

**City Council Agenda Items  
and  
Contracts, Leases or Agreements**

4/16/2013

City Council Meeting Date  
Agenda Items Only

David Jurgens  
Submitted By

Parking  
Division

Utilities  
Department

**Action Required:**

Approve a contract with Baldwin & Shell Construction Company, for \$40,000, for construction management services for the Entertainment District parking facility, approving a \$10,000 contingency, and approving a contractor's fee of 5.5% for construction phased services. The actual dollar cost of this fee will be determined when the specific construction cost is determined.

\$ 50,000 ~~40,000~~  
Cost of this request  
  
4560.9560.5804.00  
2130.9132.5314.00  
Account Number  
  
11028.1201.1203  
Project Number

\$ 6,220,000  
Category / Project Budget  
  
\$ 675,000  
Funds Used to Date  
  
\$ 5,545,000  
Remaining Balance

Entertainment District Parking Deck  
Program Category / Project Name  
  
Entertainment District Parking Deck  
Program / Project Category Name  
  
Off-Street Parking  
Fund Name

Budgeted Item  XX

Budget Adjustment Attached

David Jurgens  
Department Director

29 Mar 13  
Date

Previous Ordinance or Resolution # 258-12  
42-12  
Original Contract Date: 12/4/2012  
2/21/2012  
Original Contract Number: 2230

David Kelly  
City Attorney

4-2-13  
Date

Paul A. Becher  
Finance and Internal Services Director

4-3-2013  
Date

Received in City Clerk's Office 03-29-13 P04:02 RCVD  
Kim G.

Don Manly  
Chief of Staff

4-3-13  
Date

Received in Mayor's Office  
ENTERED  
4/2/13  
[Signature]

Lionel Jordan  
Mayor

4/3/13  
Date

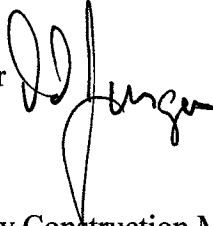
Comments:

www.accessfayetteville.org

To: Fayetteville City Council

Thru: Mayor Lioneld Jordan  
Don Marr, Chief of Staff

From: David Jurgens, Utilities Director



Date: March 29, 2013

Subject: Baldwin & Shell Parking Facility Construction Management Contract for \$40,000

## **RECOMMENDATION**

City Staff recommends approving a contract with Baldwin & Shell Construction Company, for \$40,000, for construction management services for the Entertainment District parking facility with liner buildings, approving a \$10,000 contingency, and approving a contractor's fee of 5.5% for construction phased services. The actual dollar cost of this fee will be determined when the specific construction cost is determined.

## **BACKGROUND**

The City of Fayetteville is constructing a parking deck in the entertainment district, specifically on the northwest corner of School Avenue and Spring Street, adjacent to and southeast of the Walton Arts Center (WAC) facility.

The objective is to relieve current parking shortfalls and allow for meeting increased parking demand in the area. The deck is expected to contain roughly 246 spaces. The Engineering and Architecture team led by Garver engineers is currently executing the parking deck design, in coordination with the City's team and collaboration with the Walton Arts Center and Boora Architects. The project includes removal and replacement of the existing WAC administration building.

## **DISCUSSION**

A request for qualifications for professional construction management services was published in February, 2013; ten statements of qualification (SOQ) were received. The selection committee, which included Alderman Gray and a representative from the Walton Arts Center, reviewed the SOQs and interviewed four firms, ultimately selecting Baldwin & Shell. Services under this selection will cover both preconstruction and construction phases of work for the Entertainment District parking deck

This specific contract is for preconstruction phase services, with the objective of providing the design team with detailed contractor perspective input, specifically relating to constructability and construction cost estimating. The Construction Manager's fee of 5.5% of the construction cost is set in this initial contract, although the actual dollar cost cannot be identified until bids are received. The \$40,000 counts towards and is part of the 5.5%. Upon completion of the design, the next phase of work – construction with a Guaranteed Maximum Price – will be determined based on the publicly opened bids received from subcontractors. An amendment to this contract is intended to be awarded to actually perform the construction.

## **BUDGET IMPACT**

Funding is available within the project 11028, sourced from a combination of revenue bonds and parking funds. It is possible there will be a cost share from the Walton Arts Center.



Kit Williams  
City Attorney

Jason B. Kelley  
Assistant City Attorney

MEMORANDUM

TO: MAYOR AND CITY COUNCIL

CC: KIT WILLIAMS, CITY ATTORNEY

FROM: JASON KELLEY, ASST. CITY ATTORNEY

A handwritten signature in black ink, appearing to read "J. B. Kelley".

DATE: APRIL 2, 2013

RE: BALDWIN & SHELL CONSTRUCTION CO. CONTRACT

I want to advise you that this contract is not our typically recommended form. This agreement requires the City to pay certain costs incurred by Baldwin & Shell as part of the City's obligation to pay. This agreement includes legal expenses and attorney's fees incurred by Baldwin & Shell in disputes related to the work of the contract as costs the City agrees to reimburse.

It should be clearly noted, however, that because this contract has a "cap," the City is not exposed to any large extent, nor are we obligated to pay any more than the "capped" amount, no matter how much Baldwin & Shell may incur in legal or attorney's fees in any third-party disputes.

**RESOLUTION NO. \_\_\_\_\_**

A RESOLUTION AUTHORIZING A CONTRACT WITH BALDWIN & SHELL CONSTRUCTION COMPANY IN THE AMOUNT OF \$40,000.00 FOR CONSTRUCTION MANAGEMENT SERVICES, APPROVING A \$10,000.00 CONTINGENCY, AND APPROVING A CONTRACTOR'S FEE OF FIVE AND ONE-HALF PERCENT (5.5%) FOR CONSTRUCTION PHASED SERVICES ALL RELATED TO CONSTRUCTION OF THE DICKSON STREET ENTERTAINMENT DISTRICT PARKING FACILITY

**BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF FAYETTEVILLE, ARKANSAS:**

Section 1. That the City Council of the City of Fayetteville, Arkansas hereby authorizes a contract with Baldwin & Shell Construction Company in the amount of \$40,000.00 for construction management services, approves a \$10,000.00 contingency, and approves a contractor's fee of five and one-half percent (5.5%) for construction phased services, all related to construction of the Dickson Street Entertainment District parking facility.

**PASSED and APPROVED** this 16<sup>th</sup> day of April, 2013.

APPROVED:

ATTEST:

By: \_\_\_\_\_  
**LIONELD JORDAN, Mayor**

By: \_\_\_\_\_  
**SONDRA E. SMITH, City Clerk/Treasurer**

# AIA<sup>®</sup> Document A133<sup>™</sup> – 2009

## **Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price**

**AGREEMENT** made as of the 16th day of April in the year 2013  
*(In words, indicate day, month and year.)*

**BETWEEN** the City of Fayetteville:  
*(Name, legal status and address)*

City of Fayetteville  
113 W. Mountain  
Fayetteville, Arkansas 72701  
113 W. Mountain  
Fayetteville, Arkansas 72701  
herein after referred to as the City of Fayetteville

and the Baldwin & Shell Construction Company:  
*(Name, legal status and address)*

Baldwin & Shell Construction Company  
593 Horsebarn Road, Ste 100  
Rogers, Arkansas 72758

for the following Project:  
*(Name and address or location)*

City of Fayetteville Entertainment District Parking Deck in the vicinity of South School Avenue & Spring Street, Fayetteville, Arkansas consisting of the Parking Deck, with Liner Buildings for the City of Fayetteville & Walton Arts Center

The Engineer:  
*(Name, legal status and address)*

Garver, LLC.  
2049 E. Joyce Blyd., Ste 400  
Fayetteville, AR 72703

The City of Fayetteville's Designated Representative:  
*(Name, address and other information)*

David Jurgens, P.E.  
Utilities Director  
113 W. Mountain  
Fayetteville, AR 72701  
479-575-8330  
479-575-8257 fx

### **ADDITIONS AND DELETIONS:**

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

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

AIA Document A201<sup>™</sup>-2007, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

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The Baldwin & Shell Construction Company's Designated Representative:  
(Name, address and other information)

Mike Castagna  
Project Manager  
593 Horsebarn Road, Ste. 100  
Rogers, AR 72758  
479-845-1111  
479-845-1115 fx  
479-644-9006 mob

The Engineer's Designated Representative:  
(Name, address and other information)

Ron Petrie, P.E.  
Senior Project Manager  
2049 E. Joyce Blvd., Ste 400  
Fayetteville, AR 72703  
479-287-4630  
479-527-9101 fx

The City of Fayetteville and Baldwin & Shell Construction Company agree as follows.

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- 4        **COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES**
- 5        **COMPENSATION FOR CONSTRUCTION PHASE SERVICES**
- 6        **COST OF THE WORK FOR CONSTRUCTION PHASE**
- 7        **PAYMENTS FOR CONSTRUCTION PHASE SERVICES**
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- 9        **DISPUTE RESOLUTION**
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**ARTICLE 1    GENERAL PROVISIONS**

**§ 1.1 The Contract Documents**

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to the execution of this Agreement, other documents listed in this Agreement, and Modifications issued after execution of this Agreement, all of which form the Contract and are as fully a part of the Contract as if attached to this Agreement or repeated herein. Upon the City of Fayetteville's acceptance of the Baldwin & Shell Construction Company's Guaranteed Maximum Price proposal, the Contract Documents will also include the documents described in Section 2.2.3 and identified in the Guaranteed Maximum Price Amendment and revisions prepared by the Engineer and furnished by the City of Fayetteville as described in Section 2.2.8. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. If anything in the other Contract Documents, other than a Modification, is inconsistent with this Agreement, this Agreement shall govern.

**§ 1.2 Relationship of the Parties**

The Baldwin & Shell Construction Company accepts the relationship of trust and confidence established by this Agreement and covenants with the City of Fayetteville to cooperate with the Engineer and exercise the Baldwin & Shell Construction Company's skill and judgment in furthering the interests of the City of Fayetteville; to furnish efficient construction administration, management services and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the City of Fayetteville's interests. The City of Fayetteville agrees to furnish or approve, in a timely manner, information required by the Baldwin & Shell Construction Company and to make payments to the Baldwin & Shell Construction Company in accordance with the requirements of the Contract Documents. Baldwin & Shell will exercise reasonable skill, care, and diligence in the performance of the Baldwin & Shell's services and will carry out its responsibilities in accordance with customarily accepted professional construction management practices. The City of Fayetteville will promptly report to Baldwin & Shell any defects or suspected defects in Baldwin & Shell's services of which the City of Fayetteville becomes aware, so that Baldwin & Shell can take measures to minimize the consequences of such a defect. The City of Fayetteville retains all remedies to recover for its damages caused by any negligence of Baldwin & Shell.

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### § 1.3 General Conditions

For the Preconstruction Phase, AIA Document A201™-2007, General Conditions of the Contract for Construction, shall apply only as specifically provided in this Agreement. For the Construction Phase, the general conditions of the contract shall be as set forth in A201-2007, which document is incorporated herein by reference. The term "Owner" as used in the A201-2007 shall mean The City of Fayetteville. The terms "Construction Manager" or "Contractor" as used in the A201-2007 shall mean Baldwin & Shell Construction Company. The term "Architect" as used in A201-2007 shall mean the Engineer.

*(Paragraphs deleted)*

### ARTICLE 2 BALDWIN & SHELL CONSTRUCTION COMPANY'S RESPONSIBILITIES

The Baldwin & Shell Construction Company's Preconstruction Phase responsibilities are set forth in Sections 2.1 and 2.2. The Baldwin & Shell Construction Company's Construction Phase responsibilities are set forth in Section 2.3. The City of Fayetteville and Baldwin & Shell Construction Company may agree, in consultation with the Engineer for the Construction Phase to commence prior to completion of the Preconstruction Phase, in which case, both phases will proceed concurrently. The Baldwin & Shell Construction Company shall identify a representative authorized to act on behalf of the Baldwin & Shell Construction Company with respect to the Project.

### § 2.1 Preconstruction Phase

§ 2.1.1 The Baldwin & Shell Construction Company shall provide a preliminary evaluation of the City of Fayetteville's project, schedule and construction budget requirements, each in terms of the other.

### § 2.1.2 Consultation

The Baldwin & Shell Construction Company shall schedule and conduct meetings with the Engineer and City of Fayetteville to discuss such matters as procedures, progress, coordination, and scheduling of the Work. The Baldwin & Shell Construction Company shall advise the City of Fayetteville and the Engineer on proposed site use and improvements, selection of materials, and building systems and equipment. The Baldwin & Shell Construction Company shall also provide recommendations consistent with the Project requirements to the City of Fayetteville and Engineer on constructability; availability of materials and labor; time requirements for procurement, installation and construction; and factors related to construction cost including, but not limited to, costs of alternative designs or materials, preliminary budgets, life-cycle data, and possible cost reductions.

§ 2.1.3 When Project requirements in Section 3.1.1 have been sufficiently identified, the Baldwin & Shell Construction Company shall prepare and periodically update a Project schedule for the Engineer's review and the City of Fayetteville's acceptance. The Baldwin & Shell Construction Company shall obtain the Engineer's approval for the portion of the Project schedule relating to the performance of the Engineer's services. The Project schedule shall coordinate and integrate the Baldwin & Shell Construction Company's services, the Engineer's services, other City of Fayetteville consultants' services, and the City of Fayetteville's responsibilities and identify items that could affect the Project's timely completion. The updated Project schedule shall include the following: submission of the Guaranteed Maximum Price proposal; components of the Work; times of commencement and completion required of each Subcontractor; ordering and delivery of products, including those that must be ordered well in advance of construction; and the occupancy requirements of the City of Fayetteville.

### § 2.1.4 Phased Construction

The Baldwin & Shell Construction Company shall provide recommendations with regard to accelerated or fast-track scheduling, procurement, or phased construction. The Baldwin & Shell Construction Company shall take into consideration cost reductions, cost information, constructability, provisions for temporary facilities and procurement and construction scheduling issues.

### § 2.1.5 Preliminary Cost Estimates

§ 2.1.5.1 Based on the preliminary design and other design criteria prepared by the Engineer the Baldwin & Shell Construction Company shall prepare preliminary estimates of the Cost of the Work or the cost of program requirements using area, volume or similar conceptual estimating techniques for the Engineer's review and City of Fayetteville's approval. If the Engineer or Baldwin & Shell Construction Company suggests alternative materials and systems, the Baldwin & Shell Construction Company shall provide cost evaluations of those alternative materials and systems.

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§ 2.1.5.2 As the Engineer progresses with the preparation of the Schematic Design, Design Development and Construction Documents, the Baldwin & Shell Construction Company shall prepare and update, at appropriate intervals agreed to by the City of Fayetteville, Baldwin & Shell Construction Company and Engineer estimates of the Cost of the Work of increasing detail and refinement and allowing for the further development of the design until such time as the City of Fayetteville and Baldwin & Shell Construction Company agree on a Guaranteed Maximum Price for the Work. Such estimates shall be provided for the Engineer's review and the City of Fayetteville's approval. The Baldwin & Shell Construction Company shall inform the City of Fayetteville and Engineer when estimates of the Cost of the Work exceed the latest approved Project budget and make recommendations for corrective action.

§ 2.1.6 **Baldwin & Shell Construction Company and Suppliers**

The Baldwin & Shell Construction Company shall develop bidders' interest in the Project.

§ 2.1.7 The Baldwin & Shell Construction Company shall prepare, for the Engineer's review and the City of Fayetteville's acceptance, a procurement schedule for items that must be ordered well in advance of construction. The Baldwin & Shell Construction Company shall expedite and coordinate the ordering and delivery of materials that must be ordered well in advance of construction. If the City of Fayetteville agrees to procure any items prior to the establishment of the Guaranteed Maximum Price, the City of Fayetteville shall procure the items on terms and conditions acceptable to the Baldwin & Shell Construction Company. Upon the establishment of the Guaranteed Maximum Price, the City of Fayetteville shall assign all contracts for these items to the Baldwin & Shell Construction Company and the Baldwin & Shell Construction Company shall thereafter accept responsibility for them.

§ 2.1.8 **Extent of Responsibility**

The Baldwin & Shell Construction Company shall exercise reasonable care in preparing schedules and estimates. The Baldwin & Shell Construction Company, however, does not warrant or guarantee estimates and schedules except as may be included as part of the Guaranteed Maximum Price. The Baldwin & Shell Construction Company is not required to ascertain that the Drawings and Specifications are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Baldwin & Shell Construction Company shall promptly report to the Engineer and City of Fayetteville any nonconformity discovered by or made known to the Baldwin & Shell Construction Company as a request for information in such form as the Engineer may require.

§ 2.1.9 **Notices and Compliance with Laws**

The Baldwin & Shell Construction Company shall comply with applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to its performance under this Contract, and with equal employment opportunity programs, and other programs as may be required by governmental and quasi governmental authorities for inclusion in the Contract Documents.

§ 2.2 **Guaranteed Maximum Price Proposal and Contract Time**

§ 2.2.1 At a time to be mutually agreed upon by the City of Fayetteville and the Baldwin & Shell Construction Company and in consultation with the Engineer, the Baldwin & Shell Construction Company shall prepare a Guaranteed Maximum Price proposal for the City of Fayetteville's review and acceptance. The Guaranteed Maximum Price in the proposal shall be the sum of the Baldwin & Shell Construction Company's estimate of the Cost of the Work, including contingencies described in Section 2.2.4, and the Baldwin & Shell Construction Company's Fee.

§ 2.2.2 To the extent that the Drawings and Specifications are anticipated to require further development by the Engineer, the Baldwin & Shell Construction Company shall provide in the Guaranteed Maximum Price for such further development consistent with the Contract Documents and reasonably inferable therefrom. Such further development does not include such things as changes in scope, systems, kinds and quality of materials, finishes or equipment, all of which, if required, shall be incorporated by Change Order.

§ 2.2.3 The Baldwin & Shell Construction Company shall include with the Guaranteed Maximum Price proposal a written statement of its basis, which shall include the following:

- .1 A list of the Drawings and Specifications, including all Addenda thereto, and the Conditions of the Contract;
- .2 A list of the clarifications and assumptions made by the Baldwin & Shell Construction Company in the preparation of the Guaranteed Maximum Price proposal, including assumptions under Section 2.2.2, to supplement the information provided by the City of Fayetteville and contained in the Drawings and Specifications;

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- .3 A statement of the proposed Guaranteed Maximum Price, including a statement of the estimated Cost of the Work organized by trade categories or systems, allowances, contingency, and the Baldwin & Shell Construction Company's Fee;
- .4 The anticipated date of Substantial Completion upon which the proposed Guaranteed Maximum Price is based; and
- .5 A date by which the City of Fayetteville must accept the Guaranteed Maximum Price.

§ 2.2.4 In preparing the Baldwin & Shell Construction Company's Guaranteed Maximum Price proposal, the Baldwin & Shell Construction Company shall include its contingency for the Baldwin & Shell Construction Company's exclusive use to cover those costs considered reimbursable as the Cost of the Work but not included in a Change Order.

§ 2.2.5 The Baldwin & Shell Construction Company shall meet with the City of Fayetteville and Engineer to review the Guaranteed Maximum Price proposal. In the event that the City of Fayetteville and Engineer discover any inconsistencies or inaccuracies in the information presented, they shall promptly notify the Baldwin & Shell Construction Company, who shall make appropriate adjustments to the Guaranteed Maximum Price proposal, its basis, or both.

§ 2.2.6 If the City of Fayetteville notifies the Baldwin & Shell Construction Company that the City of Fayetteville has accepted the Guaranteed Maximum Price proposal in writing before the date specified in the Guaranteed Maximum Price proposal, the Guaranteed Maximum Price proposal shall be deemed effective without further acceptance from the Baldwin & Shell Construction Company. Following acceptance of a Guaranteed Maximum Price, the City of Fayetteville and Baldwin & Shell Construction Company shall execute the Guaranteed Maximum Price Amendment amending this Agreement, a copy of which the City of Fayetteville shall provide to the Engineer. The Guaranteed Maximum Price Amendment shall set forth the agreed upon Guaranteed Maximum Price with the information and assumptions upon which it is based.

§ 2.2.7 The Baldwin & Shell Construction Company shall not incur any cost to be reimbursed as part of the Cost of the Work prior to the commencement of the Construction Phase, unless the City of Fayetteville provides prior written authorization for such costs.

§ 2.2.8 The City of Fayetteville shall authorize the Engineer to provide the revisions to the Drawings and Specifications to incorporate the agreed-upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment. The City of Fayetteville shall promptly furnish those revised Drawings and Specifications to the Baldwin & Shell Construction Company as they are revised. The Baldwin & Shell Construction Company shall notify the City of Fayetteville and Engineer of any inconsistencies between the Guaranteed Maximum Price Amendment and the revised Drawings and Specifications.

§ 2.2.9 The Baldwin & Shell Construction Company shall include in the Guaranteed Maximum Price all sales, consumer, use and similar taxes for the Work provided by the Baldwin & Shell Construction Company that are legally enacted, whether or not yet effective, at the time the Guaranteed Maximum Price Amendment is executed.

### § 2.3 Construction Phase

#### § 2.3.1 General

§ 2.3.1.1 For purposes of Section 8.1.2 of A201-2007, the date of commencement of the Work shall mean the date of commencement of the Construction Phase.

§ 2.3.1.2 The Construction Phase shall commence upon the City of Fayetteville's acceptance of the Baldwin & Shell Construction Company's Guaranteed Maximum Price proposal or the City of Fayetteville's issuance of a Notice to Proceed, whichever occurs earlier.

#### § 2.3.2 Administration

§ 2.3.2.1 Those portions of the Work that the Baldwin & Shell Construction Company does not customarily perform with the Baldwin & Shell Construction Company's own personnel shall be performed under subcontracts or by other appropriate agreements with the Baldwin & Shell Construction Company. The City of Fayetteville may designate specific persons from whom, or entities from which, the Baldwin & Shell Construction Company shall obtain bids. The Baldwin & Shell Construction Company shall obtain bids from Subcontractors and from suppliers of materials or

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equipment fabricated especially for the Work and shall deliver such bids to the Engineer. The City of Fayetteville shall then determine, with the advice of the Baldwin & Shell Construction Company and the Engineer, which bids will be accepted. The Baldwin & Shell Construction Company shall not be required to contract with anyone to whom the Baldwin & Shell Construction Company has reasonable objection.

§ 2.3.2.2 If the Guaranteed Maximum Price has been established and when a specific bidder (1) is recommended to the City of Fayetteville by the Baldwin & Shell Construction Company, (2) is qualified to perform that portion of the Work, and (3) has submitted a bid that conforms to the requirements of the Contract Documents without reservations or exceptions, but the City of Fayetteville requires that another bid be accepted, then the Baldwin & Shell Construction Company may require that a Change Order be issued to adjust the Contract Time and the Guaranteed Maximum Price by the difference between the bid of the person or entity recommended to the City of Fayetteville by the Baldwin & Shell Construction Company and the amount and time requirement of the subcontract or other agreement actually signed with the person or entity designated by the City of Fayetteville.

§ 2.3.2.3 Subcontracts or other agreements shall conform to the applicable payment provisions of this Agreement, and shall not be awarded on the basis of cost plus a fee without the prior consent of the City of Fayetteville. If the Subcontract is awarded on a cost-plus a fee basis, the Baldwin & Shell Construction Company shall provide in the Subcontract for the City of Fayetteville to receive the same audit rights with regard to the Subcontractor as the City of Fayetteville receives with regard to the Baldwin & Shell Construction Company in Section 6.11 below.

§ 2.3.2.4 If the Baldwin & Shell Construction Company recommends a specific bidder that may be considered a "related party" according to Section 6.10, then the Baldwin & Shell Construction Company shall promptly notify the City of Fayetteville in writing of such relationship and notify the City of Fayetteville of the specific nature of the contemplated transaction, according to Section 6.10.2.

§ 2.3.2.5 The Baldwin & Shell Construction Company shall schedule and conduct meetings to discuss such matters as procedures, progress, coordination, scheduling, and status of the Work. The Baldwin & Shell Construction Company shall prepare and promptly distribute minutes to the City of Fayetteville and Engineer.

§ 2.3.2.6 Upon the execution of the Guaranteed Maximum Price Amendment, the Baldwin & Shell Construction Company shall prepare and submit to the City of Fayetteville and Engineer a construction schedule for the Work and submittal schedule in accordance with Section 3.10 of A201-2007.

§ 2.3.2.7 The Baldwin & Shell Construction Company shall record the progress of the Project. On a monthly basis, or otherwise as agreed to by the City of Fayetteville, the Baldwin & Shell Construction Company shall submit written progress reports to the City of Fayetteville and Engineer, showing percentages of completion and other information required by the City of Fayetteville. The Baldwin & Shell Construction Company shall also keep, and make available to the City of Fayetteville and Engineer, a daily log containing a record for each day of weather, portions of the Work in progress, number of workers on site, identification of equipment on site, problems that might affect progress of the work, accidents, injuries, and other information required by the City of Fayetteville.

§ 2.3.2.8 The Baldwin & Shell Construction Company shall develop a system of cost control for the Work, including regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes. The Baldwin & Shell Construction Company shall identify variances between actual and estimated costs and report the variances to the City of Fayetteville and Engineer, and shall provide this information in its monthly reports to the City of Fayetteville and Engineer, in accordance with Section 2.3.2.7 above.

#### § 2.4 Professional Services

Section 3.12.10 of A201-2007 shall apply to both the Preconstruction and Construction Phases.

#### § 2.5 Hazardous Materials

Section 10.3 of A201-2007 shall apply to both the Preconstruction and Construction Phases.

### ARTICLE 3 CITY OF FAYETTEVILLE'S RESPONSIBILITIES

#### § 3.1 Information and Services Required of the City of Fayetteville

§ 3.1.1 The City of Fayetteville shall provide information with reasonable promptness, regarding requirements for and limitations on the Project, including a written program which shall set forth the City of Fayetteville's objectives,

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constraints, and criteria, including schedule, space requirements and relationships, flexibility and expandability, special equipment, systems sustainability and site requirements.

§ 3.1.2 Prior to the execution of the Guaranteed Maximum Price Amendment, the Baldwin & Shell Construction Company may request in writing that the City of Fayetteville provide reasonable evidence that the City of Fayetteville has made financial arrangements to fulfill the City of Fayetteville's obligations under the Contract. Thereafter, the Baldwin & Shell Construction Company may only request such evidence if (1) the City of Fayetteville fails to make payments to the Baldwin & Shell Construction Company as the Contract Documents require, (2) a change in the Work materially changes the Contract Sum, or (3) the Baldwin & Shell Construction Company identifies in writing a reasonable concern regarding the City of Fayetteville's ability to make payment when due. The City of Fayetteville shall furnish such evidence as a condition precedent to commencement or continuation of the Work or the portion of the Work affected by a material change. After the City of Fayetteville furnishes the evidence, the City of Fayetteville shall not materially vary such financial arrangements without prior notice to the Baldwin & Shell Construction Company and Engineer.

§ 3.1.3 The City of Fayetteville shall establish and periodically update the City of Fayetteville's budget for the Project, including (1) the budget for the Cost of the Work as defined in Section 6.1.1, (2) the City of Fayetteville's other costs, and (3) reasonable contingencies related to all of these costs. If the City of Fayetteville significantly increases or decreases the City of Fayetteville's budget for the Cost of the Work, the City of Fayetteville shall notify the Baldwin & Shell Construction Company and Engineer. The City of Fayetteville and the Engineer in consultation with the Baldwin & Shell Construction Company, shall thereafter agree to a corresponding change in the Project's scope and quality.

§ 3.1.4 **Structural and Environmental Tests, Surveys and Reports.** During the Preconstruction Phase, the City of Fayetteville shall furnish the following information or services with reasonable promptness. The City of Fayetteville shall also furnish any other information or services under the City of Fayetteville's control and relevant to the Baldwin & Shell Construction Company's performance of the Work with reasonable promptness after receiving the Baldwin & Shell Construction Company's written request for such information or services. The Baldwin & Shell Construction Company shall be entitled to rely on the accuracy of information and services furnished by the City of Fayetteville but shall exercise proper precautions relating to the safe performance of the Work.

§ 3.1.4.1 The City of Fayetteville shall furnish tests, inspections and reports required by law and as otherwise agreed to by the parties, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

§ 3.1.4.2 The City of Fayetteville shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The 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 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.

§ 3.1.4.3 The City of Fayetteville, when such services are requested, shall furnish services of geotechnical engineers, which may include but are not limited to 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.

§ 3.1.4.4 During the Construction Phase, the City of Fayetteville shall furnish information or services required of the City of Fayetteville by the Contract Documents with reasonable promptness. The City of Fayetteville shall also furnish any other information or services under the City of Fayetteville's control and relevant to the Baldwin & Shell Construction Company's performance of the Work with reasonable promptness after receiving the Baldwin & Shell Construction Company's written request for such information or services.

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**§ 3.2 City of Fayetteville's Designated Representative**

The City of Fayetteville shall identify a representative authorized to act on behalf of the City of Fayetteville with respect to the Project. The City of Fayetteville's representative shall render decisions promptly and furnish information expeditiously, so as to avoid unreasonable delay in the services or Work of the Baldwin & Shell Construction Company. Except as otherwise provided in Section 4.2.1 of A201-2007, the Engineer does not have such authority. The term "Owner" as used in the A201-2007 means the City of Fayetteville or the City of Fayetteville's authorized representative.

**§ 3.2.1 Legal Requirements.** The City of Fayetteville 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 City of Fayetteville's needs and interests.

**§ 3.3 Engineer**

The City of Fayetteville shall retain an Engineer to provide services, duties and responsibilities as described in AIA Document B103™-2007, Standard Form of Agreement Between City of Fayetteville and Engineer including any additional services requested by the Baldwin & Shell Construction Company that are necessary for the Preconstruction and Construction Phase services under this Agreement. The City of Fayetteville shall provide the Baldwin & Shell Construction Company a copy of the executed agreement between the City of Fayetteville and the Engineer and any further modifications to the agreement.

**ARTICLE 4 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES**

**§ 4.1 Compensation**

**§ 4.1.1** For the Baldwin & Shell Construction Company's Preconstruction Phase services, the City of Fayetteville shall compensate the Baldwin & Shell Construction Company as follows:

**§ 4.1.2** For the Baldwin & Shell Construction Company's Preconstruction Phase services described in Sections 2.1 and 2.2:

*(Insert amount of, or basis for, compensation and include a list of reimbursable cost items, as applicable.)*

A lump sum amount of \$40,000

**§ 4.1.3** If the Preconstruction Phase services covered by this Agreement have not been completed within six ( 6 ) months of the date of this Agreement, through no fault of the Baldwin & Shell Construction Company, the Baldwin & Shell Construction Company's compensation for Preconstruction Phase services shall be equitably adjusted.

**§ 4.1.4** Compensation based on Direct Personnel Expense includes the direct salaries of the Baldwin & Shell Construction Company's personnel providing Preconstruction Phase services on the Project and the Baldwin & Shell Construction Company's costs for the mandatory and customary contributions and benefits related thereto, such as employment taxes and other statutory employee benefits, insurance, sick leave, holidays, vacations, employee retirement plans and similar contributions.

**§ 4.2 Payments**

**§ 4.2.1** Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed.

**§ 4.2.2** Payments are due and payable upon presentation of the Baldwin & Shell Construction Company's invoice. Amounts unpaid twenty-five ( 25 ) 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 Baldwin & Shell Construction Company.

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

**ARTICLE 5 COMPENSATION FOR CONSTRUCTION PHASE SERVICES**

**§ 5.1** For the Baldwin & Shell Construction Company's performance of the Work as described in Section 2.3, the City of Fayetteville shall pay the Baldwin & Shell Construction Company the Contract Sum in current funds. The Contract Sum is the Cost of the Work as defined in Section 6.1.1 plus the Baldwin & Shell Construction Company's Fee.

**§ 5.1.1** The Baldwin & Shell Construction Company's Fee:

*(State a lump sum, percentage of Cost of the Work or other provision for determining the Baldwin & Shell Construction Company's Fee.)*

The Construction Phase Services fee shall be calculated at the time the Guarantee Maximum Price is established by taking the total estimated cost of the work for the entire project, including costs incurred during the pre-construction phase of the project as defined in Sections 2.1.1 through 2.1.9 and further defined in Sections 6.1.1 through 6.7.4 and then applying a five and one half percent (5 ½) to the total estimated cost. The fee will then be converted to a lump sum amount less the Preconstruction Phase fee of \$40,000 defined in 4.1.2. The lump sum fee will not be reduced based on savings in cost or reduction of scope by change order.

§ 5.1.2 The method of adjustment of the Baldwin & Shell Construction Company's Fee for changes in the Work:

All additive change order work shall carry a five and one half percent (5-1/2%) fee

§ 5.1.3 Limitations, if any, on a Subcontractor's overhead and profit for increases in the cost of its portion of the Work:

As defined the the Project Manual Supplementary Conditions

§ 5.1.4 Rental rates for Baldwin & Shell Construction Company-owned equipment shall not exceed eight-five percent ( 85 %) of the standard rate paid at the place of the Project.

§ 5.1.5 Unit prices, if any:

*(Identify and state the unit price; state the quantity limitations, if any, to which the unit price will be applicable.)*

Item	Units and Limitations	Price per Unit (\$0.00)
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## § 5.2 Guaranteed Maximum Price

§ 5.2.1 The Baldwin & Shell Construction Company guarantees that the Contract Sum shall not exceed the Guaranteed Maximum Price set forth in the Guaranteed Maximum Price Amendment, as it is amended from time to time. To the extent the Cost of the Work exceeds the Guaranteed Maximum Price, the Baldwin & Shell Construction Company shall bear such costs in excess of the Guaranteed Maximum Price without reimbursement or additional compensation from the City of Fayetteville.

*(Insert specific provisions if the Baldwin & Shell Construction Company is to participate in any savings.)*

All savings shall accrue one hundred percent (100%) to the City of Fayetteville

§ 5.2.2 The Guaranteed Maximum Price is subject to additions and deductions by Change Order as provided in the Contract Documents and the Date of Substantial Completion shall be subject to adjustment as provided in the Contract Documents.

## § 5.3 Changes in the Work

§ 5.3.1 The City of Fayetteville may, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions. The City of Fayetteville shall issue such changes in writing. The Engineer may make minor changes in the Work as provided in Section 7.4 of AIA Document A201-2007, General Conditions of the Contract for Construction. The Baldwin & Shell Construction Company shall be entitled to an equitable adjustment in the Contract Time as a result of changes in the Work.

§ 5.3.2 Adjustments to the Guaranteed Maximum Price on account of changes in the Work subsequent to the execution of the Guaranteed Maximum Price Amendment may be determined by any of the methods listed in Section 7.3.3 of AIA Document A201-2007, General Conditions of the Contract for Construction.

§ 5.3.3 In calculating adjustments to subcontracts (except those awarded with the City of Fayetteville's prior consent on the basis of cost plus a fee), the terms "cost" and "fee" as used in Section 7.3.3.3 of AIA Document A201-2007 and the term "costs" as used in Section 7.3.7 of AIA Document A201-2007 shall have the meanings assigned to them in

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AIA Document A201–2007 and shall not be modified by Sections 5.1 and 5.2, Sections 6.1 through 6.7, and Section 6.8 of this Agreement. Adjustments to subcontracts awarded with the City of Fayetteville's prior consent on the basis of cost plus a fee shall be calculated in accordance with the terms of those subcontracts.

§ 5.3.4 In calculating adjustments to the Guaranteed Maximum Price, the terms "cost" and "costs" as used in the above-referenced provisions of AIA Document A201–2007 shall mean the Cost of the Work as defined in Sections 6.1 to 6.7 of this Agreement and the term "fee" shall mean the Baldwin & Shell Construction Company's Fee as defined in Section 5.1 of this Agreement.

§ 5.3.5 If no specific provision is made in Section 5.1.2 for adjustment of the Baldwin & Shell Construction Company's Fee in the case of changes in the Work, or if the extent of such changes is such, in the aggregate, that application of the adjustment provisions of Section 5.1.2 will cause substantial inequity to the City of Fayetteville or Baldwin & Shell Construction Company, the Baldwin & Shell Construction Company's Fee shall be equitably adjusted on the same basis that was used to establish the Fee for the original Work, and the Guaranteed Maximum Price shall be adjusted accordingly.

## ARTICLE 6 COST OF THE WORK FOR CONSTRUCTION PHASE

### § 6.1 Costs to Be Reimbursed

§ 6.1.1 The term Cost of the Work shall mean costs necessarily incurred by the Baldwin & Shell Construction Company in the proper performance of the Work. Such costs shall be at rates not higher than the standard paid at the place of the Project except with prior consent of the City of Fayetteville. The Cost of the Work shall include only the items set forth in Sections 6.1 through 6.7.

§ 6.1.2 Where any cost is subject to the City of Fayetteville's prior approval, the Baldwin & Shell Construction Company shall obtain this approval prior to incurring the cost. The parties shall endeavor to identify any such costs prior to executing Guaranteed Maximum Price Amendment.

### § 6.2 Labor Costs

§ 6.2.1 Wages of construction workers directly employed by the Baldwin & Shell Construction Company to perform the construction of the Work at the site or, with the City of Fayetteville's prior approval, at off-site workshops.

§ 6.2.2 Wages or salaries of the Baldwin & Shell Construction Company's supervisory and administrative personnel when stationed at the site with the City of Fayetteville's prior approval.

*(If it is intended that the wages or salaries of certain personnel stationed at the Baldwin & Shell Construction Company's principal or other offices shall be included in the Cost of the Work, identify in Section 11.5, the personnel to be included, whether for all or only part of their time, and the rates at which their time will be charged to the Work.)*

§ 6.2.3 Wages and salaries of the Baldwin & Shell Construction Company's supervisory or administrative personnel engaged at factories, workshops, jobsite or on the road, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work.

§ 6.2.4 Costs paid or incurred by the Baldwin & Shell Construction Company for taxes, insurance, contributions, assessments and benefits required by law or collective bargaining agreements and, for personnel not covered by such agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries included in the Cost of the Work under Sections 6.2.1 through 6.2.3.

§ 6.2.5 Bonuses, profit sharing, incentive compensation and any other discretionary payments paid to anyone hired by the Baldwin & Shell Construction Company or paid to any Baldwin & Shell Construction Company or vendor, with the City of Fayetteville's prior approval.

### § 6.3 Subcontract Costs

Payments made by the Baldwin & Shell Construction Company to Subcontractors in accordance with the requirements of the subcontracts.

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**§ 6.4 Costs of Materials and Equipment Incorporated in the Completed Construction**

**§ 6.4.1** Costs, including transportation and storage, of materials and equipment incorporated or to be incorporated in the completed construction.

**§ 6.4.2** Costs of materials described in the preceding Section 6.4.1 in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, if any, shall become the City of Fayetteville's property at the completion of the Work or, at the City of Fayetteville's option, shall be sold by the Baldwin & Shell Construction Company. Any amounts realized from such sales shall be credited to the City of Fayetteville as a deduction from the Cost of the Work.

**§ 6.5 Costs of Other Materials and Equipment, Temporary Facilities and Related Items**

**§ 6.5.1** Costs of transportation, storage, installation, maintenance, dismantling and removal of materials, supplies, temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Baldwin & Shell Construction Company at the site and fully consumed in the performance of the Work. Costs of materials, supplies, temporary facilities, machinery, equipment and tools that are not fully consumed shall be based on the cost or value of the item at the time it is first used on the Project site less the value of the item when it is no longer used at the Project site. Costs for items not fully consumed by the Baldwin & Shell Construction Company shall mean fair market value.

**§ 6.5.2** Rental charges for temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Baldwin & Shell Construction Company at the site and costs of transportation, installation, minor repairs, dismantling and removal. The total rental cost of any Baldwin & Shell Construction Company-owned item may not exceed the purchase price of any comparable item. Rates of Baldwin & Shell Construction Company-owned equipment and quantities of equipment shall be subject to the City of Fayetteville's prior approval.

**§ 6.5.3** Costs of removal of debris from the site of the Work and its proper and legal disposal.

**§ 6.5.4** Costs of document reproductions, facsimile transmissions and long-distance telephone calls, postage and parcel delivery charges, telephone service at the site and reasonable petty cash expenses of the site office.

**§ 6.5.5** That portion of the reasonable expenses of the Baldwin & Shell Construction Company's supervisory or administrative personnel incurred while traveling in discharge of duties connected with the Work.

**§ 6.5.6** Costs of materials and equipment suitably stored off the site at a mutually acceptable location, subject to the City of Fayetteville's prior approval.

**§ 6.6 Miscellaneous Costs**

**§ 6.6.1** Premiums for that portion of insurance and bonds required by the Contract Documents that can be directly attributed to this Contract. Self-insurance for either full or partial amounts of the coverages required by the Contract Documents, with the City of Fayetteville's prior approval.

**§ 6.6.2** Sales, use or similar taxes imposed by a governmental authority that are related to the Work and for which the Baldwin & Shell Construction Company is liable.

**§ 6.6.3** Fees and assessments for the building permit and for other permits, licenses and inspections for which the Baldwin & Shell Construction Company is required by the Contract Documents to pay.

**§ 6.6.4** Fees of laboratories for tests required by the Contract Documents, except those related to defective or nonconforming Work for which reimbursement is excluded by Section 13.5.3 of AIA Document A201-2007 or by other provisions of the Contract Documents, and which do not fall within the scope of Section 6.7.3.

**§ 6.6.5** Royalties and license fees paid for the use of a particular design, process or product required by the Contract Documents; the cost of defending suits or claims for infringement of patent rights arising from such requirement of the Contract Documents; and payments made in accordance with legal judgments against the Baldwin & Shell Construction Company resulting from such suits or claims and payments of settlements made with the City of Fayetteville's consent. However, such costs of legal defenses, judgments and settlements shall not be included in the

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calculation of the Baldwin & Shell Construction Company's Fee or subject to the Guaranteed Maximum Price. If such royalties, fees and costs are excluded by the last sentence of Section 3.17 of AIA Document A201-2007 or other provisions of the Contract Documents, then they shall not be included in the Cost of the Work.

§ 6.6.6 Costs for electronic equipment and software, mobile phones, internet, electronic data transfer costs, office supplies, data processing, etc. directly related to the Work with the City of Fayetteville's prior approval.

§ 6.6.7 Deposits lost for causes other than the Baldwin & Shell Construction Company's negligence or failure to fulfill a specific responsibility in the Contract Documents.

§ 6.6.8 Legal, mediation and arbitration costs, including attorneys' fees, other than those arising from disputes between the City of Fayetteville and Baldwin & Shell Construction Company, reasonably incurred by the Baldwin & Shell Construction Company after the execution of this Agreement in the performance of the Work and with the City of Fayetteville's prior approval, which shall not be unreasonably withheld.

§ 6.6.9 Subject to the City of Fayetteville's prior approval, expenses incurred in accordance with the Baldwin & Shell Construction Company's standard written personnel policy for relocation and temporary living allowances of the Baldwin & Shell Construction Company's personnel required for the Work.

#### § 6.7 Other Costs and Emergencies

§ 6.7.1 Other costs incurred in the performance of the Work if, and to the extent, approved in advance in writing by the City of Fayetteville.

§ 6.7.2 Costs incurred in taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property, as provided in Section 10.4 of AIA Document A201-2007.

§ 6.7.3 Costs of repairing or correcting damaged or nonconforming Work executed by the Baldwin & Shell Construction Company, Subcontractors or suppliers, provided that such damaged or nonconforming Work was not caused by negligence or failure to fulfill a specific responsibility of the Baldwin & Shell Construction Company and only to the extent that the cost of repair or correction is not recovered by the Baldwin & Shell Construction Company from insurance, sureties, Subcontractors, suppliers, or others.

§ 6.7.4 The costs described in Sections 6.1 through 6.7 shall be included in the Cost of the Work, notwithstanding any provision of AIA Document A201-2007 or other Conditions of the Contract which may require the Baldwin & Shell Construction Company to pay such costs, unless such costs are excluded by the provisions of Section 6.8.

#### § 6.8 Costs Not To Be Reimbursed

§ 6.8.1 The Cost of the Work shall not include the items listed below:

- .1 Salaries and other compensation of the Baldwin & Shell Construction Company's personnel stationed at the Baldwin & Shell Construction Company's principal office or offices other than the site office, except as specifically provided in Section 6.2, or as may be provided in Article 11;
- .2 Expenses of the Baldwin & Shell Construction Company's principal office and offices other than the site office with the exception of costs provided by principal office to jobsite as defined in Section 6.6.6 above ;
- .3 Overhead and general expenses, except as may be expressly included in Sections 6.1 to 6.7;
- .4 The Baldwin & Shell Construction Company's capital expenses, including interest on the Baldwin & Shell Construction Company's capital employed for the Work;
- .5 Except as provided in Section 6.7.3 of this Agreement, costs due to the negligence or failure of the Baldwin & Shell Construction Company, Baldwin & Shell Construction Company and suppliers or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable to fulfill a specific responsibility of the Contract;
- .6 Any cost not specifically and expressly described in Sections 6.1 to 6.7;
- .7 Costs, other than costs included in Change Orders approved by the City of Fayetteville, that would cause the Guaranteed Maximum Price to be exceeded; and
- .8 Costs for services incurred during the Preconstruction Phase.

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**§ 6.9 Discounts, Rebates and Refunds**

**§ 6.9.1** Cash discounts obtained on payments made by the Baldwin & Shell Construction Company shall accrue to the City of Fayetteville if (1) before making the payment, the Baldwin & Shell Construction Company included them in an Application for Payment and received payment from the City of Fayetteville, or (2) the City of Fayetteville has deposited funds with the Baldwin & Shell Construction Company with which to make payments; otherwise, cash discounts shall accrue to the Baldwin & Shell Construction Company. Trade discounts, rebates, refunds and amounts received from sales of surplus materials and equipment shall accrue to the City of Fayetteville, and the Baldwin & Shell Construction Company shall make provisions so that they can be obtained.

**§ 6.9.2** Amounts that accrue to the City of Fayetteville in accordance with the provisions of Section 6.9.1 shall be credited to the City of Fayetteville as a deduction from the Cost of the Work.

**§ 6.10 Related Party Transactions**

**§ 6.10.1** For purposes of Section 6.10, the term "related party" shall mean a parent, subsidiary, affiliate or other entity having common ownership or management with the Baldwin & Shell Construction Company; any entity in which any stockholder in, or management employee of, the Baldwin & Shell Construction Company owns any interest in excess of ten percent in the aggregate; or any person or entity which has the right to control the business or affairs of the Baldwin & Shell Construction Company. The term "related party" includes any member of the immediate family of any person identified above.

**§ 6.10.2** If any of the costs to be reimbursed arise from a transaction between the Baldwin & Shell Construction Company and a related party, the Baldwin & Shell Construction Company shall notify the City of Fayetteville of the specific nature of the contemplated transaction, including the identity of the related party and the anticipated cost to be incurred, before any such transaction is consummated or cost incurred. If the City of Fayetteville, after such notification, authorizes the proposed transaction, then the cost incurred shall be included as a cost to be reimbursed, and the Baldwin & Shell Construction Company shall procure the Work, equipment, goods or service from the related party, as a Subcontractor, according to the terms of Sections 2.3.2.1, 2.3.2.2 and 2.3.2.3. If the City of Fayetteville fails to authorize the transaction, the Baldwin & Shell Construction Company shall procure the Work, equipment, goods or service from some person or entity other than a related party according to the terms of Sections 2.3.2.1, 2.3.2.2 and 2.3.2.3.

**§ 6.11 Accounting Records**

The Baldwin & Shell Construction Company shall keep full and detailed records and accounts related to the cost of the Work and exercise such controls as may be necessary for proper financial management under this Contract and to substantiate all costs incurred. The accounting and control systems shall be satisfactory to the City of Fayetteville. The City of Fayetteville and the City of Fayetteville's auditors shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to audit and copy, the Baldwin & Shell Construction Company's records and accounts, including complete documentation supporting accounting entries, books, correspondence, instructions, drawings, receipts, subcontracts, Subcontractor's proposals, purchase orders, vouchers, memoranda and other data relating to this Contract. The Baldwin & Shell Construction Company shall preserve these records for a period of three years after final payment, or for such longer period as may be required by law. Baldwin & Shell Construction Company shall track costs related to separate funding sources as directed by the City of Fayetteville in order to comply with requirements of state and local law and regulations, bond covenant requirement, and to track cost of components of cost shares as may occur.

**ARTICLE 7 PAYMENTS FOR CONSTRUCTION PHASE SERVICES**

**§ 7.1 Progress Payments**

**§ 7.1.1** Based upon Applications for Payment submitted to the Engineer by the Baldwin & Shell Construction Company and Certificates for Payment issued by the Engineer the City of Fayetteville shall make progress payments on account of the Contract Sum to the Baldwin & Shell Construction Company as provided below and elsewhere in the Contract Documents.

**§ 7.1.2** The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows:

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§ 7.1.3 Provided that an Application for Payment is received by the Engineer not later than the 25th day of a month, the City of Fayetteville shall make payment of the certified amount to the Baldwin & Shell Construction Company not later than the 15th day of the following month. If an Application for Payment is received by the Engineer after the application date fixed above, payment shall be made by the City of Fayetteville not later than twenty-one (21) days after the Engineer receives the Application for Payment.  
(Federal, state or local laws may require payment within a certain period of time.)

§ 7.1.4 With each Application for Payment, the Baldwin & Shell Construction Company shall, upon request by the City of Fayetteville or the Engineer, submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the City of Fayetteville or Engineer to demonstrate that cash disbursements already made by the Baldwin & Shell Construction Company on account of the Cost of the Work equal or exceed progress payments already received by the Baldwin & Shell Construction Company, less that portion of those payments attributable to the Baldwin & Shell Construction Company's Fee, plus payrolls for the period covered by the present Application for Payment.

§ 7.1.5 Each Application for Payment shall be based on the most recent schedule of values submitted by the Baldwin & Shell Construction Company in accordance with the Contract Documents. The schedule of values shall allocate the entire Guaranteed Maximum Price among the various portions of the Work, except that the Baldwin & Shell Construction Company's Fee shall be shown as a single separate item. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Engineer may require. This schedule, unless objected to by the Engineer, shall be used as a basis for reviewing the Baldwin & Shell Construction Company's Applications for Payment.

§ 7.1.6 Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage of completion shall be the lesser of (1) the percentage of that portion of the Work which has actually been completed, or (2) the percentage obtained by dividing (a) the expense that has actually been incurred by the Baldwin & Shell Construction Company on account of that portion of the Work for which the Baldwin & Shell Construction Company has made or intends to make actual payment prior to the next Application for Payment by (b) the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values.

§ 7.1.7 Subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

- .1 Take that portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values. Pending final determination of cost to the City of Fayetteville of changes in the Work, amounts not in dispute shall be included as provided in Section 7.3.9 of AIA Document A201-2007;
- .2 Add that portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work, or if approved in advance by the City of Fayetteville, suitably stored off the site at a location agreed upon in writing;
- .3 Add the Baldwin & Shell Construction Company's Fee, less retainage of five percent (5%). The Baldwin & Shell Construction Company's Fee shall be computed upon the Cost of the Work at the rate stated in Section 5.1 or, if the Baldwin & Shell Construction Company's Fee is stated as a fixed sum in that Section, shall be an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work bears to a reasonable estimate of the probable Cost of the Work upon its completion;
- .4 Subtract retainage of five percent (5%) from that portion of the Work that the Baldwin & Shell Construction Company self-performs;
- .5 Subtract the aggregate of previous payments made by the City of Fayetteville;
- .6 Subtract the shortfall, if any, indicated by the Baldwin & Shell Construction Company in the documentation required by Section 7.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the City of Fayetteville's auditors in such documentation; and
- .7 Subtract amounts, if any, for which the Engineer, has withheld or nullified a Certificate for Payment as provided in Section 9.5 of AIA Document A201-2007.

§ 7.1.8 The City of Fayetteville and Baldwin & Shell Construction Company shall agree upon (1) a mutually acceptable procedure for review and approval of payments to Baldwin & Shell Construction Company and (2) the

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percentage of retainage held on Subcontracts, and the Baldwin & Shell Construction Company shall execute subcontracts in accordance with those agreements.

**§ 7.1.9** Except with the City of Fayetteville's prior approval, the Baldwin & Shell Construction Company shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.

**§ 7.1.10** In taking action on the Baldwin & Shell Construction Company's Applications for Payment, the Engineer shall be entitled to rely on the accuracy and completeness of the information furnished by the Baldwin & Shell Construction Company and shall not be deemed to represent that the Engineer has made a detailed examination, audit or arithmetic verification of the documentation submitted in accordance with Section 7.1.4 or other supporting data; that the Engineer has made exhaustive or continuous on-site inspections; or that the Engineer has made examinations to ascertain how or for what purposes the Baldwin & Shell Construction Company has used amounts previously paid on account of the Contract. Such examinations, audits and verifications, if required by the City of Fayetteville, will be performed by the City of Fayetteville's auditors acting in the sole interest of the City of Fayetteville.

### **§ 7.2 Final Payment**

**§ 7.2.1** Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the City of Fayetteville to the Baldwin & Shell Construction Company when

- .1 the Baldwin & Shell Construction Company has fully performed the Contract except for the Baldwin & Shell Construction Company's responsibility to correct Work as provided in Section 12.2.2 of AIA Document A201-2007, and to satisfy other requirements, if any, which extend beyond final payment;
- .2 the Baldwin & Shell Construction Company has submitted a final accounting for the Cost of the Work and a final Application for Payment; and
- .3 a final Certificate for Payment has been issued by the Engineer.

The City of Fayetteville's final payment to the Baldwin & Shell Construction Company shall be made no later than 30 days after the issuance of the Engineer's final Certificate for Payment, or as follows:

**§ 7.2.2** The City of Fayetteville's auditors will review and report in writing on the Baldwin & Shell Construction Company's final accounting within 30 days after delivery of the final accounting to the Engineer by the Baldwin & Shell Construction Company. Based upon such Cost of the Work as the City of Fayetteville's auditors report to be substantiated by the Baldwin & Shell Construction Company's final accounting, and provided the other conditions of Section 7.2.1 have been met, the Engineer will, within seven days after receipt of the written report of the City of Fayetteville's auditors, either issue to the City of Fayetteville a final Certificate for Payment with a copy to the Baldwin & Shell Construction Company, or notify the Baldwin & Shell Construction Company and City of Fayetteville in writing of the Engineers reasons for withholding a certificate as provided in Section 9.5.1 of the AIA Document A201-2007. The time periods stated in this Section supersede those stated in Section 9.4.1 of the AIA Document A201-2007. The Engineer is not responsible for verifying the accuracy of the Baldwin & Shell Construction Company's final accounting.

**§ 7.2.3** If the City of Fayetteville's auditors report the Cost of the Work as substantiated by the Baldwin & Shell Construction Company's final accounting to be less than claimed by the Baldwin & Shell Construction Company, the Baldwin & Shell Construction Company shall be entitled to request mediation of the disputed amount without seeking an initial decision pursuant to Section 15.2 of A201-2007. A request for mediation shall be made by the Baldwin & Shell Construction Company within 30 days after the Baldwin & Shell Construction Company's receipt of a copy of the Engineer's final Certificate for Payment. Failure to request mediation within this 30-day period shall result in the substantiated amount reported by the City of Fayetteville's auditors becoming binding on the Baldwin & Shell Construction Company. Pending a final resolution of the disputed amount, the City of Fayetteville shall pay the Baldwin & Shell Construction Company the amount certified in the Engineer's final Certificate for Payment.

**§ 7.2.4** If, subsequent to final payment and at the City of Fayetteville's request, the Baldwin & Shell Construction Company incurs costs described in Section 6.1.1 and not excluded by Section 6.8 to correct defective or nonconforming Work, the City of Fayetteville shall reimburse the Baldwin & Shell Construction Company such costs and the Baldwin & Shell Construction Company's Fee applicable thereto on the same basis as if such costs had been incurred prior to final payment, but not in excess of the Guaranteed Maximum Price. If the Baldwin & Shell

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Construction Company has participated in savings as provided in Section 5.2.1, the amount of such savings shall be recalculated and appropriate credit given to the City of Fayetteville in determining the net amount to be paid by the City of Fayetteville to the Baldwin & Shell Construction Company.

#### ARTICLE 8 INSURANCE AND BONDS

For all phases of the Project, the Baldwin & Shell Construction Company and the City of Fayetteville shall purchase and maintain insurance, and the Baldwin & Shell Construction Company shall provide bonds as set forth in Article 11 of AIA Document A201-2007.

*(State bonding requirements, if any, and limits of liability for insurance required in Article 11 of AIA Document A201-2007.)*

Type of Insurance or Bond	Limit of Liability or Bond Amount (\$0.00)
Performance and Payment Bonds	One-hundred percent (100%) of the Guaranteed Maximum Price

#### ARTICLE 9 DISPUTE RESOLUTION

§ 9.1 Any Claim between the City of Fayetteville and Baldwin & Shell Construction Company shall be resolved in accordance with the provisions set forth in this Article 9 and Article 15 of A201-2007. However, for Claims arising from or relating to the Baldwin & Shell Construction Company's Preconstruction Phase services, no decision by the Initial Decision Maker shall be required as a condition precedent to mediation or binding dispute resolution, and Section 9.3 of this Agreement shall not apply.

§ 9.2 For any Claim subject to, but not resolved by mediation pursuant to Section 15.3 of AIA Document A201-2007, the method of binding dispute resolution shall be as follows:

*(Check the appropriate box. If the City of Fayetteville and Baldwin & Shell Construction Company do not select a method of binding dispute resolution below, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, Claims will be resolved by litigation in a court of competent jurisdiction.)*

- Arbitration pursuant to Section 15.4 of AIA Document A201-2007
- Litigation in a court of competent jurisdiction
- Other: *(Specify)*

#### § 9.3 Initial Decision Maker

The Engineer will serve as the Initial Decision Maker pursuant to Section 15.2 of AIA Document A201-2007 for Claims arising from or relating to the Baldwin & Shell Construction Company's Construction Phase services, unless the parties appoint below another individual, not a party to the Agreement, to serve as the Initial Decision Maker.

*(If the parties mutually agree, insert the name, address and other contact information of the Initial Decision Maker, if other than the Engineer.)*

#### ARTICLE 10 TERMINATION OR SUSPENSION

##### § 10.1 Termination Prior to Establishment of the Guaranteed Maximum Price

§ 10.1.1 Prior to the execution of the Guaranteed Maximum Price Amendment, the City of Fayetteville may terminate this Agreement upon not less than seven days' written notice to the Baldwin & Shell Construction Company for the City of Fayetteville's convenience and without cause, and the Baldwin & Shell Construction Company may terminate this Agreement, upon not less than seven days' written notice to the City of Fayetteville, for the reasons set forth in Section 14.1.1 of A201-2007.

Init.

§ 10.1.2 In the event of termination of this Agreement pursuant to Section 10.1.1, the Baldwin & Shell Construction Company shall be equitably compensated for Preconstruction Phase services performed prior to receipt of a notice of termination. In no event shall the Baldwin & Shell Construction Company's compensation under this Section exceed the compensation set forth in Section 4.1.

§ 10.1.3 If the City of Fayetteville terminates the Contract pursuant to Section 10.1.1 after the commencement of the Construction Phase but prior to the execution of the Guaranteed Maximum Price Amendment, the City of Fayetteville shall pay to the Baldwin & Shell Construction Company an amount calculated as follows, which amount shall be in addition to any compensation paid to the Baldwin & Shell Construction Company under Section 10.1.2:

- .1 Take the Cost of the Work incurred by the Baldwin & Shell Construction Company to the date of termination;
- .2 Add the Baldwin & Shell Construction Company's Fee computed upon the Cost of the Work to the date of termination at the rate stated in Section 5.1 or, if the Baldwin & Shell Construction Company's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion; and
- .3 Subtract the aggregate of previous payments made by the City of Fayetteville for Construction Phase services.

The City of Fayetteville shall also pay the Baldwin & Shell Construction Company fair compensation, either by purchase or rental at the election of the City of Fayetteville, for any equipment owned by the Baldwin & Shell Construction Company which the City of Fayetteville elects to retain and which is not otherwise included in the Cost of the Work under Section 10.1.3.1. To the extent that the City of Fayetteville elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Baldwin & Shell Construction Company shall, as a condition of receiving the payments referred to in this Article 10, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Baldwin & Shell Construction Company, as the City of Fayetteville may require for the purpose of fully vesting in the City of Fayetteville the rights and benefits of the Baldwin & Shell Construction Company under such subcontracts or purchase orders. All Subcontracts, purchase orders and rental agreements entered into by the Baldwin & Shell Construction Company will contain provisions allowing for assignment to the City of Fayetteville as described above.

If the City of Fayetteville accepts assignment of subcontracts, purchase orders or rental agreements as described above, the City of Fayetteville will reimburse or indemnify the Baldwin & Shell Construction Company for all costs arising under the subcontract, purchase order or rental agreement, if those costs would have been reimbursable as Cost of the Work if the contract had not been terminated. If the City of Fayetteville chooses not to accept assignment of any subcontract, purchase order or rental agreement that would have constituted a Cost of the Work had this agreement not been terminated, the Baldwin & Shell Construction Company will terminate the subcontract, purchase order or rental agreement and the City of Fayetteville will pay the Baldwin & Shell Construction Company the costs necessarily incurred by the Baldwin & Shell Construction Company because of such termination.

#### § 10.2 Termination Subsequent to Establishing Guaranteed Maximum Price

Following execution of the Guaranteed Maximum Price Amendment and subject to the provisions of Section 10.2.1 and 10.2.2 below, the Contract may be terminated as provided in Article 14 of AIA Document A201-2007.

§ 10.2.1 If the City of Fayetteville terminates the Contract after execution of the Guaranteed Maximum Price Amendment, the amount payable to the Baldwin & Shell Construction Company pursuant to Sections 14.2 and 14.4 of A201-2007 shall not exceed the amount the Baldwin & Shell Construction Company would otherwise have received pursuant to Sections 10.1.2 and 10.1.3 of this Agreement.

§ 10.2.2 If the Baldwin & Shell Construction Company terminates the Contract after execution of the Guaranteed Maximum Price Amendment, the amount payable to the Baldwin & Shell Construction Company under Section 14.1.3 of A201-2007 shall not exceed the amount the Baldwin & Shell Construction Company would otherwise have received under Sections 10.1.2 and 10.1.3 above, except that the Baldwin & Shell Construction Company's Fee shall be calculated as if the Work had been fully completed by the Baldwin & Shell Construction Company, utilizing as necessary a reasonable estimate of the Cost of the Work for Work not actually completed.

Init.

**§ 10.3 Suspension**

The Work may be suspended by the City of Fayetteville as provided in Article 14 of AIA Document A201–2007. In such case, the Guaranteed Maximum Price and Contract Time shall be increased as provided in Section 14.3.2 of AIA Document A201–2007, except that the term "profit" shall be understood to mean the Baldwin & Shell Construction Company's Fee as described in Sections 5.1 and 5.3.5 of this Agreement.

**ARTICLE 11 MISCELLANEOUS PROVISIONS**

**§ 11.1** Terms in this Agreement shall have the same meaning as those in A201–2007.

**§ 11.2 City of Fayetteville and Use of Documents**

Section 1.5 of A201–2007 shall apply to both the Preconstruction and Construction Phases.

**§ 11.3 Governing Law**

Section 13.1 of A201–2007 shall apply to both the Preconstruction and Construction Phases.

**§ 11.4 Assignment**

The City of Fayetteville and Baldwin & Shell Construction Company, respectively, bind themselves, their agents, successors, assigns and legal representatives to this Agreement. Neither the City of Fayetteville nor the Baldwin & Shell Construction Company shall assign this Agreement without the written consent of the other, except that the City of Fayetteville may assign this Agreement to a lender providing financing for the Project if the lender agrees to assume the City of Fayetteville's rights and obligations under this Agreement. Except as provided in Section 13.2.2 of A201–2007, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

**§ 11.5 Other provisions:**

**§ 11.5.1 Solid Waste Services.** Solid Waste Services shall be obtained from the City of Fayetteville Solid Waste Division, at Baldwin & Shell's expense, unless such services cannot be provided by the City of Fayetteville Solid Waste Division.

**§ 11.5.2 Computer Models.** Baldwin & Shell may use or modify Baldwin & Shell's proprietary computer models in service of City of Fayetteville under this agreement, or Baldwin & Shell may develop computer models during Baldwin & Shell's service to City of Fayetteville under this agreement. Such use, modification, or development by Baldwin & Shell does not constitute a license to City of Fayetteville to use or modify Baldwin & Shell's computer models. Said proprietary computer models shall remain the sole property of Baldwin & Shell. City of Fayetteville and Baldwin & Shell will enter into a separate license agreement if City of Fayetteville wishes to use Baldwin & Shell's computer models.

**§ 11.5.3** Baldwin & Shell. agrees that it will indemnify, defend, and hold harmless the City of Fayetteville and the Engineer from and against any and all loss where loss is caused or incurred or alleged to be caused or incurred in whole or in part as a result of the negligence or other actionable fault of Baldwin & Shell, its employees, agents, Subcontractors, and Suppliers

**§ 11.5.4 Arkansas Freedom of Information Act.** City contracts and documents, including internal documents and documents of subcontractors and sub-consultants, prepared while performing City contractual work are subject to the Arkansas Freedom of Information Act (FOIA). If a Freedom of Information Act request is presented to the City of Fayetteville, Baldwin & Shell will do everything possible to provide the documents in a prompt and timely manner as prescribed in the Arkansas Freedom of Information Act (A.C.A. §25-19-101 et seq.). Only legally authorized photocopying costs pursuant to the FOIA may be assessed for this compliance.

**§ 11.5.5 Changes, modifications or amendments.** Changes, modifications or amendments in scope, price or fees to this Contract shall **not** be allowed without formal contract amendment approved by the Mayor and the City Council in **advance** of the change in scope, cost, fees, or delivery schedule.

Init.

**ARTICLE 12 SCOPE OF THE AGREEMENT**

**§ 12.1** This Agreement represents the entire and integrated agreement between the City of Fayetteville and the Baldwin & Shell Construction Company and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both City of Fayetteville and Baldwin & Shell Construction Company.

**§ 12.2** The following documents comprise the Agreement:

- .1 AIA Document A133-2009, Standard Form of Agreement Between City of Fayetteville and Baldwin & Shell Construction Company as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price
- .2 AIA Document A201-2007, General Conditions of the Contract for Construction
- .3 AIA Document E201™-2007, Digital Data Protocol Exhibit, if completed, or the following:
  
- .4 AIA Document E202™-2008, Building Information Modeling Protocol Exhibit, if completed, or the following:
  
- .5 Other documents:  
*(List other documents, if any, forming part of the Agreement.)*

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

\_\_\_\_\_  
CITY OF FAYETTEVILLE *(Signature)*

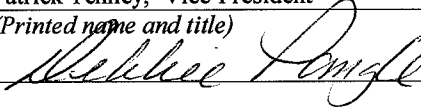
\_\_\_\_\_  
Lioneld Jordan, Mayor

\_\_\_\_\_  
ATTEST:

\_\_\_\_\_  
Sandra Smith, City Clerk

  
\_\_\_\_\_  
BALDWIN & SHELL CONSTRUCTION COMPANY  
*(Signature)*

\_\_\_\_\_  
Patrick Tenney, Vice-President  
*(Printed name and title)*

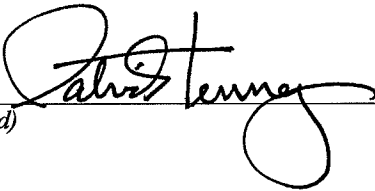
  
\_\_\_\_\_  
Debbie Pangle, Administrative Assistant

**Debbie Pangle**  
Notary Public-Arkansas  
Benton County  
My Comm. Exp. 12-13-2014



**Certification of Document's Authenticity**  
AIA® Document D401™ – 2003

I, Patrick Tenney, AIA, Vice President, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 15:15:38 on 04/01/2013 under Order No. 3625291867\_1 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A133™ – 2009, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price, as published by the AIA in its software, other than those additions and deletions shown in the associated Additions and Deletions Report.

  
\_\_\_\_\_  
(Signed)

VICE PRESIDENT  
\_\_\_\_\_  
(Title)

4.2.2013  
\_\_\_\_\_  
(Dated)

## **Additions and Deletions Report for AIA<sup>®</sup> Document A133<sup>™</sup> – 2009**

This Additions and Deletions Report, as defined on page 1 of the associated document, reproduces below all text the author has added to the standard form AIA document in order to complete it, as well as any text the author may have added to or deleted from the original AIA text. Added text is shown underlined. Deleted text is indicated with a horizontal line through the original AIA text.

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 15:15:38 on 04/01/2013.

### **PAGE 1**

**AGREEMENT** made as of the April day of 16 in the year 2013

...

**BETWEEN** the ~~Owner:~~City of Fayetteville:  
(Name, legal status and address)

City of Fayetteville  
113 W. Mountain  
Fayetteville, Arkansas 72701  
113 W. Mountain  
Fayetteville, Arkansas 72701  
herein after referred to as the City of Fayetteville

and the ~~Construction Manager:~~Baldwin & Shell Construction Company:

...

Baldwin & Shell Construction Company  
593 Horsebarn Road, Ste 100  
Rogers, Arkansas 72758

...

City of Fayetteville Entertainment District Parking Deck in the vicinity of South School Avenue & Spring Street,  
Fayetteville, Arkansas consisting of the Parking Deck, with Liner Buildings for the City of Fayetteville & Walton Arts  
Center

...

~~The Architect:~~The Engineer:

...

Garver, LLC.  
2049 E. Joyce Blyd., Ste 400  
Fayetteville, AR 72703  
The Owner's

The City of Fayetteville's Designated Representative:

...

David Jurgens, P.E.  
Utilities Director  
113 W. Mountain  
Fayetteville, AR 72701  
479-575-8330  
479-575-8257 fx

**PAGE 2**

The ~~Construction Manager's~~ Baldwin & Shell Construction Company's Designated Representative:

...

Mike Castagna  
Project Manager  
593 Horsebarn Road, Ste. 100  
Rogers, AR 72758  
479-845-1111  
479-845-1115 fx  
479-644-9006 mob

The ~~Architect's Engineer's~~ Designated Representative:

...

Ron Petrie, P.E.  
Senior Project Manager  
2049 E. Joyce Blvd., Ste 400  
Fayetteville, AR 72703  
479-287-4630  
479-527-9101 fx

...

~~The Owner and Construction Manager~~

The City of Fayetteville and Baldwin & Shell Construction Company agree as follows.

**PAGE 3**

**2 CONSTRUCTION MANAGER'S BALDWIN & SHELL CONSTRUCTION COMPANY'S RESPONSIBILITIES**

**3 OWNER'S CITY OF FAYETTEVILLE'S RESPONSIBILITIES**

...

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to the execution of this Agreement, other documents listed in this Agreement, and Modifications issued after execution of this Agreement, all of which form the Contract and are as fully a part of the Contract as if attached to this Agreement or repeated herein. Upon the ~~Owner's acceptance of the Construction Manager's~~ City of Fayetteville's acceptance of the Baldwin & Shell Construction Company's Guaranteed Maximum Price proposal, the Contract Documents will also include the documents described in Section 2.2.3 and identified in the Guaranteed Maximum Price Amendment and revisions prepared by the ~~Architect-Engineer~~ and furnished by the ~~Owner~~ City of Fayetteville as described in Section 2.2.8. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements,

either written or oral. If anything in the other Contract Documents, other than a Modification, is inconsistent with this Agreement, this Agreement shall govern.

...

~~The Construction Manager Baldwin & Shell Construction Company~~ accepts the relationship of trust and confidence established by this Agreement and covenants with the ~~Owner~~ City of Fayetteville to cooperate with the ~~Architect~~ Engineer and exercise the ~~Construction Manager's Baldwin & Shell Construction Company's~~ skill and judgment in furthering the interests of the ~~Owner~~ City of Fayetteville; to furnish efficient construction administration, management services and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the ~~Owner's interests~~. The Owner agrees City of Fayetteville's interests. The City of Fayetteville agree to furnish or approve, in a timely manner, information required by the Construction Manager Baldwin & Shell Construction Company and to make payments to the Construction Manager Baldwin & Shell Construction Company in accordance with the requirements of the Contract Documents. Baldwin & Shell will exercise reasonable skill, care, and diligence in the performance of the Baldwin & Shell's services and will carry out its responsibilities in accordance with customarily accepted professional construction management practices. The City of Fayetteville will promptly report to Baldwin & Shell any defects or suspected defects in Baldwin & Shell's services of which the City of Fayetteville becomes aware, so that Baldwin & Shell can take measures to minimize the consequences of such a defect. The City of Fayetteville retains all remedies to recover for its damages caused by any negligence of Baldwin & Shell.

#### PAGE 4

For the Preconstruction Phase, AIA Document A201™-2007, General Conditions of the Contract for Construction, shall apply only as specifically provided in this Agreement. For the Construction Phase, the general conditions of the contract shall be as set forth in A201-2007, which document is incorporated herein by reference. The term ~~"Contractor" as used in A201-2007 shall mean the Construction Manager.~~ "Owner" as used in the A201-2007 shall mean The City of Fayetteville. The terms "Construction Manager" or "Contractor" as used in the A201-2007 shall mean Baldwin & Shell Construction Company. The term "Architect" as used in A201-2007 shall mean the Engineer.

#### **ARTICLE 2 — CONSTRUCTION MANAGER'S RESPONSIBILITIES**

~~The Construction Manager's Preconstruction Phase responsibilities are set forth in Sections 2.1 and 2.2. The Construction Manager's Construction Phase responsibilities are set forth in Section 2.3. The Owner and Construction Manager may agree, in consultation with the Architect, for the Construction Phase to commence prior to completion of the Preconstruction Phase, in which case, both phases will proceed concurrently. The Construction Manager shall identify a representative authorized to act on behalf of the Construction Manager with respect to the Project.~~

#### **ARTICLE 2 BALDWIN & SHELL CONSTRUCTION COMPANY'S RESPONSIBILITIES**

The Baldwin & Shell Construction Company's Preconstruction Phase responsibilities are set forth in Sections 2.1 and 2.2. The Baldwin & Shell Construction Company's Construction Phase responsibilities are set forth in Section 2.3. The City of Fayetteville and Baldwin & Shell Construction Company may agree, in consultation with the Engineer for the Construction Phase to commence prior to completion of the Preconstruction Phase, in which case, both phases will proceed concurrently. The Baldwin & Shell Construction Company shall identify a representative authorized to act on behalf of the Baldwin & Shell Construction Company with respect to the Project.

**§ 2.1.1** ~~The Construction Manager Baldwin & Shell Construction Company shall provide a preliminary evaluation of the Owner's program, City of Fayetteville's project, schedule and construction budget requirements, each in terms of the other.~~

...

~~The Construction Manager Baldwin & Shell Construction Company shall schedule and conduct meetings with the Architect and Owner Engineer and City of Fayetteville to discuss such matters as procedures, progress, coordination, and scheduling of the Work. The Construction Manager shall advise the Owner and the Architect Baldwin & Shell Construction Company shall advise the City of Fayetteville and the Engineer on proposed site use and improvements, selection of materials, and building systems and equipment. The Construction Manager Baldwin & Shell Construction Company shall also provide recommendations consistent with the Project requirements to the Owner and Architect~~

City of Fayetteville and Engineer on constructability; availability of materials and labor; time requirements for procurement, installation and construction; and factors related to construction cost including, but not limited to, costs of alternative designs or materials, preliminary budgets, life-cycle data, and possible cost reductions.

§ 2.1.3 When Project requirements in Section 3.1.1 have been sufficiently identified, the ~~Construction Manager~~ Baldwin & Shell Construction Company shall prepare and periodically update a Project schedule for the ~~Architect's review and the Owner's acceptance. The Construction Manager shall obtain the Architect's Engineer's review and the City of Fayetteville's acceptance.~~ The Baldwin & Shell Construction Company shall obtain the Engineer's approval for the portion of the Project schedule relating to the performance of the ~~Architect's Engineer's services.~~ The Project schedule shall coordinate and integrate the Construction Manager's services, the Architect's services, other Owner consultants' services, and the Owner's Baldwin & Shell Construction Company's services, the Engineer's services, other City of Fayetteville consultants' services, and the City of Fayetteville's responsibilities and identify items that could affect the Project's timely completion. The updated Project schedule shall include the following: submission of the Guaranteed Maximum Price proposal; components of the Work; times of commencement and completion required of each Subcontractor; ordering and delivery of products, including those that must be ordered well in advance of construction; and the occupancy requirements of the Owner. City of Fayetteville.

...

The ~~Construction Manager~~ Baldwin & Shell Construction Company shall provide recommendations with regard to accelerated or fast-track scheduling, procurement, or phased construction. The ~~Construction Manager~~ Baldwin & Shell Construction Company shall take into consideration cost reductions, cost information, constructability, provisions for temporary facilities and procurement and construction scheduling issues.

...

§ 2.1.5.1 Based on the preliminary design and other design criteria prepared by the ~~Architect, the Construction Manager~~ Engineer the Baldwin & Shell Construction Company shall prepare preliminary estimates of the Cost of the Work or the cost of program requirements using area, volume or similar conceptual estimating techniques for the ~~Architect's review and Owner's approval. If the Architect or Construction Manager~~ Engineer's review and City of Fayetteville's approval. If the Engineer or Baldwin & Shell Construction Company suggests alternative materials and systems, the Construction Manager Baldwin & Shell Construction Company shall provide cost evaluations of those alternative materials and systems.

§ 2.1.5.2 As the ~~Architect~~ Engineer progresses with the preparation of the Schematic Design, Design Development and Construction Documents, the ~~Construction Manager~~ Baldwin & Shell Construction Company shall prepare and update, at appropriate intervals agreed to by the ~~Owner, Construction Manager and Architect,~~ City of Fayetteville, Baldwin & Shell Construction Company and Engineer estimates of the Cost of the Work of increasing detail and refinement and allowing for the further development of the design until such time as the ~~Owner and Construction Manager~~ City of Fayetteville and Baldwin & Shell Construction Company agree on a Guaranteed Maximum Price for the Work. Such estimates shall be provided for the ~~Architect's review and the Owner's approval. The Construction Manager shall inform the Owner and Architect~~ Engineer's review and the City of Fayetteville's approval. The Baldwin & Shell Construction Company shall inform the City of Fayetteville and Engineer when estimates of the Cost of the Work exceed the latest approved Project budget and make recommendations for corrective action.

**§ 2.1.6 ~~Subcontractors and Suppliers~~ Baldwin & Shell Construction Company and Suppliers**

The ~~Construction Manager~~ Baldwin & Shell Construction Company shall develop bidders' interest in the Project.

§ 2.1.7 The ~~Construction Manager~~ Baldwin & Shell Construction Company shall prepare, for the ~~Architect's Engineer's review and the Owner's~~ City of Fayetteville's acceptance, a procurement schedule for items that must be ordered well in advance of construction. The ~~Construction Manager~~ Baldwin & Shell Construction Company shall expedite and coordinate the ordering and delivery of materials that must be ordered well in advance of construction. If the ~~Owner~~ City of Fayetteville agrees to procure any items prior to the establishment of the Guaranteed Maximum Price, the ~~Owner~~ City of Fayetteville shall procure the items on terms and conditions acceptable to the ~~Construction Manager~~ Baldwin & Shell Construction Company. Upon the establishment of the Guaranteed Maximum Price, the ~~Owner~~ City of Fayetteville shall assign all contracts for these items to the ~~Construction Manager and the Construction~~

~~Manager Baldwin & Shell Construction Company and the Baldwin & Shell Construction Company~~ shall thereafter accept responsibility for them.

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The ~~Construction Manager Baldwin & Shell Construction Company~~ shall exercise reasonable care in preparing schedules and estimates. The ~~Construction Manager, Baldwin & Shell Construction Company,~~ however, does not warrant or guarantee estimates and schedules except as may be included as part of the Guaranteed Maximum Price. The ~~Construction Manager Baldwin & Shell Construction Company~~ is not required to ascertain that the Drawings and Specifications are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the ~~Construction Manager Baldwin & Shell Construction Company~~ shall promptly report to the ~~Architect and Owner Engineer and City of Fayetteville~~ any nonconformity discovered by or made known to the ~~Construction Manager Baldwin & Shell Construction Company~~ as a request for information in such form as the ~~Architect Engineer~~ may require.

...

The ~~Construction Manager Baldwin & Shell Construction Company~~ shall comply with applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to its performance under this Contract, and with equal employment opportunity programs, and other programs as may be required by governmental and quasi governmental authorities for inclusion in the Contract Documents.

...

§ 2.2.1 At a time to be mutually agreed upon by the ~~Owner and the Construction Manager and in consultation with the Architect, the Construction Manager City of Fayetteville and the Baldwin & Shell Construction Company and in consultation with the Engineer, the Baldwin & Shell Construction Company~~ shall prepare a Guaranteed Maximum Price proposal for the ~~Owner's City of Fayetteville's~~ review and acceptance. The Guaranteed Maximum Price in the proposal shall be the sum of the ~~Construction Manager's Baldwin & Shell Construction Company's~~ estimate of the Cost of the Work, including contingencies described in Section 2.2.4, and the ~~Construction Manager's Baldwin & Shell Construction Company's~~ Fee.

§ 2.2.2 To the extent that the Drawings and Specifications are anticipated to require further development by the ~~Architect, the Construction Manager Engineer, the Baldwin & Shell Construction Company~~ shall provide in the Guaranteed Maximum Price for such further development consistent with the Contract Documents and reasonably inferable therefrom. Such further development does not include such things as changes in scope, systems, kinds and quality of materials, finishes or equipment, all of which, if required, shall be incorporated by Change Order.

§ 2.2.3 The ~~Construction Manager Baldwin & Shell Construction Company~~ shall include with the Guaranteed Maximum Price proposal a written statement of its basis, which shall include the following:

...

- .2 A list of the clarifications and assumptions made by the ~~Construction Manager Baldwin & Shell Construction Company~~ in the preparation of the Guaranteed Maximum Price proposal, including assumptions under Section 2.2.2, to supplement the information provided by the ~~Owner City of Fayetteville~~ and contained in the Drawings and Specifications;
- .3 A statement of the proposed Guaranteed Maximum Price, including a statement of the estimated Cost of the Work organized by trade categories or systems, allowances, contingency, and the ~~Construction Manager's Baldwin & Shell Construction Company's~~ Fee;

PAGE 6

- .5 A date by which the ~~Owner City of Fayetteville~~ must accept the Guaranteed Maximum Price.

§ 2.2.4 In preparing the ~~Construction Manager's Baldwin & Shell Construction Company's~~ Guaranteed Maximum Price proposal, the ~~Construction Manager Baldwin & Shell Construction Company~~ shall include its contingency for

the ~~Construction Manager's~~ Baldwin & Shell Construction Company's exclusive use to cover those costs considered reimbursable as the Cost of the Work but not included in a Change Order.

§ 2.2.5 The ~~Construction Manager shall meet with the Owner and Architect~~ Baldwin & Shell Construction Company shall meet with the City of Fayetteville and Engineer to review the Guaranteed Maximum Price proposal. In the event that the ~~Owner and Architect~~ City of Fayetteville and Engineer discover any inconsistencies or inaccuracies in the information presented, they shall promptly notify the ~~Construction Manager, Baldwin & Shell Construction Company,~~ who shall make appropriate adjustments to the Guaranteed Maximum Price proposal, its basis, or both.

§ 2.2.6 If the ~~Owner notifies the Construction Manager that the Owner~~ City of Fayetteville notifies the Baldwin & Shell Construction Company that the City of Fayetteville has accepted the Guaranteed Maximum Price proposal in writing before the date specified in the Guaranteed Maximum Price proposal, the Guaranteed Maximum Price proposal shall be deemed effective without further acceptance from the ~~Construction Manager, Baldwin & Shell Construction Company.~~ Following acceptance of a Guaranteed Maximum Price, the ~~Owner and Construction Manager~~ City of Fayetteville and Baldwin & Shell Construction Company shall execute the Guaranteed Maximum Price Amendment amending this Agreement, a copy of which the ~~Owner~~ City of Fayetteville shall provide to the ~~Architect, Engineer.~~ The Guaranteed Maximum Price Amendment shall set forth the agreed upon Guaranteed Maximum Price with the information and assumptions upon which it is based.

§ 2.2.7 The ~~Construction Manager~~ Baldwin & Shell Construction Company shall not incur any cost to be reimbursed as part of the Cost of the Work prior to the commencement of the Construction Phase, unless the ~~Owner~~ City of Fayetteville provides prior written authorization for such costs.

§ 2.2.8 The ~~Owner~~ City of Fayetteville shall authorize the ~~Architect~~ Engineer to provide the revisions to the Drawings and Specifications to incorporate the agreed-upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment. The ~~Owner~~ City of Fayetteville shall promptly furnish those revised Drawings and Specifications to the ~~Construction Manager as they are revised.~~ The ~~Construction Manager shall notify the Owner and Architect~~ Baldwin & Shell Construction Company as they are revised. The Baldwin & Shell Construction Company shall notify the City of Fayetteville and Engineer of any inconsistencies between the Guaranteed Maximum Price Amendment and the revised Drawings and Specifications.

§ 2.2.9 The ~~Construction Manager~~ Baldwin & Shell Construction Company shall include in the Guaranteed Maximum Price all sales, consumer, use and similar taxes for the Work provided by the ~~Construction Manager~~ Baldwin & Shell Construction Company that are legally enacted, whether or not yet effective, at the time the Guaranteed Maximum Price Amendment is executed.

...

§ 2.3.1.2 The Construction Phase shall commence upon the ~~Owner's acceptance of the Construction Manager's~~ City of Fayetteville's acceptance of the Baldwin & Shell Construction Company's Guaranteed Maximum Price proposal or the ~~Owner's~~ City of Fayetteville's issuance of a Notice to Proceed, whichever occurs earlier.

...

§ 2.3.2.1 Those portions of the Work that the ~~Construction Manager~~ Baldwin & Shell Construction Company does not customarily perform with the ~~Construction Manager's~~ Baldwin & Shell Construction Company's own personnel shall be performed under subcontracts or by other appropriate agreements with the ~~Construction Manager.~~ The Owner Baldwin & Shell Construction Company. The City of Fayetteville may designate specific persons from whom, or entities from which, the ~~Construction Manager shall obtain bids.~~ The Construction Manager Baldwin & Shell Construction Company shall obtain bids. The Baldwin & Shell Construction Company shall obtain bids from Subcontractors and from suppliers of materials or equipment fabricated especially for the Work and shall deliver such bids to the ~~Architect.~~ The Owner-Engineer. The City of Fayetteville shall then determine, with the advice of the ~~Construction Manager and the Architect,~~ Baldwin & Shell Construction Company and the Engineer, which bids will be accepted. The ~~Construction Manager~~ Baldwin & Shell Construction Company shall not be required to contract with anyone to whom the ~~Construction Manager~~ Baldwin & Shell Construction Company has reasonable objection.

§ 2.3.2.2 If the Guaranteed Maximum Price has been established and when a specific bidder (1) is recommended to the ~~Owner by the Construction Manager, City of Fayetteville by the Baldwin & Shell Construction Company,~~ (2) is qualified to perform that portion of the Work, and (3) has submitted a bid that conforms to the requirements of the Contract Documents without reservations or exceptions, but the ~~Owner-City of Fayetteville~~ requires that another bid be accepted, then the ~~Construction Manager-Baldwin & Shell Construction Company~~ may require that a Change Order be issued to adjust the Contract Time and the Guaranteed Maximum Price by the difference between the bid of the person or entity recommended to the ~~Owner by the Construction Manager-City of Fayetteville by the Baldwin & Shell Construction Company~~ and the amount and time requirement of the subcontract or other agreement actually signed with the person or entity designated by the ~~Owner-City of Fayetteville.~~

§ 2.3.2.3 Subcontracts or other agreements shall conform to the applicable payment provisions of this Agreement, and shall not be awarded on the basis of cost plus a fee without the prior consent of the ~~Owner-City of Fayetteville.~~ If the Subcontract is awarded on a cost-plus a fee basis, the ~~Construction Manager-Baldwin & Shell Construction Company~~ shall provide in the Subcontract for the ~~Owner-City of Fayetteville~~ to receive the same audit rights with regard to the Subcontractor as the ~~Owner-City of Fayetteville~~ receives with regard to the ~~Construction Manager-Baldwin & Shell Construction Company~~ in Section 6.11 below.

§ 2.3.2.4 If the ~~Construction Manager-Baldwin & Shell Construction Company~~ recommends a specific bidder that may be considered a "related party" according to Section 6.10, then the ~~Construction Manager-Baldwin & Shell Construction Company~~ shall promptly notify the ~~Owner-City of Fayetteville~~ in writing of such relationship and notify the ~~Owner-City of Fayetteville~~ of the specific nature of the contemplated transaction, according to Section 6.10.2.

§ 2.3.2.5 The ~~Construction Manager-Baldwin & Shell Construction Company~~ shall schedule and conduct meetings to discuss such matters as procedures, progress, coordination, scheduling, and status of the Work. The ~~Construction Manager-Baldwin & Shell Construction Company~~ shall prepare and promptly distribute minutes to the ~~Owner and Architect-City of Fayetteville and Engineer.~~

§ 2.3.2.6 Upon the execution of the Guaranteed Maximum Price Amendment, the ~~Construction Manager-Baldwin & Shell Construction Company~~ shall prepare and submit to the ~~Owner and Architect-City of Fayetteville and Engineer~~ a construction schedule for the Work and submittal schedule in accordance with Section 3.10 of A201-2007.

§ 2.3.2.7 The ~~Construction Manager-Baldwin & Shell Construction Company~~ shall record the progress of the Project. On a monthly basis, or otherwise as agreed to by the ~~Owner, the Construction Manager-City of Fayetteville, the Baldwin & Shell Construction Company~~ shall submit written progress reports to the ~~Owner and Architect, City of Fayetteville and Engineer,~~ showing percentages of completion and other information required by the ~~Owner-The Construction Manager-City of Fayetteville. The Baldwin & Shell Construction Company~~ shall also keep, and make available to the ~~Owner and Architect, City of Fayetteville and Engineer.,~~ a daily log containing a record for each day of weather, portions of the Work in progress, number of workers on site, identification of equipment on site, problems that might affect progress of the work, accidents, injuries, and other information required by the ~~Owner-City of Fayetteville.~~

§ 2.3.2.8 The ~~Construction Manager-Baldwin & Shell Construction Company~~ shall develop a system of cost control for the Work, including regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes. The ~~Construction Manager-Baldwin & Shell Construction Company~~ shall identify variances between actual and estimated costs and report the variances to the ~~Owner and Architect-City of Fayetteville and Engineer,~~ and shall provide this information in its monthly reports to the ~~Owner and Architect, City of Fayetteville and Engineer,~~ in accordance with Section 2.3.2.7 above.

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**ARTICLE 3 — OWNER'S RESPONSIBILITIES**

**ARTICLE 3 CITY OF FAYETTEVILLE'S RESPONSIBILITIES**

**§ 3.1 Information and Services Required of the Owner/Information and Services Required of the City of Fayetteville**

§ 3.1.1 The ~~Owner-City of Fayetteville~~ shall provide information with reasonable promptness, regarding requirements for and limitations on the Project, including a written program which shall set forth the ~~Owner's-City of Fayetteville's~~



objectives, constraints, and criteria, including schedule, space requirements and relationships, flexibility and expandability, special equipment, systems sustainability and site requirements.

§ 3.1.2 Prior to the execution of the Guaranteed Maximum Price Amendment, the ~~Construction Manager Baldwin & Shell Construction Company~~ may request in writing that the ~~Owner-City of Fayetteville~~ provide reasonable evidence that the ~~Owner-City of Fayetteville~~ has made financial arrangements to fulfill the ~~Owner's-City of Fayetteville's~~ obligations under the Contract. Thereafter, the ~~Construction Manager Baldwin & Shell Construction Company~~ may only request such evidence if (1) the ~~Owner-City of Fayetteville~~ fails to make payments to the ~~Construction Manager Baldwin & Shell Construction Company~~ as the Contract Documents require, (2) a change in the Work materially changes the Contract Sum, or (3) the ~~Construction Manager Baldwin & Shell Construction Company~~ identifies in writing a reasonable concern regarding the ~~Owner's-City of Fayetteville's~~ ability to make payment when due. The ~~Owner-City of Fayetteville~~ shall furnish such evidence as a condition precedent to commencement or continuation of the Work or the portion of the Work affected by a material change. After the ~~Owner-City of Fayetteville~~ furnishes the evidence, the ~~Owner-City of Fayetteville~~ shall not materially vary such financial arrangements without prior notice to the ~~Construction Manager and Architect Baldwin & Shell Construction Company and Engineer~~.

§ 3.1.3 The ~~Owner-City of Fayetteville~~ shall establish and periodically update the ~~Owner's-City of Fayetteville's~~ budget for the Project, including (1) the budget for the Cost of the Work as defined in Section 6.1.1, (2) the ~~Owner's-City of Fayetteville's~~ other costs, and (3) reasonable contingencies related to all of these costs. If the ~~Owner-City of Fayetteville~~ significantly increases or decreases the ~~Owner's-City of Fayetteville's~~ budget for the Cost of the Work, the ~~Owner~~ shall notify the ~~Construction Manager and Architect~~. ~~The Owner and the Architect, in consultation with the Construction Manager, City of Fayetteville shall notify the Baldwin & Shell Construction Company and Engineer.~~ ~~The City of Fayetteville and the Engineer in consultation with the Baldwin & Shell Construction Company, shall thereafter agree to a corresponding change in the Project's scope and quality.~~

§ 3.1.4 **Structural and Environmental Tests, Surveys and Reports.** During the Preconstruction Phase, the ~~Owner-City of Fayetteville~~ shall furnish the following information or services with reasonable promptness. The ~~Owner-City of Fayetteville~~ shall also furnish any other information or services under the ~~Owner's-City of Fayetteville's~~ control and relevant to the ~~Construction Manager's Baldwin & Shell Construction Company's~~ performance of the Work with reasonable promptness after receiving the ~~Construction Manager's Baldwin & Shell Construction Company's~~ written request for such information or services. The ~~Construction Manager Baldwin & Shell Construction Company~~ shall be entitled to rely on the accuracy of information and services furnished by the ~~Owner-City of Fayetteville~~ but shall exercise proper precautions relating to the safe performance of the Work.

§ 3.1.4.1 The ~~Owner-City of Fayetteville~~ shall furnish tests, inspections and reports required by law and as otherwise agreed to by the parties, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

§ 3.1.4.2 The ~~Owner-City of Fayetteville~~ shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The 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 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.

§ 3.1.4.3 The ~~Owner-City of Fayetteville~~, when such services are requested, shall furnish services of geotechnical engineers, which may include but are not limited to 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.

§ 3.1.4.4 During the Construction Phase, the ~~Owner-City of Fayetteville~~ shall furnish information or services required of the ~~Owner-City of Fayetteville~~ by the Contract Documents with reasonable promptness. The ~~Owner-City of Fayetteville~~ shall also furnish any other information or services under the ~~Owner's-City of Fayetteville's~~ control and relevant to the ~~Construction Manager's Baldwin & Shell Construction Company's~~ performance of the Work with

reasonable promptness after receiving the ~~Construction Manager's~~ Baldwin & Shell Construction Company's written request for such information or services.

**§ 3.2 ~~Owner's Designated Representative~~ City of Fayetteville's Designated Representative**

The ~~Owner~~ City of Fayetteville shall identify a representative authorized to act on behalf of the ~~Owner~~ City of Fayetteville with respect to the Project. The ~~Owner's~~ City of Fayetteville's representative shall render decisions promptly and furnish information expeditiously, so as to avoid unreasonable delay in the services or Work of the ~~Construction Manager~~ Baldwin & Shell Construction Company. Except as otherwise provided in Section 4.2.1 of A201-2007, the ~~Architect-Engineer~~ does not have such authority. The term "Owner" ~~means the Owner or the Owner's~~ as used in the A201-2007 means the City of Fayetteville or the City of Fayetteville's authorized representative.

**§ 3.2.1 Legal Requirements.** The ~~Owner~~ City of Fayetteville 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~~ City of Fayetteville's needs and interests.

**§ 3.3 ~~Architect-Engineer~~**

The ~~Owner~~ City of Fayetteville shall retain an ~~Architect-Engineer~~ to provide services, duties and responsibilities as described in AIA Document B103™-2007, Standard Form of Agreement Between ~~Owner and Architect~~, City of Fayetteville and Engineer including any additional services requested by the ~~Construction Manager~~ Baldwin & Shell Construction Company that are necessary for the Preconstruction and Construction Phase services under this Agreement. The ~~Owner shall provide the Construction Manager~~ City of Fayetteville shall provide the Baldwin & Shell Construction Company a copy of the executed agreement between the ~~Owner and the Architect~~, City of Fayetteville and the Engineer and any further modifications to the agreement.

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**§ 4.1.1** For the ~~Construction Manager's~~ Preconstruction Phase services, the ~~Owner shall compensate the Construction Manager~~ Baldwin & Shell Construction Company's Preconstruction Phase services, the City of Fayetteville shall compensate the Baldwin & Shell Construction Company as follows:

**§ 4.1.2** For the ~~Construction Manager's~~ Baldwin & Shell Construction Company's Preconstruction Phase services described in Sections 2.1 and 2.2:

...

A lump sum amount of \$40,000

**§ 4.1.3** If the Preconstruction Phase services covered by this Agreement have not been completed within six ( 6 ) months of the date of this Agreement, through no fault of the ~~Construction Manager~~, the ~~Construction Manager's~~ Baldwin & Shell Construction Company, the Baldwin & Shell Construction Company's compensation for Preconstruction Phase services shall be equitably adjusted.

**§ 4.1.4** Compensation based on Direct Personnel Expense includes the direct salaries of the ~~Construction Manager's~~ Baldwin & Shell Construction Company's personnel providing Preconstruction Phase services on the Project and the ~~Construction Manager's~~ Baldwin & Shell Construction Company's costs for the mandatory and customary contributions and benefits related thereto, such as employment taxes and other statutory employee benefits, insurance, sick leave, holidays, vacations, employee retirement plans and similar contributions.

...

**§ 4.2.2** Payments are due and payable upon presentation of the ~~Construction Manager's~~ Baldwin & Shell Construction Company's invoice. Amounts unpaid twenty-five ( 25 ) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the ~~Construction Manager~~ Baldwin & Shell Construction Company.

...

%

...

§ 5.1 For the ~~Construction Manager's Baldwin & Shell Construction Company's~~ performance of the Work as described in Section 2.3, the ~~Owner shall pay the Construction Manager~~ City of Fayetteville shall pay the Baldwin & Shell Construction Company the Contract Sum in current funds. The Contract Sum is the Cost of the Work as defined in Section 6.1.1 plus the ~~Construction Manager's Baldwin & Shell Construction Company's~~ Fee.

§ 5.1.1 The ~~Construction Manager's Baldwin & Shell Construction Company's~~ Fee:  
*(State a lump sum, percentage of Cost of the Work or other provision for determining the ~~Construction Manager's Baldwin & Shell Construction Company's~~ Fee.)*

The Construction Phase Services fee shall be calculated at the time the Guarantee Maximum Price is established by taking the total estimated cost of the work for the entire project, including costs incurred during the pre-construction phase of the project as defined in Sections 2.1.1 through 2.1.9 and further defined in Sections 6.1.1 through 6.7.4 and then applying a five and one half percent (5 ½) to the total estimated cost. The fee will then be converted to a lump sum amount less the Preconstruction Phase fee of \$40,000 defined in 4.1.2. The lump sum fee will not be reduced based on savings in cost or reduction of scope by change order.

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§ 5.1.2 The method of adjustment of the ~~Construction Manager's Baldwin & Shell Construction Company's~~ Fee for changes in the Work:

All additive change order work shall carry a five and one half percent (5-1/2%) fee

...

As defined the the Project Manual Supplementary Conditions

§ 5.1.4 Rental rates for ~~Construction Manager-owned Baldwin & Shell Construction Company-owned~~ equipment shall not exceed eight-five percent ( 85 %) of the standard rate paid at the place of the Project.

...

§ 5.2.1 The ~~Construction Manager Baldwin & Shell Construction Company~~ guarantees that the Contract Sum shall not exceed the Guaranteed Maximum Price set forth in the Guaranteed Maximum Price Amendment, as it is amended from time to time. To the extent the Cost of the Work exceeds the Guaranteed Maximum Price, the ~~Construction Manager Baldwin & Shell Construction Company~~ shall bear such costs in excess of the Guaranteed Maximum Price without reimbursement or additional compensation from the ~~Owner~~ City of Fayetteville.  
*(Insert specific provisions if the ~~Construction Manager Baldwin & Shell Construction Company~~ is to participate in any savings.)*

All savings shall accrue one hundred percent (100%) to the City of Fayetteville

...

§ 5.3.1 The ~~Owner~~ City of Fayetteville may, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions. The ~~Owner~~ City of Fayetteville shall issue such changes in writing. The ~~Architect-Engineer~~ may make minor changes in the Work as provided in Section 7.4 of AIA Document A201-2007, General Conditions of the Contract for Construction. The ~~Construction Manager Baldwin & Shell Construction Company~~ shall be entitled to an equitable adjustment in the Contract Time as a result of changes in the Work.

...

§ 5.3.3 In calculating adjustments to subcontracts (except those awarded with the ~~Owner's~~ City of Fayetteville's prior consent on the basis of cost plus a fee), the terms "cost" and "fee" as used in Section 7.3.3.3 of AIA Document A201-2007 and the term "costs" as used in Section 7.3.7 of AIA Document A201-2007 shall have the meanings assigned to them in AIA Document A201-2007 and shall not be modified by Sections 5.1 and 5.2, Sections 6.1 through 6.7, and Section 6.8 of this Agreement. Adjustments to subcontracts awarded with the ~~Owner's~~ City of Fayetteville's prior consent on the basis of cost plus a fee shall be calculated in accordance with the terms of those subcontracts.

§ 5.3.4 In calculating adjustments to the Guaranteed Maximum Price, the terms "cost" and "costs" as used in the above-referenced provisions of AIA Document A201-2007 shall mean the Cost of the Work as defined in Sections 6.1 to 6.7 of this Agreement and the term "fee" shall mean the ~~Construction Manager's~~ Baldwin & Shell Construction Company's Fee as defined in Section 5.1 of this Agreement.

§ 5.3.5 If no specific provision is made in Section 5.1.2 for adjustment of the ~~Construction Manager's~~ Baldwin & Shell Construction Company's Fee in the case of changes in the Work, or if the extent of such changes is such, in the aggregate, that application of the adjustment provisions of Section 5.1.2 will cause substantial inequity to the ~~Owner or Construction Manager, the Construction Manager's~~ City of Fayetteville or Baldwin & Shell Construction Company, the Baldwin & Shell Construction Company's Fee shall be equitably adjusted on the same basis that was used to establish the Fee for the original Work, and the Guaranteed Maximum Price shall be adjusted accordingly.

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§ 6.1.1 The term Cost of the Work shall mean costs necessarily incurred by the ~~Construction Manager~~ Baldwin & Shell Construction Company in the proper performance of the Work. Such costs shall be at rates not higher than the standard paid at the place of the Project except with prior consent of the ~~Owner,~~ City of Fayetteville. The Cost of the Work shall include only the items set forth in Sections 6.1 through 6.7.

§ 6.1.2 Where any cost is subject to the ~~Owner's~~ City of Fayetteville's prior approval, the ~~Construction Manager~~ Baldwin & Shell Construction Company shall obtain this approval prior to incurring the cost. The parties shall endeavor to identify any such costs prior to executing Guaranteed Maximum Price Amendment.

...

§ 6.2.1 Wages of construction workers directly employed by the ~~Construction Manager~~ Baldwin & Shell Construction Company to perform the construction of the Work at the site or, with the ~~Owner's~~ City of Fayetteville's prior approval, at off-site workshops.

§ 6.2.2 Wages or salaries of the ~~Construction Manager's~~ Baldwin & Shell Construction Company's supervisory and administrative personnel when stationed at the site with the ~~Owner's~~ City of Fayetteville's prior approval. *(If it is intended that the wages or salaries of certain personnel stationed at the ~~Construction Manager's~~ Baldwin & Shell Construction Company's principal or other offices shall be included in the Cost of the Work, identify in Section 11.5, the personnel to be included, whether for all or only part of their time, and the rates at which their time will be charged to the Work.)*

§ 6.2.3 Wages and salaries of the ~~Construction Manager's~~ Baldwin & Shell Construction Company's supervisory or administrative personnel engaged at factories, ~~workshops~~ workshops, jobsite or on the road, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work.

§ 6.2.4 Costs paid or incurred by the ~~Construction Manager~~ Baldwin & Shell Construction Company for taxes, insurance, contributions, assessments and benefits required by law or collective bargaining agreements and, for personnel not covered by such agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries included in the Cost of the Work under Sections 6.2.1 through 6.2.3.

§ 6.2.5 Bonuses, profit sharing, incentive compensation and any other discretionary payments paid to anyone hired by the ~~Construction Manager or paid to any Subcontractor or vendor,~~ Baldwin & Shell Construction

Company or paid to any Baldwin & Shell Construction Company or vendor, with the City of Fayetteville's prior approval.

...

Payments made by the ~~Construction Manager~~ Baldwin & Shell Construction Company to Subcontractors in accordance with the requirements of the subcontracts.

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§ 6.4.2 Costs of materials described in the preceding Section 6.4.1 in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, if any, shall become the ~~Owner's~~ City of Fayetteville's property at the completion of the Work or, at the ~~Owner's~~ City of Fayetteville's option, shall be sold by the ~~Construction Manager~~ Baldwin & Shell Construction Company. Any amounts realized from such sales shall be credited to the ~~Owner~~ City of Fayetteville as a deduction from the Cost of the Work.

...

§ 6.5.1 Costs of transportation, storage, installation, maintenance, dismantling and removal of materials, supplies, temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the ~~Construction Manager~~ Baldwin & Shell Construction Company at the site and fully consumed in the performance of the Work. Costs of materials, supplies, temporary facilities, machinery, equipment and tools that are not fully consumed shall be based on the cost or value of the item at the time it is first used on the Project site less the value of the item when it is no longer used at the Project site. Costs for items not fully consumed by the ~~Construction Manager~~ Baldwin & Shell Construction Company shall mean fair market value.

§ 6.5.2 Rental charges for temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the ~~Construction Manager~~ Baldwin & Shell Construction Company at the site and costs of transportation, installation, minor repairs, dismantling and removal. The total rental cost of any ~~Construction Manager-owned~~ Baldwin & Shell Construction Company-owned item may not exceed the purchase price of any comparable item. Rates of ~~Construction Manager-owned~~ Baldwin & Shell Construction Company-owned equipment and quantities of equipment shall be subject to the ~~Owner's~~ City of Fayetteville's prior approval.

...

§ 6.5.5 That portion of the reasonable expenses of the ~~Construction Manager's~~ Baldwin & Shell Construction Company's supervisory or administrative personnel incurred while traveling in discharge of duties connected with the Work.

§ 6.5.6 Costs of materials and equipment suitably stored off the site at a mutually acceptable location, subject to the ~~Owner's~~ City of Fayetteville's prior approval.

...

§ 6.6.1 Premiums for that portion of insurance and bonds required by the Contract Documents that can be directly attributed to this Contract. Self-insurance for either full or partial amounts of the coverages required by the Contract Documents, with the ~~Owner's~~ City of Fayetteville's prior approval.

§ 6.6.2 Sales, use or similar taxes imposed by a governmental authority that are related to the Work and for which the ~~Construction Manager~~ Baldwin & Shell Construction Company is liable.

§ 6.6.3 Fees and assessments for the building permit and for other permits, licenses and inspections for which the ~~Construction Manager~~ Baldwin & Shell Construction Company is required by the Contract Documents to pay.

...

§ 6.6.5 Royalties and license fees paid for the use of a particular design, process or product required by the Contract Documents; the cost of defending suits or claims for infringement of patent rights arising from such requirement of the Contract Documents; and payments made in accordance with legal judgments against the ~~Construction Manager~~ Baldwin & Shell Construction Company resulting from such suits or claims and payments of settlements made with the ~~Owner's~~ City of Fayetteville's consent. However, such costs of legal defenses, judgments and settlements shall not be included in the calculation of the ~~Construction Manager's~~ Baldwin & Shell Construction Company's Fee or subject to the Guaranteed Maximum Price. If such royalties, fees and costs are excluded by the last sentence of Section 3.17 of AIA Document A201-2007 or other provisions of the Contract Documents, then they shall not be included in the Cost of the Work.

§ 6.6.6 Costs for electronic equipment and software, mobile phones, internet, electronic data transfer costs, office supplies, data processing, etc. directly related to the Work with the ~~Owner's~~ City of Fayetteville's prior approval.

§ 6.6.7 Deposits lost for causes other than the ~~Construction Manager's~~ Baldwin & Shell Construction Company's negligence or failure to fulfill a specific responsibility in the Contract Documents.

§ 6.6.8 Legal, mediation and arbitration costs, including attorneys' fees, other than those arising from disputes between the ~~Owner and Construction Manager,~~ reasonably incurred by the Construction Manager City of Fayetteville and Baldwin & Shell Construction Company, reasonably incurred by the Baldwin & Shell Construction Company after the execution of this Agreement in the performance of the Work and with the ~~Owner's~~ City of Fayetteville's prior approval, which shall not be unreasonably withheld.

§ 6.6.9 Subject to the ~~Owner's~~ City of Fayetteville's prior approval, expenses incurred in accordance with the ~~Construction Manager's~~ Baldwin & Shell Construction Company's standard written personnel policy for relocation and temporary living allowances of the ~~Construction Manager's~~ Baldwin & Shell Construction Company's personnel required for the Work.

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§ 6.7.1 Other costs incurred in the performance of the Work if, and to the extent, approved in advance in writing by the ~~Owner~~ City of Fayetteville.

...

§ 6.7.3 Costs of repairing or correcting damaged or nonconforming Work executed by the ~~Construction Manager,~~ Baldwin & Shell Construction Company, Subcontractors or suppliers, provided that such damaged or nonconforming Work was not caused by negligence or failure to fulfill a specific responsibility of the ~~Construction Manager~~ Baldwin & Shell Construction Company and only to the extent that the cost of repair or correction is not recovered by the ~~Construction Manager~~ Baldwin & Shell Construction Company from insurance, sureties, Subcontractors, suppliers, or others.

§ 6.7.4 The costs described in Sections 6.1 through 6.7 shall be included in the Cost of the Work, notwithstanding any provision of AIA Document A201-2007 or other Conditions of the Contract which may require the ~~Construction Manager~~ Baldwin & Shell Construction Company to pay such costs, unless such costs are excluded by the provisions of Section 6.8.

...

- .1 Salaries and other compensation of the ~~Construction Manager's~~ personnel stationed at the Construction Manager's Baldwin & Shell Construction Company's personnel stationed at the Baldwin & Shell Construction Company's principal office or offices other than the site office, except as specifically provided in Section 6.2, or as may be provided in Article 11;
- .2 Expenses of the ~~Construction Manager's~~ Baldwin & Shell Construction Company's principal office and offices other than the site office; office with the exception of costs provided by principal office to jobsite as defined in Section 6.6.6 above ;

...

- .4 ~~The Construction Manager's~~ Baldwin & Shell Construction Company's capital expenses, including interest on the ~~Construction Manager's~~ Baldwin & Shell Construction Company's capital employed for the Work;
  - .5 Except as provided in Section 6.7.3 of this Agreement, costs due to the negligence or failure of the ~~Construction Manager, Subcontractors~~ Baldwin & Shell Construction Company, Baldwin & Shell Construction Company and suppliers or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable to fulfill a specific responsibility of the Contract;
- ...
- .7 Costs, other than costs included in Change Orders approved by the ~~Owner,~~ City of Fayetteville, that would cause the Guaranteed Maximum Price to be exceeded; and

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§ 6.9.1 Cash discounts obtained on payments made by the ~~Construction Manager~~ Baldwin & Shell Construction Company shall accrue to the ~~Owner~~ City of Fayetteville if (1) before making the payment, the ~~Construction Manager~~ Baldwin & Shell Construction Company included them in an Application for Payment and received payment from the ~~Owner,~~ City of Fayetteville, or (2) the ~~Owner~~ City of Fayetteville has deposited funds with the ~~Construction Manager~~ Baldwin & Shell Construction Company with which to make payments; otherwise, cash discounts shall accrue to the ~~Construction Manager~~ Baldwin & Shell Construction Company. Trade discounts, rebates, refunds and amounts received from sales of surplus materials and equipment shall accrue to the ~~Owner,~~ and the Construction Manager City of Fayetteville, and the ~~Baldwin & Shell Construction Company~~ shall make provisions so that they can be obtained.

§ 6.9.2 Amounts that accrue to the ~~Owner~~ City of Fayetteville in accordance with the provisions of Section 6.9.1 shall be credited to the ~~Owner~~ City of Fayetteville as a deduction from the Cost of the Work.

...

§ 6.10.1 For purposes of Section 6.10, the term "related party" shall mean a parent, subsidiary, affiliate or other entity having common ownership or management with the ~~Construction Manager~~ Baldwin & Shell Construction Company; any entity in which any stockholder in, or management employee of, the ~~Construction Manager~~ Baldwin & Shell Construction Company owns any interest in excess of ten percent in the aggregate; or any person or entity which has the right to control the business or affairs of the ~~Construction Manager~~ Baldwin & Shell Construction Company. The term "related party" includes any member of the immediate family of any person identified above.

§ 6.10.2 If any of the costs to be reimbursed arise from a transaction between the ~~Construction Manager and a related party,~~ the ~~Construction Manager~~ shall notify the ~~Owner~~ Baldwin & Shell Construction Company and a related party, the ~~Baldwin & Shell Construction Company~~ shall notify the City of Fayetteville of the specific nature of the contemplated transaction, including the identity of the related party and the anticipated cost to be incurred, before any such transaction is consummated or cost incurred. If the ~~Owner,~~ City of Fayetteville, after such notification, authorizes the proposed transaction, then the cost incurred shall be included as a cost to be reimbursed, and the ~~Construction Manager~~ Baldwin & Shell Construction Company shall procure the Work, equipment, goods or service from the related party, as a Subcontractor, according to the terms of Sections 2.3.2.1, 2.3.2.2 and 2.3.2.3. If the ~~Owner~~ City of Fayetteville fails to authorize the transaction, the ~~Construction Manager~~ Baldwin & Shell Construction Company shall procure the Work, equipment, goods or service from some person or entity other than a related party according to the terms of Sections 2.3.2.1, 2.3.2.2 and 2.3.2.3.

...

The ~~Construction Manager~~ Baldwin & Shell Construction Company shall keep full and detailed records and accounts related to the cost of the Work and exercise such controls as may be necessary for proper financial management under this Contract and to substantiate all costs incurred. The accounting and control systems shall be satisfactory to the ~~Owner.~~ The Owner and the Owner's City of Fayetteville. The City of Fayetteville and the City of Fayetteville's auditors shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to audit and copy, the ~~Construction Manager's~~ Baldwin & Shell Construction Company's records and accounts,

including complete documentation supporting accounting entries, books, correspondence, instructions, drawings, receipts, subcontracts, Subcontractor's proposals, purchase orders, vouchers, memoranda and other data relating to this Contract. ~~The Construction Manager~~ Baldwin & Shell Construction Company shall preserve these records for a period of three years after final payment, or for such longer period as may be required by law. Baldwin & Shell Construction Company shall track costs related to separate funding sources as directed by the City of Fayetteville in order to comply with requirements of state and local law and regulations, bond covenant requirement, and to track cost of components of cost shares as may occur.

...

§ 7.1.1 Based upon Applications for Payment submitted to the ~~Architect~~ Engineer by the ~~Construction Manager~~ Baldwin & Shell Construction Company and Certificates for Payment issued by the ~~Architect~~, the Owner ~~Engineer~~ the City of Fayetteville shall make progress payments on account of the Contract Sum to the ~~Construction Manager~~ Baldwin & Shell Construction Company as provided below and elsewhere in the Contract Documents.

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§ 7.1.3 Provided that an Application for Payment is received by the ~~Architect~~ Engineer not later than the 25th day of a month, the ~~Owner~~ City of Fayetteville shall make payment of the certified amount to the ~~Construction Manager~~ Baldwin & Shell Construction Company not later than the 15th day of the following month. If an Application for Payment is received by the ~~Architect~~ Engineer after the application date fixed above, payment shall be made by the ~~Owner~~ City of Fayetteville not later than twenty-one (21) days after the ~~Architect~~ Engineer receives the Application for Payment.

...

§ 7.1.4 With each Application for Payment, the ~~Construction Manager~~ Baldwin & Shell Construction Company shall, upon request by the City of Fayetteville or the Engineer, submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the ~~Owner~~ or ~~Architect~~ City of Fayetteville or Engineer to demonstrate that cash disbursements already made by the ~~Construction Manager~~ Baldwin & Shell Construction Company on account of the Cost of the Work equal or exceed progress payments already received by the ~~Construction Manager~~, Baldwin & Shell Construction Company, less that portion of those payments attributable to the ~~Construction Manager's~~ Baldwin & Shell Construction Company's Fee, plus payrolls for the period covered by the present Application for Payment.

§ 7.1.5 Each Application for Payment shall be based on the most recent schedule of values submitted by the ~~Construction Manager~~ Baldwin & Shell Construction Company in accordance with the Contract Documents. The schedule of values shall allocate the entire Guaranteed Maximum Price among the various portions of the Work, except that the ~~Construction Manager's~~ Baldwin & Shell Construction Company's Fee shall be shown as a single separate item. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the ~~Architect~~ Engineer may require. This schedule, unless objected to by the ~~Architect~~, Engineer, shall be used as a basis for reviewing the ~~Construction Manager's~~ Baldwin & Shell Construction Company's Applications for Payment.

§ 7.1.6 Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage of completion shall be the lesser of (1) the percentage of that portion of the Work which has actually been completed, or (2) the percentage obtained by dividing (a) the expense that has actually been incurred by the ~~Construction Manager~~ Baldwin & Shell Construction Company on account of that portion of the Work for which the ~~Construction Manager~~ Baldwin & Shell Construction Company has made or intends to make actual payment prior to the next Application for Payment by (b) the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values.

...

- .1 Take that portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values. Pending



- final determination of cost to the ~~Owner-City of Fayetteville~~ of changes in the Work, amounts not in dispute shall be included as provided in Section 7.3.9 of AIA Document A201-2007;
- .2 Add that portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work, or if approved in advance by the ~~Owner, City of Fayetteville,~~ suitably stored off the site at a location agreed upon in writing;
  - .3 Add the ~~Construction Manager's Fee, less retainage of — percent ( — %).~~ The Construction Manager's Baldwin & Shell Construction Company's Fee, less retainage of five percent ( 5 %). The Baldwin & Shell Construction Company's Fee shall be computed upon the Cost of the Work at the rate stated in Section 5.1 or, if the ~~Construction Manager's Baldwin & Shell Construction Company's Fee~~ is stated as a fixed sum in that Section, shall be an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work bears to a reasonable estimate of the probable Cost of the Work upon its completion;
  - .4 Subtract retainage of five percent ( 5 %) from that portion of the Work that the ~~Construction Manager Baldwin & Shell Construction Company~~ self-performs;
  - .5 Subtract the aggregate of previous payments made by the ~~Owner, City of Fayetteville;~~
  - .6 Subtract the shortfall, if any, indicated by the ~~Construction Manager Baldwin & Shell Construction Company~~ in the documentation required by Section 7.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the ~~Owner's City of Fayetteville's~~ auditors in such documentation; and
  - .7 Subtract amounts, if any, for which the ~~Architect-Engineer,~~ has withheld or nullified a Certificate for Payment as provided in Section 9.5 of AIA Document A201-2007.

§ 7.1.8 The ~~Owner and Construction Manager-City of Fayetteville and Baldwin & Shell Construction Company~~ shall agree upon (1) a mutually acceptable procedure for review and approval of payments to ~~Subcontractors Baldwin & Shell Construction Company~~ and (2) the percentage of retainage held on Subcontracts, and the ~~Construction Manager Baldwin & Shell Construction Company~~ shall execute subcontracts in accordance with those agreements.

§ 7.1.9 Except with the ~~Owner's prior approval, the Construction Manager-City of Fayetteville's prior approval,~~ the ~~Baldwin & Shell Construction Company~~ shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.

§ 7.1.10 In taking action on the ~~Construction Manager's Baldwin & Shell Construction Company's~~ Applications for Payment, the ~~Architect-Engineer~~ shall be entitled to rely on the accuracy and completeness of the information furnished by the ~~Construction Manager Baldwin & Shell Construction Company~~ and shall not be deemed to represent that the ~~Architect-Engineer~~ has made a detailed examination, audit or arithmetic verification of the documentation submitted in accordance with Section 7.1.4 or other supporting data; that the ~~Architect-Engineer~~ has made exhaustive or continuous on-site inspections; or that the ~~Architect-Engineer~~ has made examinations to ascertain how or for what purposes the ~~Construction Manager Baldwin & Shell Construction Company~~ has used amounts previously paid on account of the Contract. Such examinations, audits and verifications, if required by the ~~Owner, City of Fayetteville,~~ will be performed by the ~~Owner's City of Fayetteville's~~ auditors acting in the sole interest of the ~~Owner-City of Fayetteville.~~

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§ 7.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the ~~Owner to the Construction Manager-City of Fayetteville to the Baldwin & Shell Construction Company~~ when

- .1 the ~~Construction Manager Baldwin & Shell Construction Company~~ has fully performed the Contract except for the ~~Construction Manager's Baldwin & Shell Construction Company's~~ responsibility to correct Work as provided in Section 12.2.2 of AIA Document A201-2007, and to satisfy other requirements, if any, which extend beyond final payment;
- .2 the ~~Construction Manager Baldwin & Shell Construction Company~~ has submitted a final accounting for the Cost of the Work and a final Application for Payment; and
- .3 a final Certificate for Payment has been issued by the ~~Architect-Engineer.~~

The ~~Owner's City of Fayetteville's~~ final payment to the ~~Construction Manager Baldwin & Shell Construction Company~~ shall be made no later than 30 days after the issuance of the ~~Architect's-Engineer's~~ final Certificate for Payment, or as follows:

...

§ 7.2.2 ~~The Owner's City of Fayetteville's~~ auditors will review and report in writing on the Construction Manager's Baldwin & Shell Construction Company's final accounting within 30 days after delivery of the final accounting to the Architect by the Construction Manager-Engineer by the Baldwin & Shell Construction Company. Based upon such Cost of the Work as the ~~Owner's City of Fayetteville's~~ auditors report to be substantiated by the Construction Manager's Baldwin & Shell Construction Company's final accounting, and provided the other conditions of Section 7.2.1 have been met, the Architect-Engineer will, within seven days after receipt of the written report of the Owner's City of Fayetteville's auditors, either issue to the Owner-City of Fayetteville a final Certificate for Payment with a copy to the Construction Manager, or notify the Construction Manager and Owner in writing of the Architect's Baldwin & Shell Construction Company, or notify the Baldwin & Shell Construction Company and City of Fayetteville in writing of the Engineers reasons for withholding a certificate as provided in Section 9.5.1 of the AIA Document A201-2007. The time periods stated in this Section supersede those stated in Section 9.4.1 of the AIA Document A201-2007. The Architect-Engineer is not responsible for verifying the accuracy of the Construction Manager's Baldwin & Shell Construction Company's final accounting.

§ 7.2.3 ~~If the Owner's City of Fayetteville's~~ auditors report the Cost of the Work as substantiated by the Construction Manager's Baldwin & Shell Construction Company's final accounting to be less than claimed by the Construction Manager, the Construction Manager Baldwin & Shell Construction Company, the Baldwin & Shell Construction Company shall be entitled to request mediation of the disputed amount without seeking an initial decision pursuant to Section 15.2 of A201-2007. A request for mediation shall be made by the Construction Manager Baldwin & Shell Construction Company within 30 days after the Construction Manager's Baldwin & Shell Construction Company's receipt of a copy of the Architect's-Engineer's final Certificate for Payment. Failure to request mediation within this 30-day period shall result in the substantiated amount reported by the Owner's City of Fayetteville's auditors becoming binding on the Construction Manager- Baldwin & Shell Construction Company. Pending a final resolution of the disputed amount, the Owner shall pay the Construction Manager the amount certified in the Architect's City of Fayetteville shall pay the Baldwin & Shell Construction Company the amount certified in the Engineer's final Certificate for Payment.

§ 7.2.4 ~~If, subsequent to final payment and at the Owner's request, the Construction Manager-City of Fayetteville's request, the Baldwin & Shell Construction Company incurs costs described in Section 6.1.1 and not excluded by Section 6.8 to correct defective or nonconforming Work, the Owner shall reimburse the Construction Manager such costs and the Construction Manager's City of Fayetteville shall reimburse the Baldwin & Shell Construction Company such costs and the Baldwin & Shell Construction Company's Fee applicable thereto on the same basis as if such costs had been incurred prior to final payment, but not in excess of the Guaranteed Maximum Price. If the Construction Manager Baldwin & Shell Construction Company has participated in savings as provided in Section 5.2.1, the amount of such savings shall be recalculated and appropriate credit given to the Owner-City of Fayetteville in determining the net amount to be paid by the Owner to the Construction Manager-City of Fayetteville to the Baldwin & Shell Construction Company.~~

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For all phases of the Project, the Construction Manager and the Owner Baldwin & Shell Construction Company and the City of Fayetteville shall purchase and maintain insurance, and the Construction Manager Baldwin & Shell Construction Company shall provide bonds as set forth in Article 11 of AIA Document A201-2007.

...

Performance and Payment Bonds

One-hundred percent (100%) of the Guaranteed Maximum Price

...

§ 9.1 ~~Any Claim between the Owner and Construction Manager-City of Fayetteville and Baldwin & Shell Construction Company shall be resolved in accordance with the provisions set forth in this Article 9 and Article 15 of A201-2007. However, for Claims arising from or relating to the Construction Manager's Baldwin & Shell~~

Construction Company's Preconstruction Phase services, no decision by the Initial Decision Maker shall be required as a condition precedent to mediation or binding dispute resolution, and Section 9.3 of this Agreement shall not apply.

...

*(Check the appropriate box. If the ~~Owner and Construction Manager~~ City of Fayetteville and Baldwin & Shell Construction Company do not select a method of binding dispute resolution below, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, Claims will be resolved by litigation in a court of competent jurisdiction.)*

...

[  ] Litigation in a court of competent jurisdiction

...

The ~~Architect-Engineer~~ will serve as the Initial Decision Maker pursuant to Section 15.2 of AIA Document A201-2007 for Claims arising from or relating to the ~~Construction Manager's~~ Baldwin & Shell Construction Company's Construction Phase services, unless the parties appoint below another individual, not a party to the Agreement, to serve as the Initial Decision Maker.

*(If the parties mutually agree, insert the name, address and other contact information of the Initial Decision Maker, if other than the ~~Architect-Engineer~~.)*

...

§ 10.1.1 Prior to the execution of the Guaranteed Maximum Price Amendment, the ~~Owner~~ City of Fayetteville may terminate this Agreement upon not less than seven days' written notice to the ~~Construction Manager for the Owner's~~ Baldwin & Shell Construction Company for the City of Fayetteville's convenience and without cause, and the ~~Construction Manager~~ Baldwin & Shell Construction Company may terminate this Agreement, upon not less than seven days' written notice to the ~~Owner,~~ City of Fayetteville, for the reasons set forth in Section 14.1.1 of A201-2007.

§ 10.1.2 In the event of termination of this Agreement pursuant to Section 10.1.1, the ~~Construction Manager~~ Baldwin & Shell Construction Company shall be equitably compensated for Preconstruction Phase services performed prior to receipt of a notice of termination. In no event shall the ~~Construction Manager's~~ Baldwin & Shell Construction Company's compensation under this Section exceed the compensation set forth in Section 4.1.

§ 10.1.3 If the ~~Owner~~ City of Fayetteville terminates the Contract pursuant to Section 10.1.1 after the commencement of the Construction Phase but prior to the execution of the Guaranteed Maximum Price Amendment, the ~~Owner~~ City of Fayetteville shall pay to the ~~Construction Manager~~ Baldwin & Shell Construction Company an amount calculated as follows, which amount shall be in addition to any compensation paid to the ~~Construction Manager~~ Baldwin & Shell Construction Company under Section 10.1.2:

- .1 Take the Cost of the Work incurred by the ~~Construction Manager~~ Baldwin & Shell Construction Company to the date of termination;
- .2 Add the ~~Construction Manager's~~ Baldwin & Shell Construction Company's Fee computed upon the Cost of the Work to the date of termination at the rate stated in Section 5.1 or, if the ~~Construction Manager's~~ Baldwin & Shell Construction Company's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion; and
- .3 Subtract the aggregate of previous payments made by the ~~Owner~~ City of Fayetteville for Construction Phase services.

The ~~Owner~~ City of Fayetteville shall also pay the ~~Construction Manager~~ Baldwin & Shell Construction Company fair compensation, either by purchase or rental at the election of the ~~Owner,~~ City of Fayetteville, for any equipment owned by the ~~Construction Manager~~ Baldwin & Shell Construction Company which the ~~Owner~~ City of Fayetteville elects to retain and which is not otherwise included in the Cost of the Work under Section 10.1.3.1. To the extent that the ~~Owner~~ City of Fayetteville elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the ~~Construction Manager~~ Baldwin & Shell Construction Company shall, as a condition of receiving the

payments referred to in this Article 10, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the ~~Construction Manager, as the Owner~~ Baldwin & Shell Construction Company, as the City of Fayetteville may require for the purpose of fully vesting in the ~~Owner~~ City of Fayetteville the rights and benefits of the ~~Construction Manager~~ Baldwin & Shell Construction Company under such subcontracts or purchase orders. All Subcontracts, purchase orders and rental agreements entered into by the ~~Construction Manager~~ Baldwin & Shell Construction Company will contain provisions allowing for assignment to the ~~Owner~~ City of Fayetteville as described above.

If the ~~Owner~~ City of Fayetteville accepts assignment of subcontracts, purchase orders or rental agreements as described above, the ~~Owner~~ City of Fayetteville will reimburse or indemnify the ~~Construction Manager~~ Baldwin & Shell Construction Company for all costs arising under the subcontract, purchase order or rental agreement, if those costs would have been reimbursable as Cost of the Work if the contract had not been terminated. If the ~~Owner~~ City of Fayetteville chooses not to accept assignment of any subcontract, purchase order or rental agreement that would have constituted a Cost of the Work had this agreement not been terminated, the ~~Construction Manager~~ Baldwin & Shell Construction Company will terminate the subcontract, purchase order or rental agreement and the ~~Owner~~ City of Fayetteville will pay the ~~Baldwin & Shell Construction Company~~ the costs necessarily incurred by the ~~Construction Manager~~ Baldwin & Shell Construction Company because of such termination.

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§ ~~10.2.1~~ If the ~~Owner~~ City of Fayetteville terminates the Contract after execution of the Guaranteed Maximum Price Amendment, the amount payable to the ~~Construction Manager~~ Baldwin & Shell Construction Company pursuant to Sections 14.2 and 14.4 of A201-2007 shall not exceed the amount the ~~Construction Manager~~ Baldwin & Shell Construction Company would otherwise have received pursuant to Sections 10.1.2 and 10.1.3 of this Agreement.

§ ~~10.2.2~~ If the ~~Construction Manager~~ Baldwin & Shell Construction Company terminates the Contract after execution of the Guaranteed Maximum Price Amendment, the amount payable to the ~~Construction Manager~~ Baldwin & Shell Construction Company under Section 14.1.3 of A201-2007 shall not exceed the amount the ~~Construction Manager~~ Baldwin & Shell Construction Company would otherwise have received under Sections 10.1.2 and 10.1.3 above, except that the ~~Construction Manager's~~ Baldwin & Shell Construction Company's Fee shall be calculated as if the Work had been fully completed by the ~~Construction Manager~~ Baldwin & Shell Construction Company, utilizing as necessary a reasonable estimate of the Cost of the Work for Work not actually completed.

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The Work may be suspended by the ~~Owner~~ City of Fayetteville as provided in Article 14 of AIA Document A201-2007. In such case, the Guaranteed Maximum Price and Contract Time shall be increased as provided in Section 14.3.2 of AIA Document A201-2007, except that the term "profit" shall be understood to mean the ~~Construction Manager's~~ Baldwin & Shell Construction Company's Fee as described in Sections 5.1 and 5.3.5 of this Agreement.

...

#### § ~~11.2 Ownership and Use of Documents~~ City of Fayetteville and Use of Documents

...

The ~~Owner and Construction Manager~~ City of Fayetteville and Baldwin & Shell Construction Company, respectively, bind themselves, their agents, successors, assigns and legal representatives to this Agreement. Neither the ~~Owner nor the Construction Manager~~ City of Fayetteville nor the Baldwin & Shell Construction Company shall assign this Agreement without the written consent of the other, except that the ~~Owner~~ City of Fayetteville may assign this Agreement to a lender providing financing for the Project if the lender agrees to assume the ~~Owner's~~ City of Fayetteville's rights and obligations under this Agreement. Except as provided in Section 13.2.2 of A201-2007, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

...

§ 11.5.1 Solid Waste Services. Solid Waste Services shall be obtained from the City of Fayetteville Solid Waste Division, at Baldwin & Shell's expense, unless such services cannot be provided by the City of Fayetteville Solid Waste Division.

§ 11.5.2 Computer Models. Baldwin & Shell may use or modify Baldwin & Shell's proprietary computer models in service of City of Fayetteville under this agreement, or Baldwin & Shell may develop computer models during Baldwin & Shell's service to City of Fayetteville under this agreement. Such use, modification, or development by Baldwin & Shell does not constitute a license to City of Fayetteville to use or modify Baldwin & Shell's computer models. Said proprietary computer models shall remain the sole property of Baldwin & Shell. City of Fayetteville and Baldwin & Shell will enter into a separate license agreement if City of Fayetteville wishes to use Baldwin & Shell's computer models.

§ 11.5.3 Baldwin & Shell. agrees that it will indemnify, defend, and hold harmless the City of Fayetteville and the Engineer from and against any and all loss where loss is caused or incurred or alleged to be caused or incurred in whole or in part as a result of the negligence or other actionable fault of Baldwin & Shell, its employees, agents, Subcontractors, and Suppliers

§ 11.5.4 Arkansas Freedom of Information Act. City contracts and documents, including internal documents and documents of subcontractors and sub-consultants, prepared while performing City contractual work are subject to the Arkansas Freedom of Information Act (FOIA). If a Freedom of Information Act request is presented to the City of Fayetteville, Baldwin & Shell will do everything possible to provide the documents in a prompt and timely manner as prescribed in the Arkansas Freedom of Information Act (A.C.A. §25-19-101 et seq.). Only legally authorized photocopying costs pursuant to the FOIA may be assessed for this compliance.

§ 11.5.5 Changes, modifications or amendments. Changes, modifications or amendments in scope, price or fees to this Contract shall not be allowed without formal contract amendment approved by the Mayor and the City Council in advance of the change in scope, cost, fees, or delivery schedule.

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§ 12.1 This Agreement represents the entire and integrated agreement between the ~~Owner and the Construction Manager~~ City of Fayetteville and the Baldwin & Shell Construction Company and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both ~~Owner and Construction Manager~~ City of Fayetteville and Baldwin & Shell Construction Company.

...

- .1 AIA Document A133-2009, Standard Form of Agreement Between ~~Owner and Construction Manager~~ City of Fayetteville and Baldwin & Shell Construction Company as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price

...

OWNER CITY OF FAYETTEVILLE (Signature)

CONSTRUCTION MANAGER BALDWIN & SHELL  
CONSTRUCTION COMPANY (Signature)

Lioneld Jordan, Mayor  
*(Printed name and title)*

Patrick Tenney, Vice-President  
*(Printed name and title)*

ATTEST:

Sandra Smith, City Clerk

Debbie Pangle, Administrative Assistant