBILITIES
3	SCOPE OF ARCHITECT'S BASIC SERVICES
4	SUPPLEMENTAL AND ADDITIONAL SERVICES
5	OWNER'S RESPONSIBILITIES
6	COST OF THE WORK
7	COPYRIGHTS AND LICENSES
8	CLAIMS AND DISPUTES
9	TERMINATION OR SUSPENSION
10	MISCELLANEOUS PROVISIONS
11	COMPENSATION
12	SPECIAL TERMS AND CONDITIONS
13	SCOPE OF THE AGREEMENT

### ARTICLE 1 INITIAL INFORMATION

§ 1.1 This Agreement is based on the Initial Information set forth in this Section 1.1.

*(For each item in this section, insert the information or a statement such as "not applicable" or "unknown at time of execution.")*

§ 1.1.1 The Owner's program for the Project:

*(Insert the Owner's program, identify documentation that establishes the Owner's program, or state the manner in which the program will be developed.)*

Project program as developed with the City Appointed Design Committee, Taliesin School and Ambler Architects.  
Project program approved by the City Council on November 5, 2018

§ 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.)*

See Exhibit 'B' Attached

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

As agreed upon with the City of Bartlesville, Construction Manager and Ambler Architects

§ 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.)*

Competitive Bid with a CM at Risk

§ 1.1.7 The Owner identifies the following representative in accordance with Section 5.3:  
(List name, address, and other contact information.)

Terry L. Lauritsen»  
401 South Johnstone Avenue  
Bartlesville, Oklahoma 74003  
Telephone Number: 918-338-4116  
Mobile Number: 918-397-4277  
Email Address: tllaurit@cityofbartlesville.org»

§ 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.)

N/A

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

.1 Geotechnical Engineer:

To be bid and selected by the Architect and approved by the Owner

.2 Other, if any:

(List any other consultants and contractors retained by the Owner.)

Buckland Surveying Company  
1652 SE Washington Blvd  
Bartlesville, OK 74006

§ 1.1.10 The Architect identifies the following representative in accordance with Section 2.3:  
(List name, address, and other contact information.)

Project Landscape Architect  
Randy D. Weatherly, AIA, ASLA, LEED  
510 SE Dewey Ave, Suite 500  
Bartlesville, OK 74003

Project Architect  
Scott K. Ambler, AIA  
510 SE Dewey Avenue, Suite 500  
Bartlesville, OK 74003

§ 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:

Wallace Engineer  
Attn: Mondher Labbane  
200 E. Mathew Brady StreetTulsa, Ok 74103  
Scope of Services:

1. Foundations for Toilets/Stage Complex
2. Building Structure design for Toilets/Storage Only
3. Design of the canopy over the stage will be added by amendment once the preliminary design of the canopy is complete.

Structural Fee: Five thousand five hundred dollars and no/cents (\$5,500)

.2 Mechanical Engineer:

Flynt and Kallenberger with Lux Studios (Lighting)

Attn: Ryan Grogg

10810 E. 45<sup>th</sup> Street, Suite 201

Tulsa, Oklahoma 74146

Scope of Services:

1. MEP of Toilets/State Complex
2. Overall Site Electrical
3. Overall Site Lighting
4. Shore Power for Food Trucks
5. Design of the stage canopy power/lighting/sound will be added by amendment once the preliminary design of the canopy is complete.

MEP / Lighting Fee: Twenty three thousand , eight hundred dollars and no/cents (\$23,800.00)

.3 Civil Engineer:

Doug Duke, PE

Tulsa, Oklahoma

1. Scope of Work: 2. Grading Plan
3. On-site Storm Water Design
4. Site Layout
5. Utility Plan

Civil Engineering Fee: Three thousand eight hundred and no/cents (\$3,800.00)

4. Landscape Architectural Consultant

Chris Winters

Chris Winters & Associates/Taliesin School of Architecture

502 W. Roosevelt

Phoenix, AZ 85003

Scope of Work:

1. Design of renovated fountain
2. Consultation with Ambler regarding standard details/specifications/etc.

Landscape Architect Fee: Ten Thousand dollars and no/cents (\$10,000.00)

5. Architectural/Landscape Architectural

Ambler Architects

510 S. Dewey Avenue, Suite 500 Price Tower

Bartlesville, Oklahoma, 74003

Scope of Work:

1. Coordination between all the Engineering/Design disciplines
2. Coordination with the CMAR to produce a project within the budget
3. Documentation of all existing conditions
4. Construction Documents including plans and details for bidding
  - a. Toilet / Stage Complex
  - b. Site Paving and details

c.Stone Seating / Walls and details  
d.Landscape Plans and details

Project Architect Fee: Zero Dollars (\$0.00)

6. Taliesin Intern – Part time (Summer of 2019).  
Intern Fee: Five thousand dollars and no/cents (\$5,000.00)

Design Cost does not include stage canopy design or Future water feature design: Forty eight thousand one hundred dollars and no/cents (\$48,100.00)

§ 1.1.11.2 Consultants retained under Supplemental Services:

N/A

§ 1.1.12 Other Initial Information on which the Agreement is based:

None Noted

§ 1.2 The Owner and Architect may rely on the Initial Information. Both parties, however, recognize that the Initial Information may materially change and, in that event, the Owner and the Architect shall appropriately adjust the Architect's services, schedule for the Architect's services, and the Architect's compensation. The Owner shall adjust the Owner's budget for the Cost of the Work and the Owner's anticipated design and construction milestones, as necessary, to accommodate material changes in the Initial Information.

§ 1.3 The parties shall agree upon protocols governing the transmission and use of Instruments of Service or any other information or documentation in digital form. The parties will use AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, to establish the protocols for the development, use, transmission, and exchange of digital data.

§ 1.3.1 Any use of, or reliance on, all or a portion of a building information model without agreement to protocols governing the use of, and reliance on, the information contained in the model and without having those protocols set forth in AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, and the requisite AIA Document G202™–2013, Project Building Information Modeling Protocol Form, shall be at the using or relying party's sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.

## ARTICLE 2 ARCHITECT'S RESPONSIBILITIES

§ 2.1 The Architect shall provide professional services as set forth in this Agreement. The Architect represents that it is properly licensed in the jurisdiction where the Project is located to provide the services required by this Agreement, or shall cause such services to be performed by appropriately licensed design professionals.

§ 2.2 The Architect shall perform its services consistent with the professional skill and care ordinarily provided by architects practicing in the same or similar locality under the same or similar circumstances. The Architect shall perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project.

§ 2.3 The Architect shall identify a representative authorized to act on behalf of the Architect with respect to the Project.

§ 2.4 Except with the Owner's knowledge and consent, the Architect shall not engage in any activity, or accept any employment, interest or contribution that would reasonably appear to compromise the Architect's professional judgment with respect to this Project.

§ 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 and no/cents (\$ 1,000,000.00 )

§ 2.5.2 Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Architect with policy limits of not less than One Million Dollars and no/cents (\$ 1,000,000.00 ) 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.

§ 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  
One Million Dollars and no/cents (\$1,000,000.00)

§ 2.5.5 Employers' Liability with policy limits not less than One Million Dollars and no/cents (\$ 1,000,000.00

§ 2.5.6 Professional Liability covering negligent acts, errors and omissions in the performance of professional services with policy limits of not less than Two Million Dollars (\$ 2,000,000.00 )

§ 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.

### 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

§ 3.2.1 The Architect shall review the program and other information furnished by the Owner, and shall review laws, codes, and regulations applicable to the Architect's services.

§ 3.2.2 The Architect shall prepare a preliminary evaluation of the Owner's program, schedule, budget for the Cost of the Work, Project site, the proposed procurement and delivery method, and other Initial Information, each in terms of the other, to ascertain the requirements of the Project. The Architect shall notify the Owner of (1) any inconsistencies discovered in the information, and (2) other information or consulting services that may be reasonably needed for the Project.

§ 3.2.3 The Architect shall present its preliminary evaluation to the Owner and shall discuss with the Owner alternative approaches to design and construction of the Project. The Architect shall reach an understanding with the Owner regarding the requirements of the Project.

§ 3.2.4 Based on the Project requirements agreed upon with the Owner, the Architect shall prepare and present, for the Owner's approval, a preliminary design illustrating the scale and relationship of the Project components.

§ 3.2.5 Based on the Owner's approval of the preliminary design, the Architect shall prepare Schematic Design Documents for the Owner's approval. The Schematic Design Documents shall consist of drawings and other documents including a site plan, if appropriate, and preliminary building plans, sections and elevations; and may include some combination of study models, perspective sketches, or digital representations. Preliminary selections of major building systems and construction materials shall be noted on the drawings or described in writing.

§ 3.2.5.1 The Architect shall consider sustainable design alternatives, such as material choices and building orientation, together with other considerations based on program and aesthetics, in developing a design that is consistent with the Owner's program, schedule and budget for the Cost of the Work. The Owner may obtain more advanced sustainable design services as a Supplemental Service under Section 4.1.1.

§ 3.2.5.2 The Architect shall consider the value of alternative materials, building systems and equipment, together with other considerations based on program and aesthetics, in developing a design for the Project that is consistent with the Owner's program, schedule, and budget for the Cost of the Work.

§ 3.2.6 The Architect 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 and Construction Manager in establishing a list of prospective contractors. Following the Owner's approval of the Construction Documents, the Architect shall assist the Owner and Construction Manager in (1) obtaining competitive bids ; (2) confirming responsiveness of bids or proposals; (3) determining the successful bid or proposal, if any; and, (4) awarding and preparing contracts for construction.

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#### § 3.6 Construction Phase Services

##### § 3.6.1 General

§ 3.6.1.1 The Architect shall provide administration of the Contract between the Owner and the Contractor as set forth below and in AIA Document A201™-2017, General Conditions of the Contract for Construction. If the Owner and Contractor modify AIA Document A201-2017, those modifications shall not affect the Architect's services under this Agreement unless the Owner and the Architect amend this Agreement.

§ 3.6.1.2 The Architect shall advise and consult with the Owner during the Construction Phase Services. The Architect shall have authority to act on behalf of the Owner only to the extent provided in this Agreement. The Architect shall not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, nor shall the Architect be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect shall be responsible for the Architect's negligent acts or omissions, but shall not have control over or charge

of, and shall not be responsible for, acts or omissions of the Contractor or of any other persons or entities performing portions of the Work.

§ 3.6.1.3 Subject to Section 4.2 and except as provided in Section 3.6.6.5, the Architect's responsibility to provide Construction Phase Services commences with the award of the Contract for Construction and terminates on the date the Architect issues the final Certificate for Payment.

### § 3.6.2 Evaluations of the Work

§ 3.6.2.1 The Architect shall visit the site at intervals appropriate to the stage of construction, or as otherwise required in Section 4.2.3, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine, in general, if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. On the basis of the site visits, the Architect shall keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and promptly report to the Owner (1) known deviations from the Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Contractor, and (3) defects and deficiencies observed in the Work.

§ 3.6.2.2 The Architect has the authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect shall have the authority to require inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not the Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 3.6.2.3 The Architect shall interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests shall be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

§ 3.6.2.4 Interpretations and decisions of the Architect shall be consistent with the intent of, and reasonably inferable from, the Contract Documents and shall be in writing or in the form of drawings. When making such interpretations and decisions, the Architect shall endeavor to secure faithful performance by both Owner and Contractor, shall not show partiality to either, and shall not be liable for results of interpretations or decisions rendered in good faith. The Architect's decisions on matters relating to aesthetic effect shall be final if consistent with the intent expressed in the Contract Documents.

§ 3.6.2.5 Unless the Owner and Contractor designate another person to serve as an Initial Decision Maker, as that term is defined in AIA Document A201–2017, the Architect shall render initial decisions on Claims between the Owner and Contractor as provided in the Contract Documents.

### § 3.6.3 Certificates for Payment to Contractor

§ 3.6.3.1 The Architect shall review and certify the amounts due the Contractor and shall issue certificates in such amounts. The Architect's certification for payment shall constitute a representation to the Owner, based on the Architect's evaluation of the Work as provided in Section 3.6.2 and on the data comprising the Contractor's Application for Payment, that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and that the Contractor is entitled to payment in the amount certified. The foregoing representations are subject to (1) an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, (2) results of subsequent tests and inspections, (3) correction of minor deviations from the Contract Documents prior to completion, and (4) specific qualifications expressed by the Architect.

§ 3.6.3.2 The issuance of a Certificate for Payment shall not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and suppliers and other data requested by the Owner to substantiate the Contractor's right to payment,

or (4) ascertained how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§ 3.6.3.3 The Architect shall maintain a record of the Applications and Certificates for Payment.

#### § 3.6.4 Submittals

§ 3.6.4.1 The Architect shall review the Contractor's submittal schedule and shall not unreasonably delay or withhold approval of the schedule. The Architect's action in reviewing submittals shall be taken in accordance with the approved submittal schedule or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time, in the Architect's professional judgment, to permit adequate review.

§ 3.6.4.2 The Architect shall review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. Review of such submittals is not for the purpose of determining the accuracy and completeness of other information such as dimensions, quantities, and installation or performance of equipment or systems, which are the Contractor's responsibility. The Architect's review shall not constitute approval of safety precautions or construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 3.6.4.3 If the Contract Documents specifically require the Contractor to provide professional design services or certifications by a design professional related to systems, materials, or equipment, the Architect shall specify the appropriate performance and design criteria that such services must satisfy. The Architect shall review and take appropriate action on Shop Drawings and other submittals related to the Work designed or certified by the Contractor's design professional, provided the submittals bear such professional's seal and signature when submitted to the Architect. The Architect's review shall be for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect shall be entitled to rely upon, and shall not be responsible for, the adequacy and accuracy of the services, certifications, and approvals performed or provided by such design professionals.

§ 3.6.4.4 Subject to Section 4.2, the Architect shall review and respond to requests for information about the Contract Documents. The Architect shall set forth, in the Contract Documents, the requirements for requests for information. Requests for information shall include, at a minimum, a detailed written statement that indicates the specific Drawings or Specifications in need of clarification and the nature of the clarification requested. The Architect's response to such requests shall be made in writing within any time limits agreed upon, or otherwise with reasonable promptness. If appropriate, the Architect shall prepare and issue supplemental Drawings and Specifications in response to the requests for information.

§ 3.6.4.5 The Architect shall maintain a record of submittals and copies of submittals supplied by the Contractor in accordance with the requirements of the Contract Documents.

#### § 3.6.5 Changes in the Work

§ 3.6.5.1 The Architect may order minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. Subject to Section 4.2, the Architect shall prepare Change Orders and Construction Change Directives for the Owner's approval and execution in accordance with the Contract Documents.

§ 3.6.5.2 The Architect shall maintain records relative to changes in the Work.

#### § 3.6.6 Project Completion

§ 3.6.6.1 The Architect shall:

- .1 conduct inspections to determine the date or dates of Substantial Completion and the date of final completion;
- .2 issue Certificates of Substantial Completion;
- .3 forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract Documents and received from the Contractor; and,

- .4 issue a final Certificate for Payment based upon a final inspection indicating that, to the best of the Architect's knowledge, information, and belief, the Work complies with the requirements of the Contract Documents.

§ 3.6.6.2 The Architect's inspections shall be conducted with the Owner to check conformance of the Work with the requirements of the Contract Documents and to verify the accuracy and completeness of the list submitted by the Contractor of Work to be completed or corrected.

§ 3.6.6.3 When Substantial Completion has been achieved, the Architect shall inform the Owner about the balance of the Contract Sum remaining to be paid the Contractor, including the amount to be retained from the Contract Sum, if any, for final completion or correction of the Work.

§ 3.6.6.4 The Architect shall forward to the Owner the following information received from the Contractor: (1) consent of surety or sureties, if any, to reduction in or partial release of retainage or the making of final payment; (2) affidavits, receipts, releases and waivers of liens, or bonds indemnifying the Owner against liens; and (3) any other documentation required of the Contractor under the Contract Documents.

§ 3.6.6.5 Upon request of the Owner, and prior to the expiration of one year from the date of Substantial Completion, the Architect shall, without additional compensation, conduct a meeting with the Owner to review the facility operations and performance.

#### § 4.2 Architect's Additional Services

The Architect may provide Additional Services after execution of this Agreement without invalidating the Agreement. Except for services required due to the fault of the Architect, any Additional Services provided in accordance with this Section 4.2 shall entitle the Architect to compensation pursuant to Section 11.3 and an appropriate adjustment in the Architect's schedule.

§ 4.2.1 Upon recognizing the need to perform the following Additional Services, the Architect shall notify the Owner with reasonable promptness and explain the facts and circumstances giving rise to the need. The Architect shall not proceed to provide the following Additional Services until the Architect receives the Owner's written authorization:

- .1 Services necessitated by a change in the Initial Information, previous instructions or approvals given by the Owner, or a material change in the Project including size, quality, complexity, the Owner's schedule or budget for Cost of the Work, or procurement or delivery method;
- .2 Services necessitated by the enactment or revision of codes, laws, or regulations, including changing or editing previously prepared Instruments of Service;
- .3 Changing or editing previously prepared Instruments of Service necessitated by official interpretations of applicable codes, laws or regulations that are either (a) contrary to specific interpretations by the applicable authorities having jurisdiction made prior to the issuance of the building permit, or (b) contrary to requirements of the Instruments of Service when those Instruments of Service were prepared in accordance with the applicable standard of care;
- .4 Services necessitated by decisions of the Owner not rendered in a timely manner or any other failure of performance on the part of the Owner or the Owner's consultants or contractors;
- .5 Preparing digital models or other design documentation for transmission to the Owner's consultants and contractors, or to other Owner-authorized recipients;
- .6 Preparation of design and documentation for alternate bid or proposal requests proposed by the Owner;
- .7 Preparation for, and attendance at, a public presentation, meeting or hearing;
- .8 Preparation for, and attendance at, a dispute resolution proceeding or legal proceeding, except where the Architect is party thereto;
- .9 Evaluation of the qualifications of entities providing bids or proposals;
- .10 Consultation concerning replacement of Work resulting from fire or other cause during construction; or,
- .11 Assistance to the Initial Decision Maker, if other than the Architect.

§ 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.

§ 4.2.5 If the services covered by this Agreement have not been completed within **Twenty Four ( 24 )** months of the date of this Agreement, through no fault of the Architect, extension of the Architect's services beyond that time shall be compensated as Additional Services.

#### ARTICLE 5 OWNER'S RESPONSIBILITIES

§ 5.1 Unless otherwise provided for under this Agreement, the Owner shall provide information in a timely manner regarding requirements for and limitations on the Project, including a written program, which shall set forth the Owner's objectives; schedule; constraints and criteria, including space requirements and relationships; flexibility; expandability; special equipment; systems; and site requirements.

§ 5.2 The Owner shall establish the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Section 6.1; (2) the Owner's other costs; and, (3) reasonable contingencies related to all of these costs. The Owner shall update the Owner's budget for the Project as necessary throughout the duration of the Project until final completion. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Architect. The Owner and the Architect shall thereafter agree to a corresponding change in the Project's scope and quality.

§ 5.3 The Owner shall identify a representative authorized to act on the Owner's behalf with respect to the Project. The Owner shall render decisions and approve the Architect's submittals in a timely manner in order to avoid unreasonable delay in the orderly and sequential progress of the Architect's services.

§ 5.4 The Owner shall furnish surveys to describe physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as 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.

§ 5.8 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.

§ 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.

## 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.

### § 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.)*

Litigation in a court of competent jurisdiction

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.

## 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.)*

- 1 Termination Fee:

\$ 0.00

- 2 Licensing Fee if the Owner intends to continue using the Architect's Instruments of Service:

\$0.00

§ 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 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)

Design Fee: Forty eight thousand one hundred dollars and no/cents (\$48,100.00)  
Canopy Design Fee and water feature design fee to be added by amendment, once preliminary design of these is complete.

Reimbursables: Estimated at Five Thousand Dollars and no/cents (\$5,000.00)

§ 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.)

« »To be negotiated as required

§ 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 ( %), or as follows:  
(Insert amount of, or basis for computing, Architect’s consultants’ compensation for Supplemental or Additional Services.)

« » To be negotiated as required

§ 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		percent (	10	%)
Design Development Phase		percent (	15	%)
Construction Documents Phase		percent (	40	%)
Procurement Phase		percent (	5	%)
Construction Phase		percent (	20	%)
Total Basic Compensation	one hundred	percent (	100	%)

**§ 11.8 Compensation for Reimbursable Expenses**

§ 11.8.1 Reimbursable Expenses are in addition to compensation for Basic, Supplemental, and Additional Services and include expenses incurred by the Architect and the Architect’s consultants directly related to the Project, as follows:

- .1 Transportation and authorized out-of-town travel and subsistence;
- .3 Permitting and other fees required by authorities having jurisdiction over the Project;
- .4 Printing, reproductions, plots, and standard form documents (if necessary);
- .5 Postage, handling, and delivery;
- .6 Expense of overtime work requiring higher than regular rates, if authorized in advance by the Owner;
- .8 If required by the Owner, and with the Owner’s prior written approval, the Architect’s consultants’ expenses of professional liability insurance dedicated exclusively to this Project, or the expense of additional insurance coverage or limits in excess of that normally maintained by the Architect’s consultants;
- .9 All taxes levied on professional services and on reimbursable expenses;
- .11 Registration fees and any other fees charged by the Certifying Authority or by other entities as necessary to achieve the Sustainable Objective; and,
- .12 Other similar Project-related expenditures.

§ 11.8.2 For Reimbursable Expenses the compensation shall be the expenses incurred by the Architect and the Architect's consultants plus 0 percent ( 0 %) of the expenses incurred.

§ 11.9 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.)*

#### § 11.10 Payments to the Architect

##### § 11.10.1 Initial Payments

§ 11.10.1.1 An initial payment of 0 (\$ 0.00 ) 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.

##### § 11.10.2 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 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 Architect.

*(Insert rate of monthly or annual interest agreed upon.)*

Ten Percent 10% APR

§ 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 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.

This Agreement entered into as of the day and year first written above.

\_\_\_\_\_  
OWNER *(Signature)*

Mayor, City of Bartlesville

*(Printed name and title)*

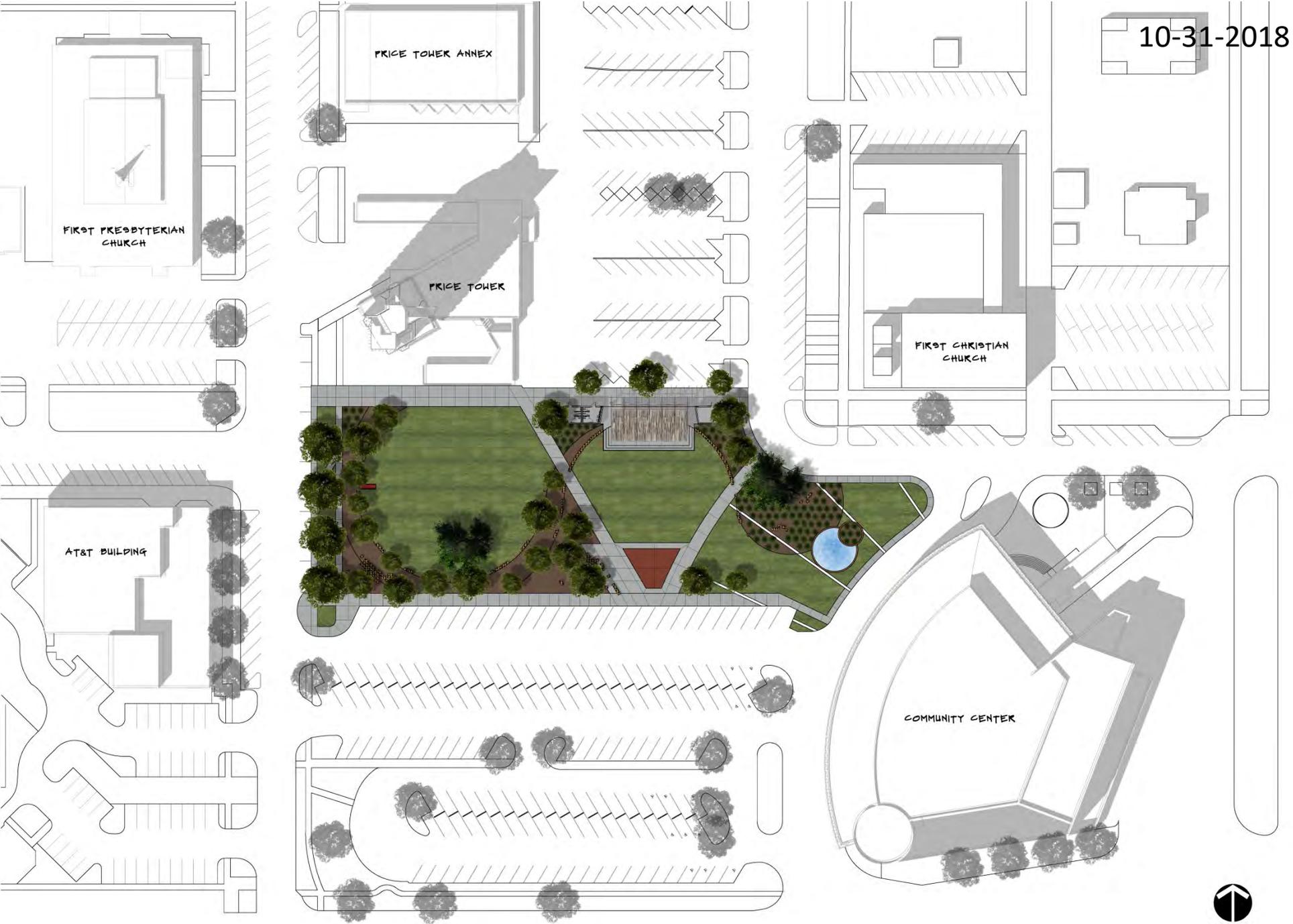
\_\_\_\_\_  
ARCHITECT *(Signature)*

Randy D. Weatherly, Vice President

*(Printed name, title, and license number, if required)*



Project scope: The project generally includes the design of areas within the extents illustrated above. It includes minor alterations to street parking and the development of an urban park with amenities as shown in the following drawings and outlined in the project budget, Exhibit B. This contract does not include the design of the canopy over the stage. The contract will be amended to include this item once the preliminary design for the canopy is complete.



FIRST PRESBYTERIAN CHURCH

PRICE TOWER ANNEX

PRICE TOWER

FIRST CHRISTIAN CHURCH

AT&T BUILDING

COMMUNITY CENTER



NORTH

10-31-2018

PRICE TOWER

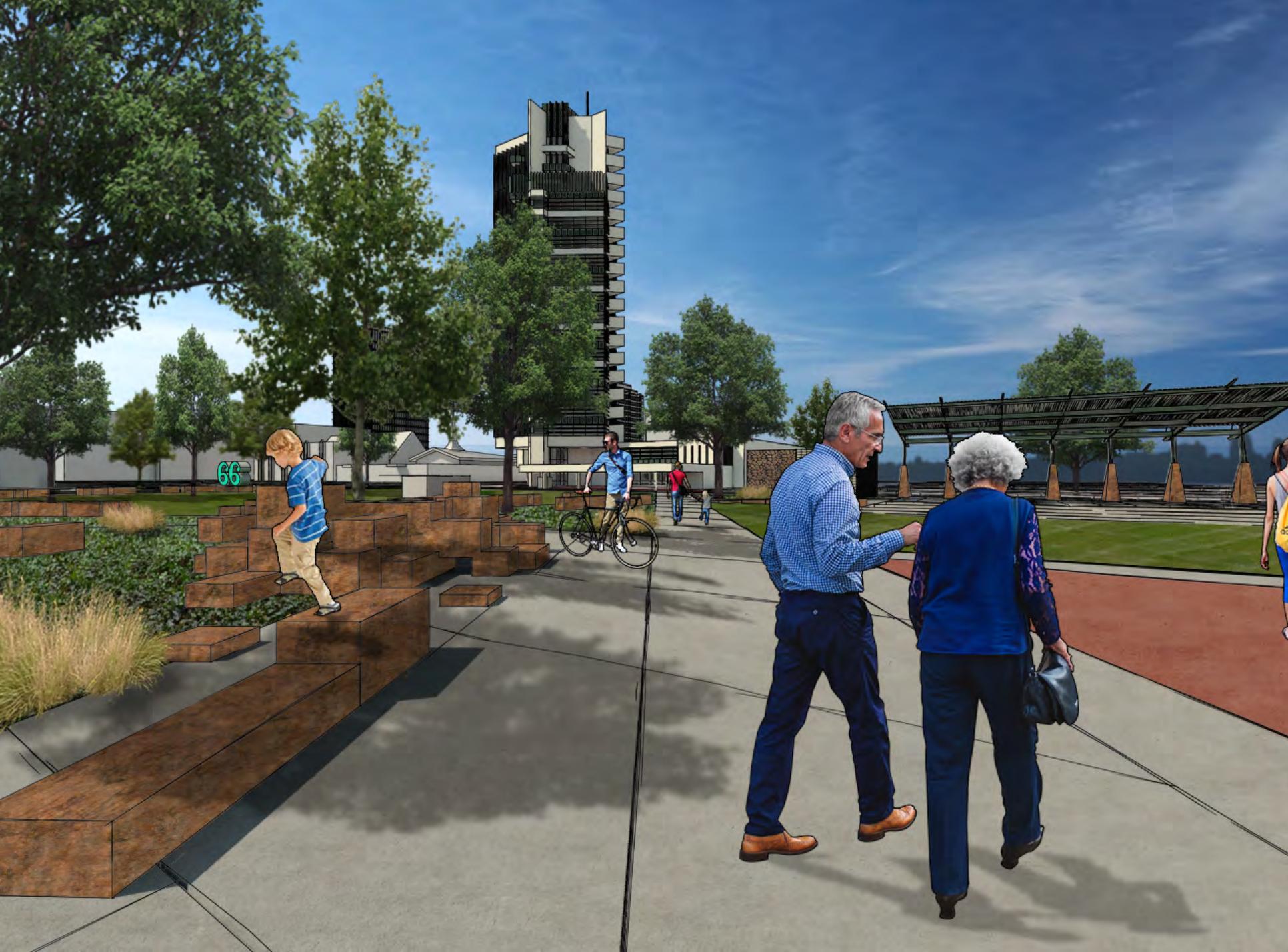
FIRST CHRISTIAN CHURCH



COMMUNITY CENTER









**Community Green  
Project Budget**

**31-Oct-18  
Rev 0**

Prepared by: S. Ambler

Note: These costs represent budget numbers for this project. They do not represent bid prices. Final costs will not be available until after the project is fully designed and bids are received.

<b>Item Description</b>	<b>Units</b>	<b>Quantity</b>	<b>Unit Cost</b>	<b>Budget Cost</b>
Mobilization	CM	0	\$5,000.00	\$0.00
Survey/Soils Report	allowance	1	\$7,000.00	\$7,000.00
Construction staking	CM	0	\$6,000.00	\$0.00
Temporary silt fence	CM	0	\$2,500.00	\$0.00
Temporary silt dike / inlet protection	CM	0	\$500.00	\$0.00
<b>Demolition</b>				
Concrete Curb	lf	1,291	\$3.50	\$4,518.50
Concrete Walks	sf	24,069	\$2.00	\$48,138.00
6th Street	sf	19,256	\$3.50	\$67,396.00
Raised Planter Removal	ls	1	\$10,000.00	\$10,000.00
Concrete Bench Removal	ls	1	\$5,000.00	\$5,000.00
Demolished Material Removal	allowance	1	\$15,000.00	\$15,000.00
Tree Removal	each	11	\$600.00	\$6,600.00
<b>Earthwork (6th street and Plaza)</b>				
Earthwork	cy	4,500	\$10.00	\$45,000.00
Street Parking Earthwork	cy	980	\$10.00	\$9,800.00
Finish Grading	ls	1	\$7,500.00	\$7,500.00
<b>Storm Water System</b>				
Drainage from Stage	allowance	1	\$15,000.00	\$15,000.00
<b>Landscape Paving</b>				
Decomposed granite paving	sf	0	\$4.00	\$0.00
Pavers on sand base	sf	0	\$12.00	\$0.00
Concrete Walks	sf	17,910	\$6.00	\$107,460.00
<b>Landscaping</b>				
Tree Plantings	each	20	\$4,000.00	\$80,000.00
Planter by Fountain	sf	3,961	\$8.00	\$31,688.00
Misc Planters in Plaza	sf	6,816	\$8.00	\$54,528.00
Sod at West Lawn (O)	sf	27,449	\$1.00	\$27,449.00
Sod at Center Lawn (Stage)	sf	9,639	\$1.00	\$9,639.00
Sod at East Lawn (Fountain Area)	sf	8,028	\$1.00	\$8,028.00
Irrigation	allowance	1	\$50,000.00	\$50,000.00
Boulder seats, walls, etc.	lbs	400,000	\$0.25	\$100,000.00

**Street Parking**

Curb at BCC Parking	lf	150	\$18.00	\$2,700.00
Curb at 6th Street	lf	88	\$18.00	\$1,584.00
Aggregate Base Type A w/ Fabric	sf	3,000	\$4.00	\$12,000.00
Asphalt paving (5")	sf	3,000	\$3.75	\$11,250.00

**Dewey Street Parking (East Side)**

Aggregate Base Type A w/fabric	sf	850	\$4.00	\$3,400.00
Asphalt paving (5")	sf	850	\$3.75	\$3,187.50
6" standard curb and gutter	lf	170	\$18.00	\$3,060.00
Striping	ls	1	\$2,500.00	\$2,500.00

**Dewey Street Parking (West Side)**

Striping	ls	1	\$1,000.00	\$1,000.00
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**6th Street Parking (East)**

Curb removal	lf	280	\$3.50	\$980.00
Aggregate Base Type A w/fabric	sf	3,600	\$2.50	\$9,000.00
Asphalt Paving (5")	sf	3,600	\$3.75	\$13,500.00
6" standard curb and gutter	lf	120	\$18.00	\$2,160.00
Striping	ls	1	\$2,500.00	\$2,500.00

**6th Street Parking (West)**

Aggregate Base Type A w/ fabric	sf	0	\$4.00	\$0.00
Asphalt paving (5")	sf	0	\$3.75	\$0.00
6" standard curb and gutter	lf	0	\$18.00	\$0.00
Striping	ls	1	\$2,500.00	\$2,500.00

**Osage Street Parking**

Aggregate Base Type A w/fabric	sf	0	\$4.00	\$0.00
Asphalt Paving (5")	sf	0	\$3.75	\$0.00
6" standard curb and gutter	lf	0	\$18.00	\$0.00
Striping	ls	1	\$2,500.00	\$2,500.00

**Site Improvements**

Renovation of Existing Fountain	allowance	1	\$40,000.00	\$40,000.00
Restrooms	sf	400	\$350.00	\$140,000.00
Storage and Mechanical Building	sf	280	\$200.00	\$56,000.00
Raised Stage Area	sf	3,000	\$20.00	\$60,000.00
Relocation of 66 Sculpture	each	0	\$5,000.00	\$0.00
Removal of 3 Flagpoles	each	0	\$2,000.00	\$0.00
Relocation of Existing Sculpture	each	0	\$4,000.00	\$0.00
Site furnishings	allowance	1	\$0.00	\$0.00
Stage Frame and Awning	allowance	1	\$100,000.00	\$100,000.00

**Electrical**

Site Lighting	allowance	1	\$125,000.00	\$125,000.00
Site Electrical (shore, general power, etc)	allowance	1	\$50,000.00	\$50,000.00

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Subtotal **\$1,354,566.00**

CM Project Costs Overhead and Profit	15%			\$203,184.90
A/E Professional Fees	7%			\$94,819.62
Contingency	10%			\$135,456.60

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**Probable Construction Cost** **\$1,788,027.12**

**Future Phases**

Upgraded Stage/Projection/Sound Systems				250,000
Interactive Site Furnishings				50,000
Community Center Storefront				150,000
Interactive Water Sculpture				350,000
Extend Green to Community Center				120,000
Reconfigure Community Center Parking, change Lighting and add Drainage				400,000

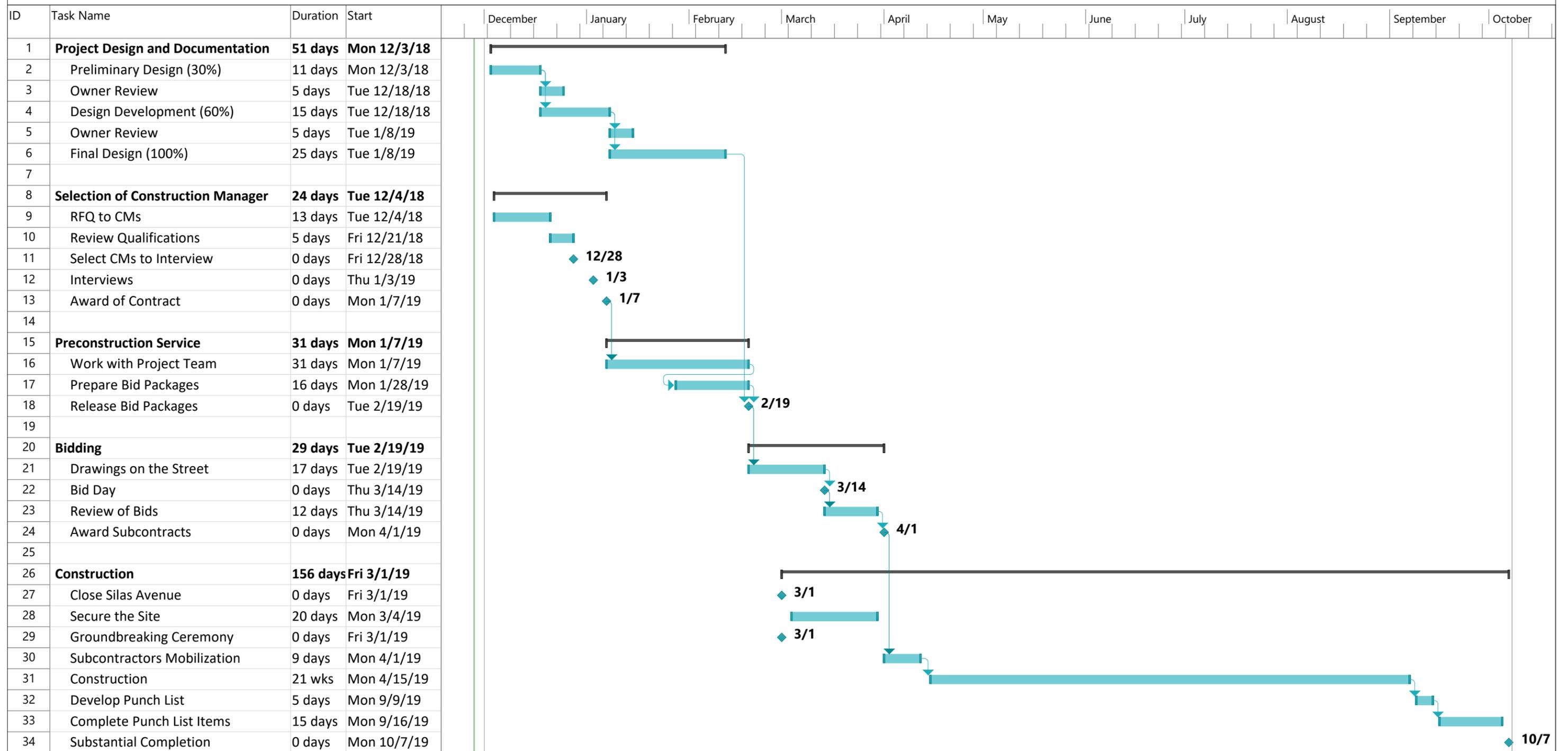
**Extend Green to Community Center**

Demo Curbs	lf	550	\$3.50	\$1,925.00
Demo Concrete Drive	sf	7,821	\$3.50	\$27,373.50
New Curb	lf	225	\$18.00	\$4,050.00
New Asphalt Base	sf	1,200	\$3.00	\$3,600.00
New Asphalt Paving	sf	1,200	\$3.75	\$4,500.00
New Concrete Walks/bands	sf	2,575	\$6.00	\$15,450.00
Grass Pavers	sf	5,775	\$10.00	\$57,750.00
Contingency		10%		\$11,464.85
<b>Estimated cost to extend Green to Community Center</b>				<b>\$126,113.35</b>

**Community Center Parking Modifications**

Demo concrete walk	sf	11,465	\$2.00	\$22,930.00
Demo of California Curb	lf	5,451	\$3.50	\$19,078.50
Demo of Concrete Paving	sf	17,715	\$2.00	\$35,430.00
Demo of Asphalt Paving	sf	2,500	\$2.00	\$5,000.00
Demo of concrete curbing	lf	1,090	\$3.50	\$3,815.00
Aggregate Base Type A	sf	3,500	\$4.00	\$14,000.00
Asphalt Paving (5")	sf	3,500	\$3.75	\$13,125.00
7" Concrete drive approach	sf	1,800	\$10.00	\$18,000.00
6" standard curb and gutter	lf	1,090	\$18.00	\$19,620.00
6' parking lot bumpers	each	100	\$150.00	\$15,000.00
Bollards at Community Center	each	20	\$700.00	\$14,000.00
Parking Lot Striping	ls	1	\$3,500.00	\$3,500.00
Concrete walk at CC overhang (5")	sf	4,942	\$8.00	\$39,536.00
Bio swale walks (4")	sf	3,960	\$6.00	\$23,760.00
New Planters at Community Center	sf	464	\$10.00	\$4,640.00
New Planters in Parking Lot	sf	1,260	\$8.00	\$10,080.00
Bio Swale Planter Underdrain system	lf	330	\$10.00	\$3,300.00
Bio Swale Plantings	sf	5,940	\$4.00	\$23,760.00
Lighting	allowance	1	\$50,000.00	\$50,000.00
Contingency		10%		\$33,857.45
<b>Estimated cost for Community Center Parking Modifications</b>				<b>\$372,431.95</b>

Tower Center at Unity Square  
Preliminary Project Schedule



**TO:** Mike Bailey, City Manager  
**FROM:** Terry Lauritsen, P.E. Director of Water Utilities  
**DATE:** November 26, 2018  
**SUBJECT:** Approval of Amendment #2 to a professional service contract with Tetra Tech to update the Wastewater Treatment Plan including a Reuse Feasibility Study

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In August 2017, Council approved a professional service contract with Tetra Tech for a Wasteload Allocation (WLA) study, which involves sampling the water quality in the Caney River at various points during different seasons and flow conditions to develop a wastewater treatment level and volume that can be discharged into the river. The WLA is the last piece of a feasibility study for Bartlesville's reuse scenario and is the technical component utilized by the Oklahoma Department of Environmental Quality (ODEQ) for permitting a wastewater discharge.

The river sampling was conducted in September and October of 2017 and preliminary models and reports were submitted to the DEQ in February 2018. DEQ comments were incorporated and the final model and report were submitted to the DEQ in April 2018. In June 2018, the DEQ reviewer assigned to the project left the DEQ and a new reviewer was assigned. The new reviewer did not agree with the previous reviewers approvals on multiple components of the model. Thus, Tetra Tech had to start over and redo all of modeling and reporting to facilitate approval by the state. While DEQ approval has been received, the net effect of the staff turnover at the DEQ required Tetra Tech to perform the modeling, calibration, corroboration and reporting twice. Tetra Tech has requested a contract amendment for \$18,000 to account for this additional effort, which is attached. There are sufficient funds within the Wastewater Regulatory Fund to pay for this amendment.

Staff recommends approval of Amendment #2 to the professional services contract with Tetra Tech to update the Wastewater Treatment Plan and Reuse Feasibility Study.



November 12, 2018

Terry Lauritsen, P.E.  
Director of Utilities  
401 South Johnstone Ave  
Bartlesville, OK 74003

**RE: Contract Amendment Request- Additional Scope for Caney River Modeling and WLA Report Revisions**

Dear Mr. Lauritsen:

Per your request, this memo summarizes the additional efforts which are beyond the original scope and intent of the project. We are submitting this information in support of the amendment request that was sent to you prior to this memo. As you are aware, the calibrated and corroborated models were initially approved by DEQ early this year and the wasteload allocation report based on this approval was submitted to DEQ in April 2018. In June 2018, Tetra Tech and Bartlesville became aware that the original reviewer who approved the model was no longer working for DEQ. DEQ assigned a new reviewer to this project. The new reviewer had different requirements for a calibrated and corroborated model that required considerable efforts for the Tetra Tech project team.

Tetra Tech began a lengthy period of coordination with DEQ since June 2018 until now to address the new reviewer's comments which, in our opinion was outside of the scope of work and budget for this project. A summary of our additional work to date is provided below:

1. **DEQ Coordination** – Since June 2018, Tetra Tech has made multiple trips to DEQ to facilitate the review process of the recently completed Caney River Model and WLA study. In addition, we have conducted multiple conference calls, emails, and coordination with various parties at DEQ to further facilitate the review process.
2. **Modeling** – Upon conclusion of each meeting, Tetra Tech spent a substantial amount of time revising the Caney River Model to meet the requirements of the new DEQ reviewer. The model revisions required internal efforts between local staff and intercompany divisions with our hydraulic modeling team.
3. **WLA Reports** – The model revisions required the WLA report to be updated and revised to match the corresponding model data on multiple occasions.

In addition to the previous DEQ coordination, updated modeling and WLA report revisions, the recent need to relocate the secondary discharge point further upstream of the Adams property required some additional modeling and revisions to the WLA report as DEQ requested. Tetra Tech submitted a revised model to DEQ for review and acceptance on November 9, 2018. This work along with any future coordination with DEQ is also additional effort to the current scope and budget.

I hope this information will assist you and the City with your review and approval of the amendment request previously submitted. If you need anything further, please contact me by phone or email.

Sincerely,

A handwritten signature in blue ink, appearing to read "Josh Paz". The signature is fluid and cursive, with the first name "Josh" and last name "Paz" clearly distinguishable.

Joshua C. Paz, P.E.  
Project Manager  
Tetra Tech, Inc.

cc: Jon Nelson  
Srini Sundaramoorthy

File: P:\11458\200-11458-16002\Projmgmt\Correspondence\Memo - Add Modeling Scope.Docx

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# TE Price Proposal

## WWT Plan and Reuse Study - Amendment #2

DEQ Coordination, WLA Report Updates, and Remodeling  
Submitted to: City of Bartlesville (Attn: Terry Lauritsen)

Contract Type: Fixed Price

### Labor Plan

5 Resource

### Price Summary / Totals

Task Pricing Totals	18,000
Specify Add'l Fees on Setup	0
Technology Use Fee	
Add'l Fees for Prem. O/T Labor	N/A
<b>Total Price</b>	<b>18,000</b>

Project Phases / Tasks	Schedule					Total Labor Hrs	Pricing by Resource					Task Pricing Totals						
	From	Thru	Months	Work Days Off	Work Days		Project Manager	Senior PM	Design Engineer	CAD	Clerical		Labor Rate Esc.	Labor	Subs	Travel	Mat'l's & Equip	ODCs
							46	20	18	4	2		2	0.00%	9,050	8,400	550	-
<b>A - Project Management</b>	06/01/18	12/30/18	6.8	16	136	18	10	2	2	2	2		2,750	-	-	-	-	2,750
A.1.1 - Project Management	06/01/18	12/30/18	6.8	16	136	8	8					1,191						1,191
A.1.2 - Reporting & Presentation	06/02/18	12/30/18	6.8	16	135	10	2	2	2	2	2	1,558						1,558
<b>B - Coordination</b>	06/01/18	12/30/18	6.8	16	136	18	6	12	-	-	-	4,358	4,200	550	-	-	9,108	
B.7.1	06/01/18	12/30/18	6.8	16	136	6	3	3				1,313					1,313	
B.7.2	06/01/18	12/30/18	6.8	16	136	6	3	3				1,313					1,313	
B.7.3	06/01/18	12/30/18	6.8	16	136	6		6				1,732		550			2,282	
B.8 S2E Sub	06/01/18	12/30/18	6.8	16	136	-							4,200				4,200	
<b>C - WLA (ISA)</b>	06/01/18	12/30/18	6.8	16	136	10	4	4	2	-	-	1,942	4,200	-	-	-	6,142	
C1.1 -Model	06/01/18	12/30/18	6.8	16	136	6	2	2	2			1,067					1,067	
C1.2-WLA Alternative Analysis	06/01/18	12/30/18	6.8	16	136	3	1	2				726					726	
C1.3- Recreational / Natural resources	06/01/18	12/30/18	6.8	16	136	1	1					149					149	
C1.4 WLA/TMDL (SUB)	06/01/18	12/30/18	6.8	16	136	-											-	
C1.5 TT-DIV Phase 2 (ISA)	06/01/18	12/30/18	6.8	16	136	-							4,200				4,200	
<b>Totals</b>	06/01/18	12/30/18	6.8			46	20	18	4	2	2	0.00%	9,050	8,400	550	-	-	18,000



## ACCOUNTING AND FINANCE

### *MEMORANDUM*

**TO:** Mike Bailey, City Manager

**FROM:** Jason Muninger, Finance Director/City Clerk

**SUBJECT:** Award of Professional Services Agreement for Continuing Disclosure.

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#### **GENERAL INFORMATION:**

Required in the language the Continuing Disclosure Certificate/Agreement, which is entered into upon issuance of debt, the City must perform continuing disclosure of financial information. Given the nature and importance of these filing, Municipal Finance Services Inc is assisting clients to ensure they stay compliant. This encompasses the creation and filing of the appropriate forms as well as assisting the issuer in the electronic submission to the Electronic Municipal Marketplace Access System (EMMA).

City Staff recommends approval of the agreement with Municipal Finance Services, Inc. due to their expertise and their previous experience serving as the City's financial bond advisor in numerous debt issuance. The annual fee for this Service Agreement is \$3,500.

November 5, 2018

## PROFESSIONAL SERVICES AGREEMENT

### CONTINUING DISCLOSURE REPORTING ASSISTANCE

THIS AGREEMENT is entered into, by and among MUNICIPAL FINANCE SERVICES, INC. (“MFSOK”) and the CITY OF BARTLESVILLE, OKLAHOMA (the “ISSUER”). MFSOK’s services are limited to those specifically set forth herein.

#### ***I. Scope of Services.***

The general scope of services to be performed by MFSOK for the ISSUER’s bonds governed by a Continuing Disclosure Certificate/Agreement (“CDA”) include:

- A. Assisting the ISSUER in compiling the financial information and operating data set forth in the CDA included in any Final Official Statement; and
- B. If necessary, preparing a “Failure to File Notice” should documents not be available for filing within the prescribed time frame designated in the CDA; and
- C. Upon request, assisting the ISSUER in the submission of the aforementioned information to the Electronic Municipal Marketplace Access system (“EMMA”).

MFSOK will not make any legal determination as to documents to be filed nor provide any legal advice to ISSUER regarding the interpretation or implementation of the CDA.

#### ***II. Compensation and Reimbursements***

Compensation for Financial Advisor Services. MFSOK will receive a fee of \$3,500.00 for the services performed.

#### ***III. Term and Termination***

- A. Term of Agreement. Unless terminated as provided herein, the term of this Agreement shall be through June 30, 2019.

- B. Termination of Agreement and Services. This Agreement and all financial advisor services to be rendered hereunder may be terminated at any time by written notice from either party, with or without cause. In that event, all finished and unfinished documents prepared for the ISSUER, shall, at the option of the ISSUER, become its property and shall be delivered to it or any party it may designate, provided that MFSOK shall have no liability whatsoever for any subsequent use of such documents.
- C. Successors and Assigns. MFSOK may not assign its obligations under this Agreement without the written consent of Issuer except to a successor partnership or corporation to which all or substantially all of the assets and operations of MFSOK are transferred. Issuer may assign its rights and obligations under this Agreement to (but only to) any other public entity that issues the Notes (if not the Issuer). Issuer shall not otherwise assign its rights and obligations under this Agreement without written consent of MFSOK. All references to MFSOK and Issuer in this Agreement shall be deemed to refer to any successor of MFSOK and to any such assignee of Issuer and shall bind and inure to the benefit of such successor and assignee whether so expressed or not.

#### **IV. Municipal Advisor Registration and Acknowledgement**

Pursuant to Municipal Securities Rulemaking Board Rule G-10, on Investor and Municipal Advisory Client Education and Protection, Municipal Advisors are required to provide certain written information to their municipal entity and obligated person clients which include the following:

Municipal Finance Services, Inc. is currently registered as a Municipal Advisor with the U.S. Securities and Exchange Commission (“SEC”) and the Municipal Securities Rulemaking Board (“MSRB”).

Within the Municipal Securities Rulemaking Board (“MSRB”) website at [www.msrb.org](http://www.msrb.org), the Issuer may obtain the Municipal Advisory client brochure that is posted on the MSRB website. The brochure describes the protections that may be provided by the MSRB Rules along with how to file a complaint with financial regulatory authorities.

Issuer further acknowledges receipt of MFSOK’s Form ADV Part 2A Brochure and 2B Brochure Supplements as required by the SEC and Oklahoma Department of Securities prior to entering into this Agreement.

#### **V. Conflict of Interest Statement**

As of the date of this agreement, MFSOK has performed a reasonable diligence to determine if there are any conflicts of interest that should be brought to the attention of the Issuer. During the diligence process, MFSOK has determined that no material conflict of interest has been identified.

Since the compensation arrangement included in Section II includes a component that is based on the completion of a transaction, this may be viewed as a conflict of interest regarding our ability to provide unbiased advice to enter into such transaction. This viewed conflict of interest will not impair MFSOK’s ability to render unbiased and competent advice to the Issuer. The fee paid to MFSOK increases the cost of borrowing to the Issuer. The increased cost occurs from compensating MFSOK for municipal advisory services provided.

If MFSOK becomes aware of any actual or potential conflict of interest not mentioned above during this agreement, MFSOK will promptly provide the Issuer a supplement written disclosure with sufficient details of the change, if any, which will allow the Issuer to evaluate the situation.

#### **VI. Legal Events and Disciplinary History**

A regulatory disclosure action has been made on MFSOK's Form MA and on Form MA-I for two of MFSOK's municipal advisory personnel relating to a 2017 U.S. Securities and Exchange Commission ("SEC") order. The details of which are available in Item 9; C (2), C (4), C (5) and the corresponding regulatory action DRP section on Form MA and Item 6: C (2), C (4), C (5), C (6) and the corresponding regulatory action DRP section on Form MA-I for both Rick A. Smith and Jon Wolff. In addition, the Oklahoma Department of Securities adopted the above proceedings which are identified in Item 9; D (2), D (4) and the corresponding regulatory action DRP section on Form MA.

The Issuer may electronically access MFSOK's most recent Form MA and each most recent Form MA-I filed with the Commission at the following website:

[www.sec.gov/edgar/searchedgar/companysearch.html](http://www.sec.gov/edgar/searchedgar/companysearch.html).

There has been no change to any legal or disciplinary event that has been disclosed on MFSOK's SEC registration for MA filings since December 18, 2017.

#### **VII. Fiduciary Duty**

MFSOK is registered as a Municipal Advisor with the SEC and Municipal Securities Rulemaking Board ("MSRB"). As such, MFSOK has a Fiduciary duty to the Issuer and must provide both a Duty of Care and a Duty of Loyalty that entails the following.

Duty of Care:

- A. exercise due care in performing its municipal advisory activities;
- B. possess the degree of knowledge and expertise needed to provide the Issuer with informed advice;
- C. make a reasonable inquiry as to the facts that are relevant to the Issuer's determination as to whether to proceed with a course of action or that form the basis for any advice provided to the Issuer; and
- D. undertake a reasonable investigation to determine that MFSOK is not forming any recommendation on materially inaccurate or incomplete information; MFSOK must have a reasonable basis for:
  - a. any advice provided to or on behalf of the Issuer;
  - b. any representations made in a certificate that it signs that will be reasonably foreseeably relied upon by the Issuer, any other party involved in the municipal

securities transaction or municipal financial product, or investors in the Issuer securities; and

- c. any information provided to the Issuer or other parties involved in the municipal securities transaction in connection with the preparation of an official statement.

Duty of Loyalty:

MFSOK must deal honestly and with the utmost good faith with the Issuer and act in the Issuer's best interests without regard to the financial or other interests of MFSOK. MFSOK will eliminate or provide full and fair disclosure (included herein) to Issuer about each material conflict of interest (as applicable). MFSOK will not engage in municipal advisory activities with the Issuer as a municipal entity, if it cannot manage or mitigate its conflicts in a manner that will permit it to act in the Issuer's best interests. As of the date of this agreement, MFSOK has performed a reasonable diligence to determine if there are any conflicts of interest that should be brought to the attention of the Issuer.

***VIII.      Recommendations***

If MFSOK makes a recommendation of a municipal securities transaction or municipal financial product or if the review of a recommendation of another party is requested in writing by the Issuer and is within the scope of the engagement, MFSOK will determine, based on the information obtained through reasonable diligence of MFSOK whether a municipal securities transaction or municipal financial product is suitable for the Issuer. In addition, MFSOK will inform the Issuer of:

- A. the evaluation of the material risks, potential benefits, structure, and other characteristics of the recommendation;
- B. the basis upon which MFSOK reasonably believes that the recommended municipal securities transaction or municipal financial product is, or is not, suitable for the Issuer; and
- C. whether MFSOK has investigated or considered other reasonably feasible alternatives to the recommendation that might also or alternatively serve the Issuer's objectives.

If the Issuer elects a course of action that is independent of or contrary to the advice provided by MFSOK, MFSOK is not required on that basis to disengage from the Issuer.

***IX.      Record Retention***

Pursuant to the Securities and Exchange Commission (SEC) record retention regulations, Municipal Finance Services, Inc. is required to maintain in writing, all communication and created documents between Municipal Finance Services, Inc. and the Issuer for five (5) years after the maturity of any obligation.

Notices

Any and all notices pertaining to this Agreement shall be sent by U.S. Postal Service, first class, postage prepaid to:

MFSOK:

Municipal Finance Services, Inc.  
Attn: Rick A. Smith  
P.O. Box 747  
Edmond, OK 73083-0747

ISSUER:

City of Bartlesville  
Attn: City Manager  
401 S. Johnstone Ave.  
Bartlesville, OK 74003

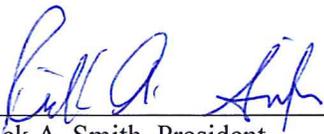
**Acceptance**

If there are any questions regarding the above, please do not hesitate to contact Municipal Finance Services, Inc. If the foregoing terms meet with your approval, please indicate your acceptance by executing all original copies of this letter and keeping one copy for your file.

The ISSUER and MFSOK have entered into this Agreement by the duly authorized representatives which was approved on the \_\_\_\_ day of \_\_\_\_\_, 2018.

MUNICIPAL FINANCE SERVICES, INC.

CITY OF BARTLESVILLE, OKLAHOMA

  
\_\_\_\_\_  
Rick A. Smith, President

\_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_



## ACCOUNTING AND FINANCE

### MEMORANDUM

**TO:** Mike Bailey, City Manager  
**FROM:** Jason Muninger, Finance Director/City Clerk  
**SUBJECT:** Award of proposal for Arbitrage Compliance Services.

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#### GENERAL INFORMATION:

Pursuant to the Arbitrage and Use of Proceeds Certificate agreed to at the time bonds are issued, any year in which \$5,000,000 in debt is issued, arbitrage compliance and rebate calculations must be performed. This engagement is to prepare arbitrage compliance reports pertaining to the required rebate and yield reduction payment to the United States Treasury, Internal Revenue Service (the "IRS") for specific bond issues listed below.

<u>Par Value</u> \$4,000,000	<u>Bond Name</u> Combined Purpose General Obligation Bonds, Series 2008	<u>Anticipated 5 Year Fee</u> \$1,400
<u>Par Value</u> \$2,000,000	<u>Bond Name</u> Combined Purpose General Obligation Bonds, Series 2008B	<u>Anticipated 5 Year Fee</u> \$1,400

City Staff recommends Arbitrage Compliance Specialist due to this being their sole expertise and their competitive price point in the market. The City has contracted with Arbitrage Compliance Specialist for past G.O. Bond arbitrage calculations.



September 25, 2018

Mr. Jason Muninger, Internal Services Supervisor  
City of Bartlesville, Oklahoma ("Issuer")  
401 South Johnstone Avenue  
Bartlesville, OK 74003

Arbitrage Compliance Specialists, Inc. ("ACS") is pleased to present our fees to provide arbitrage compliance services for the Issuer. Our firm has distinctive legal and accounting experience with arbitrage compliance services dating back to the inception of the arbitrage rebate regulations of 1986. ACS is one of the most prominent and well-respected providers of arbitrage compliance services in the nation. ACS' staff members are accounting professionals who have extensive knowledge of governmental accounting, accounting allocation methods and legal interpretation skills to compute the lowest permissible liability allowed. We pride ourselves on our unprecedented commitment to each and every client we represent.

ACS has provided a fee schedule to encompass the various elements that we may encounter during the calculations. ACS' fees are derived by the number of years included in the calculation. The fee schedule listed on page 2 provides fees for reports covering the applicable periods. Each calculation includes both a legal opinion and a CPA opinion to provide assurance that the calculations were completed according to Section 148(f) of the Internal Revenue Code of 1986 that governs the arbitrage rebate requirements (the "Tax Code").

We appreciate the opportunity to provide assistance to help the Issuer comply with the IRS arbitrage compliance requirements. As always, if we may be of further assistance or if there are any questions, please do not hesitate to call us at (800) 672-9993 ext.7538.

Sincerely,  
Arbitrage Compliance Specialists, Inc.

\_\_\_\_\_  
Matt Collins, Senior Manager

Please acknowledge acceptance of this engagement by signing and faxing this letter in its entirety to Arbitrage Compliance Specialists, Inc. at (800) 756-6505 or scanning and e-mailing to Matt@rebatebyacs.com.

\_\_\_\_\_  
Accepted by – Signature

\_\_\_\_\_  
Print Name, Title

\_\_\_\_\_  
Date



<b>Bond Compliance Program Services:</b>			<b>Fees</b>
2.00	\$2,000,000.00	General Obligation Bonds, Series 2008B	
Arbitrage Rebate Calculation Final: 09/03/2013 to 09/01/2018			\$1,400.00
1.00	\$4,000,000.00	Combined Purpose General Obligation Bonds, Series 2008	
Arbitrage Rebate Calculation Final: 06/03/2013 to 06/01/2018			\$1,400.00
			<b>Total</b>
			<b>\$2,800.00</b>
<b>Arbitrage Rebate Calculation Services</b>			
Yield Restriction Review			Included
Debt Service Reserve Fund Analysis			Included
Commingled Funds and / or Transferred Proceeds			Included
Preparation of IRS Form 8038-T and IRS Filing Instructions			Included
<b>Legal Services</b>			
IRS Audit Assistance (For Bond Issues Completed By ACS)			Included
<b>Post-Calculation Services</b>			
Debt Compliance Monitoring Service			Included
Record Retention Service			Included

### **Calculation Services**

1. Review the documents related to the debt issue to include the Official Statement, Tax Certificate, IRS Form 8038-G and CPA Verification Report.
2. Complete an in-depth analysis of the debt structure by our in-house tax attorney to determine if the debt issue is subject to rebate and/or yield restriction and identify applicable exceptions.
3. Monitor IRS filing deadlines, election requirements and restricted periods in our database tracking system to ensure timely reporting.
4. Perform the rebate, yield restriction/yield reduction or spending exception/penalty calculations in compliance with Internal Revenue Code of 1986.
5. Provide calculations with legal opinion and CPA certified professional opinion that can be relied upon by the Issuer regarding the liability. The report will provide supporting documentation to include the calculation method employed, assumptions and conclusions.
6. Prepare payment Form 8038-T with detailed filing instructions for accurate and timely filing to the IRS, if applicable.

### **Support Services**

7. Discuss the report and findings to ensure a complete understanding of the procedures and recommendations in such report.
8. Prepare a debt compliance monitoring schedule that identifies all-important relevant information by issue including prior calculations, liability amounts, future calculation due dates and important status notes.
9. Advise on how future changes in the Tax Code may affect the debt issue.
10. Provide technical assistance and consultation in matters related to the arbitrage compliance regulations.
11. Assist in the IRS record retention requirements, which include storage of records related to the debt issue.
12. Provide no cost audit support in the event of an IRS audit.