

AGREEMENT

BETWEEN CITY OF FAYETTEVILLE AND CONTRACTOR

THIS AGREEMENT is dated as of the ____ day of _____ in the year 2013 by and between the City of Fayetteville, Arkansas (hereinafter called CITY OF FAYETTEVILLE) and General Construction Solutions, Inc. (herein after called CONTRACTOR).

CITY OF FAYETTEVILLE and CONTRACTOR, in consideration of the mutual covenants hereinafter set forth, agree as follows:

Article 1. WORK.

CONTRACTOR shall complete all Work as specified or indicated in the Contract Documents.

The work generally consists of the replacement of an existing asphalt roadway/access drive, the installation of a pre-engineered arbor structure (provided by others), and the construction of a concrete and native stone slab, an 18-inch native stone seat wall, a colored concrete apron, ADA accessible parking, connecting sidewalks, tree planting and associated site work at **Mt. Sequoyah Gardens** and all items indicated in the Drawings and Specifications.

Article 2. PROJECT MANAGER.

The Project has been designed by

City of Fayetteville Parks and Recreation Department
1455 South Happy Hollow Road
Fayetteville, Arkansas 72701

will be hereinafter called PARKS AND RECREATION DEPARTMENT PROJECT MANAGER and who is to act as CITY OF FAYETTEVILLE's representative, assume all duties and responsibilities, and have the rights and authority assigned to PROJECT MANAGER in the Contract Documents in connection with completion of the Work in accordance with the Contract documents.

Article 3. CONTRACT TIME.

3.1. The Work for Construction of Mt. Sequoyah Gardens Improvements shall be substantially completed within 90 consecutive calendar days after the date when the Contract Time commences to run as provided in paragraph 2.03 of the General Conditions, and completed and ready for final payment in accordance with paragraphs 14.07.B & C of the General Conditions within 120 consecutive calendar days after the date when the Contract Time commences to run.

3.2. *Liquidated Damages.* CITY OF FAYETTEVILLE and CONTRACTOR recognize that time is of the essence of the Agreement and that CITY OF FAYETTEVILLE will suffer financial loss if the Work is not completed within the times specified in paragraph 3.1 above, plus and extensions thereof allowed in accordance with Article 12 of the General Conditions. They also recognize the delays, expense and difficulties involved in proving the actual loss suffered by CITY OF FAYETTEVILLE if the Work is not completed on time. Accordingly, instead of requiring any such proof, City of Fayetteville and

CONTRACTOR agree that as liquidated damages for delay (but not as a penalty) CONTRACTOR shall pay CITY OF FAYETTEVILLE Two hundred and fifty dollars (\$250.00) for each day that expires after the time specified in paragraph 3.1 for Substantial Completion until the Work is substantially complete. After Substantial Completion, if CONTRACTOR shall neglect, refuse or fail to complete the remaining Work within the time specified in paragraph 3.1 for completion and readiness for final payment or any proper extension thereof granted by CITY OF FAYETTEVILLE, CONTRACTOR shall pay CITY OF FAYETTEVILLE Two hundred and fifty dollars (\$250.00) for each day that expires after the time specified in paragraph 3.1 for completion and readiness for final payment.

Article 4. CONTRACT PRICE.

CITY OF FAYETTEVILLE shall pay CONTRACTOR for completion of the Work in accordance with the Contract Documents an amount in current funds equal to the sum of the amounts determined from the following Schedule of Values pursuant to paragraphs 4.1 and 4.2 below:

4.1. For all Work other than Unit Price Work, an amount equal to the sum of the established lump sums for each separately identified item of Lump Sum Work; and

4.2. For all Unit Price Work, an amount equal to the sum of the established unit price for each separately identified item of Unit Price Work times the estimated quantity of that item as indicated in this paragraph 4.2.

PAYMENT ITEMS

				General Construction Solutions, Inc.	
ITEM #	DESCRIPTION	UNIT	EST. QTY.	UNIT PRICE	TOTAL
1	Mobilization (not to exceed 5% of project bid)	L.S.	1	\$3,000.00	\$3,000.00
2	Bonds and insurance	L.S.	1	\$3,000.00	\$3,000.00
3	Demolition, removal and disposal of approx. 550 CF of existing asphalt driveway and approx. 1,915 CF of existing base	L.S.	1	\$5,460.00	\$5,460.00
4	Site preparation - including tree protection fencing, tree planking, straw wattle, straw bales and concrete washout	L.S.	1	\$5,850.00	\$5,850.00
5	1-1/4-inch Sch. 40 electrical conduit for future lighting - complete in place	L.F.	185	\$11.14	\$2,060.00
6	Unclassified excavation	C.Y.	60	\$16.25	\$975.00
7	Imported hillside	C.Y.	70	\$26.93	\$1,885.00
8	Class 7 base	TON	185	\$39.00	\$7,215.00
9	Five-foot wide fiber reinforced concrete sidewalk (4-inch thickness)	S.Y.	60	\$57.67	\$3,460.00
10	Concrete arbor slab (5-inch thickness)	S.Y.	25	\$137.40	\$3,435.00
11	Native flagstone for arbor slab	S.F.	215	\$9.74	\$2,095.00
12	Native stone wall (16-inch x 18-inch)	L.F.	32	\$187.19	\$5,990.00
13	Colored concrete apron	S.Y.	20	\$142.75	\$2,855.00
14	Installation of pre-engineered arbor (provided by others) - complete in place per details	L.S.	1	\$5,160.00	\$5,160.00
15	18-inch concrete flush curb (6-inch thickness)	S.Y.	75	\$50.40	\$3,780.00
16	6-inch concrete residential driveway approach - complete in place per details	S.F.	370	\$5.03	\$1,860.00
17	3-inch asphalt	S.Y.	320	\$16.88	\$5,400.00
18	6-inch concrete apron at north end of drive - complete in place per details	S.F.	160	\$3.28	\$525.00
19	6-inch standard concrete curb and gutter	L.F.	105	\$12.33	\$1,295.00
20	Parking striping and ADA symbol	L.S.	1	\$300.00	\$300.00
21	Bicycle rack - complete in place per details	EA.	1	\$975.00	\$975.00
22	Trees - complete in place per details including water	EA.	6	\$375.00	\$2,250.00
23	Site restoration - including 4-inch depth topsoil, wildflower seed, straw and water	S.F.	1,225	\$0.95	\$1,165.00
24	Site restoration - including 4-inch depth topsoil, buffalo grass seed, straw and water	S.F.	1,035	\$1.92	\$1,990.00
TOTAL BID AMOUNT					\$71,980.00

As provided in paragraph 11.03 of the General Conditions estimated quantities are not guaranteed, and determinations of actual quantities and classifications are to be made by PARKS AND RECREATION DEPARTMENT PROJECT MANAGER as provided in paragraph 9.08 of the General Conditions. Unit prices have been computed as provided in paragraph 11.03.B of the General Conditions.

Article 5. PAYMENT PROCEDURES

CONTRACTOR shall submit Applications for Payment in accordance with Article 14 of the General Conditions or as modified in the Supplementary Conditions. Applications for Payment will be processed by PARKS AND RECREATION DEPARTMENT PROJECT MANAGER as provided in the General Conditions.

5.1. *Progress Payments.* CITY OF FAYETTEVILLE shall make progress payments on account of the Contract Price on the basis of CONTRACTOR's Applications for Payment as recommended by PARKS AND RECREATION DEPARTMENT PROJECT MANAGER, on or about the 1st day of each month during construction as provided in paragraphs 5.1.1 and 5.1.2 below and SC-14.02 . All such payments will be measured by the schedule of values established in paragraph 2.07 of the General Conditions and based on the number of units completed in the case of Unit Price Work or, in the event there is no schedule of values, as provided in the General Requirements.

5.1.1. Prior to Substantial Completion, progress payments will be made in an amount equal to the percentage indicated below, but, in case, less the aggregate of payments previously made and less such amounts as PARKS AND RECREATION DEPARTMENT PROJECT MANAGER shall determine, or CITY OF FAYETTEVILLE may withhold, in accordance with paragraphs 14.02.B.5 & 14.02.D of the General Conditions.

95 percent of Work completed (with the balance of 5 percent being retainage), If Work has been 50 percent completed as determined by the PARKS AND RECREATION DEPARTMENT PROJECT MANAGER, and if the character and progress of the Work have been satisfactory to CITY OF FAYETTEVILLE and PARKS AND RECREATION DEPARTMENT PROJECT MANAGER, CITY OF FAYETTEVILLE, on recommendation of PARKS AND RECREATION DEPARTMENT PROJECT MANAGER, may determine that as long as the character and progress of the Work remain satisfactory to them, there will be no additional retainage on account of work completed, in which case the remaining progress payments prior to Substantial Completion will be in an amount equal to 100 percent of the Work completed.

100 percent of materials and equipment not incorporated in the Work but delivered, suitably stored, and accompanied by documentation satisfactory to CITY OF FAYETTEVILLE as provided in paragraphs 14.02.B.5 & 14.02.D of the General Conditions. That is, if any such items are setup for that type payment in the Specifications.

5.1.2. Upon Substantial Completion, in an amount sufficient to increase total payments to CONTRACTOR to 98 percent of the Contract Price (with the balance of 2 percent being retainage), less such amounts as PARKS AND RECREATION DEPARTMENT PROJECT MANAGER shall determine, or CITY OF FAYETTEVILLE may withhold, in accordance with paragraphs 14.02.B.5 & 14.02.D of the General Conditions.

5.2 *Final Payment.* Upon final completion and acceptance of the Work in accordance with paragraphs 14.07.B & C of the General Conditions, CITY OF FAYETTEVILLE shall pay

the remainder of the Contract Price as recommended by PARKS AND RECREATION DEPARTMENT PROJECT MANAGER as provided in said paragraphs 14.07.B & C.

Article 6. CONTRACTOR'S REPRESENTATIONS.

In order to induce CITY OF FAYETTEVILLE to enter into this Agreement CONTRACTOR makes the following representations:

6.1. CONTRACTOR has examined and carefully studied the Contract Documents (including the Addenda listed in Article 7) and the other related data identified in the Bidding Documents including "technical data."

6.2. CONTRACTOR has visited the site and become familiar with and is satisfied as to the general, local, and site conditions that may affect cost, progress, performance, or furnishing of the Work.

6.3. CONTRACTOR is familiar with and is satisfied as to all federal, state, and local Laws and Regulations that may affect cost, progress, performance, and furnishing of the Work.

6.4. CONTRACTOR has carefully studied all reports of explorations and tests of subsurface conditions at or contiguous to the site and all drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the site which have been identified in the Supplementary Conditions as provided in paragraph 4.02.A of the General Conditions. CONTRACTOR accepts the determination set forth in paragraph SC-4.02 of the Supplementary Conditions of the extent of the "technical data" contained in such reports and drawings upon which CONTRACTOR is entitled to rely as provided in paragraph 4.02 of the General Conditions.

CONTRACTOR acknowledges that such reports and drawings are not Contract Documents and may not be complete for CONTRACTOR's purposes. CONTRACTOR acknowledges that CITY OF FAYETTEVILLE and PARKS AND RECREATION DEPARTMENT PROJECT MANAGER do not assume responsibility for the accuracy or completeness of information and data shown or indicated in the Contract Documents with respect to Underground Facilities at or contiguous to the site. CONTRACTOR has obtained and carefully studied (or assumes responsibility for having done so) all such additional supplementary examinations, investigations, explorations, tests, studies, and data concerning conditions (surface, subsurface, and Underground Facilities) at or contiguous to the site or otherwise which may affect cost, progress, performance, or furnishing of the Work or which relate to any aspect of the means, methods, techniques, sequences, and procedures of construction to be employed by CONTRACTOR and safety precautions and programs incident thereto. CONTRACTOR does not consider that any additional examinations, investigations, explorations, tests, studies, or data are necessary for the performance and furnishing of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract Documents.

6.5. CONTRACTOR is aware of the general nature of work to be performed by CITY OF FAYETTEVILLE and others at the site that relates to the Work as indicated in the Contract Documents.

6.6. CONTRACTOR has correlated the information known to CONTRACTOR, information and observations obtained from visits to the site, reports and drawings identified in the

Contract Documents, and all additional examinations, investigations, explorations, tests, studies, and data with the Contract Documents.

6.7. CONTRACTOR has given PARKS AND RECREATION DEPARTMENT PROJECT MANAGER written notice of all conflicts, errors, ambiguities, or discrepancies that CONTRACTOR has discovered in the Contract Documents and the written resolution thereof by PARKS AND RECREATION DEPARTMENT PROJECT MANAGER is acceptable to CONTRACTOR and the Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

Article 7. CONTRACT DOCUMENTS

The Contract Documents which comprise the entire agreement between CITY OF FAYETTEVILLE and CONTRACTOR concerning the Work consist of the following:

- 7.1. This Agreement (pages 1 to 8, inclusive).
- 7.2. Performance and Payment Bonds, (Exhibits A and B respectively).
- 7.3. Certificates of Insurance, (Exhibit C).
- 7.4. Documentation submitted by CONTRACTOR prior to Notice of Selection (Exhibit D).
- 7.5. General Conditions (pages 1 to 42, inclusive).
- 7.6. Supplementary Conditions (pages 1 to 13 inclusive).
- 7.7. Specifications consisting of Divisions 1 through 32 as listed in table of contents thereof.
- 7.8. Addenda numbers 1 to 2, inclusive.
- 7.9. One set of drawings (not attached hereto) consisting of: a cover sheet and additional sheets numbered two through twelve with each sheet bearing the following general title: **Construction - Mt. Sequoyah Gardens Improvements.**
- 7.10. The following which may be delivered or issued after the Effective Date of the Agreement and are not attached hereto:
 - 7.10.1. Notice to Proceed
 - 7.10.2 All Written Amendments and other documents amending, modifying or supplementing the Contract Documents pursuant to paragraph 3.04 of the General Conditions.

The documents listed in paragraphs 7.2 et seq. above are attached to this Agreement (except as expressly noted otherwise above).

There are no Contract Documents other than those listed above in this Article 7. The Contract Documents may only be amended, modified or supplemented as provided in paragraph 3.04 of the General Conditions.

Article 8. MISCELLANEOUS.

8.1. Terms used in the Agreement which are defined in Article 1 of the General Conditions will have the meanings indicated in the General Conditions.

8.2. No assignment by a party hereto of any rights under or interests in the Contract Documents will be binding on another party hereto without the written consent of the party sought to be bound; and, specifically but without limitation, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

8.3. CITY OF FAYETTEVILLE and CONTRACTOR each binds itself, its partners, successors, assigns, and legal representatives to the other party hereto, its partners, successors, assigns, and legal representatives in respect to all covenants, agreements and obligations contained in the Contract Documents.

8.4. Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken and all remaining provisions shall continue to be valid and binding upon stricken provision or part thereof with a valid and enforceable provision that comes as close as possible expressing the intention of the stricken provision.

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

8.6. Freedom of Information Act. City contract and documents prepared while performing city contractual work are subject to the Arkansas Freedom of Information Act. If a Freedom of Information Act request is presented to the City of Fayetteville, CONTRACTOR 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.

8.7. **No liens against this construction project are allowed.** Arkansas law (A.C.A. §§ 18-44-501 through 508) prohibits the filing of any mechanics' or materialmen's liens in relation to this public construction project. Arkansas law requires and the Contractor promises to provide and file with the Circuit Clerk of Washington County a bond in a sum equal to the amount of this contract. Any subcontractor or materials supplier may bring an action for non-payment of labor or materials on the bond. The Contractor promises to notify every subcontractor and materials supplier for this project of this paragraph and obtain their written acknowledgement of such notice prior to commencement of the work of the subcontractor or materials supplier.

IN WITNESS WHEREOF, CITY OF FAYETTEVILLE and CONTRACTOR have signed this Agreement in duplicate. One counterpart each has been delivered to CITY OF FAYETTEVILLE and PARKS AND RECREATION DEPARTMENT PROJECT MANAGER, and one counterpart has been delivered to CONTRACTOR. All portions of the Contract Documents have been signed, initialed, or identified by CITY OF FAYETTEVILLE and CONTRACTOR or identified by PARKS AND RECREATION DEPARTMENT PROJECT MANAGER on their behalf.

This Agreement will be effective on _____, 2013 (which is the Effective Date of The Agreement).

CITY OF FAYETTEVILLE:

CONTRACTOR

By: _____
Mayor

By: 

[CORPORATE SEAL]

[CORPORATE SEAL]

Attest _____

*Attest 

* If a Corporation, attest by the Secretary.

Address for giving notices

Address for giving notices

(If CONTRACTOR is a corporation, attach evidence of authority to sign.)

The undersigned acting as incorporators of a corporation under the ARKANSAS BUSINESS CORPORATION ACT (ACT 958 OF 1987), adopt the following Articles of Incorporation of such Corporation:

First: The name of the Corporation is:
 GENERAL CONSTRUCTION SOLUTIONS, INC.

Must contain the words "Corporation", Incorporated", "Company", "Limited", or the abbreviation "Corp.", "Inc.", "Co.," or "Ltd." or words or abbreviations of like import in another language.

Second: The number of shares which the Corporation shall have the authority to issue is:

100 share(s).

The par value of each share is 1

The designation of each class, the number of shares of each class, or a statement that the shares of any class are without par value are as follows:

No. of Shares	Class	Series (if any)	Par Value Per Share Or Statement That Shares Are Without Par Value
100	A		\$1.00

Third: The street address of the initial registered office of this Corporation shall be located at:

Street Address 1695 ELECTRIC AVE.
City: SPRINGDALE
State: AR **ZIP:** 72764-

and the name of the initial registered agent of this Corporation at that address is:

WES TAYLOR

Fourth: The name and address of each Incorporator is as follows:

Name 1 WES TAYLOR

Address 1 1695 ELECTRIC AVE.,
SPRINGDALE, AR 72764

Name 2 DAVID FISHER

Address 2 PO BOX 570
BENTONVILLE, AR 72712

Name 3

Address 3

Fifth: The nature of the business of the Corporation and the object or purposes proposed to be transacted, promoted or carried on by it, are as follows:

- (a) The primary purpose of the Corporation shall be:
CONSTRUCTION.
- (b) To conduct any business enterprise not contrary to law.
- (c) To exercise all of the powers enumerated in Section 4-27-302 of the Arkansas Business Corporation Act.

Sixth: Executed this 25th day of January, 2010

Signature: DAVID FISHER

Title: INCORPORATOR
(Pres., other officer, Chairman of the Board or by
Incorporator pending elections of corporate officers)

Corporate Name: GENERAL CONSTRUCTION SOLUTIONS, INC.
Contact Person: WES TAYLOR
**Street Address or
P.O. Box Number** 1695 ELECTRIC AVE
City: SPRINGDALE
State: AR **ZIP:** 72764-
Telephone Number: 479-530-3577
E-mail Address: WTAYLOR@BASICCONSTRUCTION.US

DAVID FISHER
Signature of Incorporator, Officer or Agent for the Corporation

