

**BENTON CITY COUNCIL**

**May 24, 2021**

**6:00 PM**

**AGENDA**

- I. CALL TO ORDER Mayor Tom Farmer**
- II. INVOCATION Pastor Chris Threatt**
- III. PLEDGE OF ALLEGIANCE Council Member Donnor**
- IV. ROLL CALL City Clerk**
- V. APPROVAL OF MINUTES April 26, 2021  
Regular Meeting**

- VI. COMMUNITY SERVICES Council Member Reed**

**ORDINANCE NO. 11 OF 2021 (3<sup>RD</sup> READING)**

**AN ORDINANCE AMENDING ORDINANCE NO. 46 OF 2005, AS AMENDED BY ORDINANCE NO. 50 OF 2011, ESTABLISHING A ONE AND ONE-HALF PERCENT (1.50%) TAX UPON THE GROSS RECEIPTS OR PROCEEDS OF HOTELS, MOTELS, RESTAURANTS, CAFES, CAFETERIAS, AND SIMILAR BUSINESSES IN THE CITY OF BENTON, ARKANSAS, FOR ADVERTISING AND PROMOTING THE CITY; AND FOR OTHER PURPOSES**

- VII. NEW BUSINESS Council Member Knight**

**RESOLUTION NO. 48 OF 2021**

**A RESOLUTION AUTHORIZING THE CITY TO ENTER INTO A CONTRACT WITH EVERBRIDGE FOR THE PURCHASE OF A COMMUNICATION SYSTEM TO REACH THE CITIZENS OF BENTON AT A COST OF \$8,000; AND FOR OTHER PURPOSES**

- VIII. COMMITTEE REPORTS & MOTIONS**

- 1. FINANCE COMMITTEE Council Member Morrow**

**RESOLUTION NO. 49 OF 2021**

**A RESOLUTION AUTHORIZING THE CITY TO ENTER INTO A CONTRACT WITH THE SALINE COUNTY CAREER TECHNICAL CAMPUS FOR THE PLACEMENT OF ONE SCHOOL RESOURCE OFFICER WITHIN THE DISTRICT FOR A FIVE-YEAR PERIOD, BEGINNING WITH THE 2021-2022 SCHOOL YEAR; AND FOR OTHER PURPOSES**

**RESOLUTION NO. 50 OF 2021**

**A RESOLUTION AUTHORIZING THE CITY TO ENTER INTO A CONTRACT WITH THE BENTON SCHOOL DISTRICT FOR THE PLACEMENT OF SEVEN SCHOOL RESOURCE OFFICERS WITHIN THE DISTRICT; AND FOR OTHER PURPOSES**

**Council Member Hart**

**RESOLUTION NO. 51 OF 2021**

# A RESOLUTION EXPRESSING THE WILLINGNESS OF THE CITY OF BENTON TO UTILIZE FEDERAL AID RECREATIONAL TRAILS PROGRAM FUNDS

## RESOLUTION NO 52 OF 2021

**A RESOLUTION EXPRESSING THE WILLINGNESS OF THE CITY  
OF BENTON TO UTILIZE FEDERAL AID RECREATIONAL TRAILS  
PROGRAM FUNDS**

### Council Member Reed

**4. STREET & DRAINAGE COMMITTEE Council Member Hamm**

**ORDINANCE NO. 27 OF 2021**

**AN ORDINANCE ACCEPTING THE PUBLIC STREETS, UTILITIES,  
AND STORM DRAINAGE FOR MAINTENANCE WITHIN PHASE 1  
FIELDS AT HURRICANE LAKE; AND FOR OTHER PURPOSES**

**ORDINANCE NO. 28 OF 2021**

**AN ORDINANCE ACCEPTING THE PUBLIC STREETS, UTILITIES,  
AND STORM DRAINAGE FOR MAINTENANCE WITHIN PHASE 4  
RICHLAND HILLS SUBDIVISION; AND FOR OTHER PURPOSES**

**ORDINANCE NO. 29 OF 2021**

**AN ORDINANCE ACCEPTING THE PUBLIC STREETS, UTILITIES,  
AND STORM DRAINAGE FOR MAINTENANCE WITHIN PHASE 4C  
COLDWATER CREEK SUBDIVISION; AND FOR OTHER PURPOSES**

## RESOLUTION NO 53 OF 2021

**A RESOLUTION CALLING A PUBLIC HEARING TO HEAR THE PETITION OF BENTON UTILITIES TO ABANDON A STREET LOCATED ON DALE STREET INSIDE THE CITY OF BENTON; CALLING FOR PUBLIC NOTICE OF THE HEARING; AND FOR OTHER PURPOSES**

## 5. PERSONNEL/HEALTH & SAFETY COMMITTEE

### Council Member Donnor

**RESOLUTION NO. 54 OF 2021**

**A RESOLUTION AUTHORIZING THE CITY TO ENTER INTO SETTLEMENT AGREEMENTS WITH DENNIS MITCHELL AND ERNEST COPPOCK ARISING FROM OVERPAYMENTS ASSOCIATED WITH THEIR RETIREMENT; AND FOR OTHER PURPOSES**

6. PUBLIC UTILITIES COMMISSION Council Member Lee

**7. A&P COMMISSION** **Council Members Lee & Brown**

- |     |    |                 |                        |
|-----|----|-----------------|------------------------|
|     | 8. | IT COMMITTEE    | Council Member Brown   |
|     | 9. | P&Z COMMISSION  | Council Member Freeman |
| IX. |    | Old Business    |                        |
| X.  |    | Public Comments |                        |
| XI. |    | Adjourn         |                        |

**MINUTES OF THE BENTON CITY COUNCIL**  
**Regular Session**  
**April 26, 2021**  
**Benton Municipal Complex**

**The Benton City Council was called to order at 6:01 p.m.**

**The Mayor gave the invocation.**

**Council Member Hart led the pledge of allegiance.**

**Roll was called.**

**The following persons were in attendance:**

**Council Member Frank Baptist  
Council Member Robin Freeman  
Council Member Jeff Morrow  
Council Member Steve Lee  
Baxter Drennon, City Attorney  
Tom Farmer, Mayor**

**Council Member Steve Brown  
Council Member Bill Donnor  
Council Member Shane Knight  
Council Member Jeff Hamm  
Cindy Stracener, City Clerk**

**When roll was called nine (9) council members were present. Council Member Reed was absent. A quorum was declared.**

**Council Member Morrow made a motion to approve the March 22, 2021 council meeting minutes. Seconded by Council Member Lee. The Mayor called for a voice vote. All council members voted in the affirmative. The minutes were approved with 9 affirmative votes and 1 absent.**

**The next item on the agenda was committee reports and motions. Council Member Morrow was recognized for a report from the Finance Committee. Council Member Morrow made a motion to read and adopt Ordinance 15 of 2021 – An Ordinance Waiving Competitive Bidding and Approving the Purchase of a Camera Contract Through Bodyworn Utility; Declaring an Emergency; and For Other Purposes. Seconded by Council Member Lee. The ordinance was read by the city clerk. The Mayor asked for any comments, none. Roll was called which resulted in Council Member Baptist yes, Council Member Brown yes, Council Member Freeman yes, Council Member Reed absent, Council Member Donnor yes, Council Member Morrow yes, Council Member Hart yes, Council Member Knight yes, Council Member Lee yes, and Council Member Hamm yes. Ordinance 15 of 2021 was adopted with 9 affirmative votes and 1 absent vote. Council Member Morrow made a motion to adopt the emergency clause. Seconded by Council Member Hart. Roll was called which resulted in Council Member Baptist yes, Council Member Brown yes, Council Member Freeman yes, Council Member Reed absent, Council Member Donnor yes, Council Member Morrow yes, Council Member Hart yes, Council Member Knight yes, Council Member Lee yes, and Council Member Hamm yes. The emergency clause was adopted with 9 affirmative and 1 absent vote.**

**Council Member Morrow made a motion to read and adopt Ordinance 16 of 2021 – An Ordinance Authorizing an Actuarial Valuation of the Local Fire Pension That Consolidated into LOPFI; Declaring an Emergency; and For Other Purposes. Seconded by Council Member Knight. The ordinance was read by the city clerk. The Mayor asked for any comments, none. Roll was called which resulted in Council Member Baptist yes, Council Member Brown yes, Council Member Freeman yes, Council Member Reed absent, Council Member Donnor yes, Council Member Morrow yes, Council Member Hart yes, Council Member Knight yes, Council Member Lee abstained, and Council Member Hamm yes. Ordinance 16 of 2021 was adopted with 8 affirmative votes, 1 absent and 1 abstained vote. Council Member Morrow made a motion to adopt the emergency clause. Seconded by Council Member Knight. Roll was called which resulted in Council Member Baptist yes, Council Member Brown yes, Council Member Freeman yes, Council Member Reed absent, Council Member Donnor yes, Council Member Morrow yes, Council Member Hart yes, Council Member Knight yes, Council Member Lee abstained, and Council Member Hamm yes. The emergency clause was adopted with 8 affirmative, 1 absent and 1 abstained vote.**

**Council Member Morrow made a motion to read and adopt Ordinance 17 of 2021 – An Ordinance Authorizing Use of Restricted Funds; Declaring an Emergency; and For Other Purposes. Seconded by Council Member Knight. The ordinance was read by the city clerk. This was for additional rescue equipment for the fire department. The Mayor asked for any comments, none. Roll was called which resulted in Council Member Baptist yes, Council Member Brown yes, Council Member Freeman yes, Council Member Reed absent, Council Member Donnor yes, Council Member Morrow yes, Council Member Hart yes, Council Member Knight yes, Council Member Lee yes, and Council Member Hamm yes. Ordinance 17 of 2021 was adopted with 9 affirmative votes and 1 absent vote. Council Member Morrow made a motion to adopt the emergency clause. Seconded by Council Member Brown. Roll was called which resulted in Council Member Baptist yes, Council Member Brown yes, Council Member Freeman yes, Council Member Reed absent, Council Member Donnor yes, Council Member Morrow yes, Council Member Hart yes, Council Member Knight yes, Council Member Lee yes, and Council Member Hamm yes. The emergency clause was adopted with 9 affirmative and 1 absent vote.**

**Council Member Morrow made a motion to read and adopt Resolution 42 of 2021 – A Resolution Amending the 2021 Budget for the Cost of the Purchase of Rescue Equipment for the Fire Department; and For Other Purposes. Seconded by Council Member Lee. The resolution was read by the city clerk. The Mayor asked for any comments, none. Roll was called which resulted in Council Member Baptist yes, Council Member Brown yes, Council Member Freeman yes, Council Member Reed absent, Council Member Donnor yes, Council Member Morrow yes, Council Member Hart yes, Council Member Knight yes, Council Member Lee yes, and Council Member Hamm yes. Resolution 42 of 2021 was adopted with 9 affirmative votes and 1 absent vote.**

**Council Member Morrow made a motion to read and adopt Resolution 43 of 2021 – A Resolution Closing the Farmers Market Account at Arvest Bank and Depositing the Funds into the City of Benton General Fund; and For Other Purposes. Seconded by Council Member Lee. The resolution was read by the city clerk. The Mayor asked for any comments, none. Roll was called which resulted in Council Member Baptist yes, Council Member Brown yes, Council Member Freeman yes, Council Member Reed absent, Council**

**Member Donnor yes, Council Member Morrow yes, Council Member Hart yes, Council Member Knight yes, Council Member Lee yes, and Council Member Hamm yes. Resolution 43 of 2021 was adopted with 9 affirmative votes and 1 absent vote.**

**Council Member Morrow made a motion to read and adopt Resolution 44 of 2021 – A Resolution Closing the Regions Bond and Fine Bank Account and Opening an Account at First Security for the Bond and Fine Account; and For Other Purposes. Seconded by Council Member Lee. The resolution was read by the city clerk. The Mayor asked for any comments, none. Roll was called which resulted in Council Member Baptist yes, Council Member Brown yes, Council Member Freeman yes, Council Member Reed absent, Council Member Donnor yes, Council Member Morrow yes, Council Member Hart yes, Council Member Knight yes, Council Member Lee yes, and Council Member Hamm yes. Resolution 44 of 2021 was adopted with 9 affirmative votes and 1 absent vote.**

**Council Member Morrow made a motion to read and adopt Resolution 45 of 2021 – A Resolution Amending the 2021 Budget by Increasing the Expenditures for the Carryover of the Information Technology Project That Began in 2020; and For Other Purposes. Seconded by Council Member Lee. The resolution was read by the city clerk. The Mayor asked for any comments, none. Roll was called which resulted in Council Member Baptist yes, Council Member Brown yes, Council Member Freeman yes, Council Member Reed absent, Council Member Donnor yes, Council Member Morrow yes, Council Member Hart yes, Council Member Knight yes, Council Member Lee yes, and Council Member Hamm yes. Resolution 45 of 2021 was adopted with 9 affirmative votes and 1 absent vote.**

**Council Member Hart was recognized for a report from the Parks Committee. Council Member Hart made a motion to read and adopt Ordinance 18 of 2021 – An Ordinance Setting Temporary Discounted Programming Rates for Benton Parks and Recreation; Declaring an Emergency; and For Other Purposes. Seconded by Council Member Freeman. The ordinance was read by the city clerk. The Mayor stated this is an ordinance to promote the activities that we offer at the park. Hopefully by giving a discount more people will get involved in these various programs. The Mayor asked for any other comments, none. Roll was called which resulted in Council Member Baptist yes, Council Member Brown yes, Council Member Freeman yes, Council Member Reed absent, Council Member Donnor yes, Council Member Morrow yes, Council Member Hart yes, Council Member Knight yes, Council Member Lee yes, and Council Member Hamm yes. Ordinance 18 of 2021 was adopted with 9 affirmative and 1 absent vote. Council Member Hart made a motion to adopt the emergency clause. Seconded by Council Member Brown. Roll was called which resulted in Council Member Baptist yes, Council Member Brown yes, Council Member Freeman yes, Council Member Reed absent, Council Member Donnor yes, Council Member Morrow yes, Council Member Hart yes, Council Member Knight yes, Council Member Lee yes, and Council Member Hamm yes. The emergency clause was adopted with 9 affirmative and 1 absent vote.**

**Council Member Hart made a motion to read and adopt Ordinance 19 of 2021 – An Ordinance Setting Temporary Discounted Membership Rates for the River Center; Declaring an Emergency; and For Other Purposes. Seconded by Council Member Morrow. The ordinance was read by the city clerk. The Mayor stated we are hoping by giving this discount more people will sign up and join the River Center. Because of COVID we lost a lot**

of memberships and are hoping this encourages others to get back down there and start exercising again and taking advantage of that great facility. The Mayor asked for any comments. Barbara Elrod asked why was one ending July 31<sup>st</sup> and the other the end of the year. The Mayor stated one is a membership fee and the other is for programs. There are different programs in the fall than are in the summer so this way everyone gets the advantage of the discount throughout the year. Roll was called which resulted in Council Member Baptist yes, Council Member Brown yes, Council Member Freeman yes, Council Member Reed absent, Council Member Donnor yes, Council Member Morrow yes, Council Member Hart yes, Council Member Knight yes, Council Member Lee yes, and Council Member Hamm yes. Ordinance 19 of 2021 was adopted with 9 affirmative and 1 absent vote. Council Member Hart made a motion to adopt the emergency clause. Seconded by Council Member Morrow. Roll was called which resulted in Council Member Baptist yes, Council Member Brown yes, Council Member Freeman yes, Council Member Reed absent, Council Member Donnor yes, Council Member Morrow yes, Council Member Hart yes, Council Member Knight yes, Council Member Lee yes, and Council Member Hamm yes. The emergency clause was adopted with 9 affirmative and 1 absent vote.

Council Member Hart made a motion to read and adopt Resolution 46 of 2021 – A Resolution Authorizing the City to Enter into a Contract with American Fire Protection Group, Inc. for Providing Fire Sprinkler, Fire Alarm, and Fire Extinguisher Preventative Maintenance Services to the River Center; and For Other Purposes. Seconded by Council Member Knight. The resolution was read by the city clerk. The Mayor asked for any comments, none. Roll was called which resulted in Council Member Baptist yes, Council Member Brown yes, Council Member Freeman yes, Council Member Reed absent, Council Member Donnor yes, Council Member Morrow yes, Council Member Hart yes, Council Member Knight yes, Council Member Lee yes, and Council Member Hamm yes. Resolution 46 of 2021 was adopted with 9 affirmative and 1 absent vote.

Council Member Hart was recognized for a report from the Community Services/Animal Control Committee. Council Member Hart made a motion to read Ordinance 5 of 2021 – An Ordinance to Establish the Standards for the Creation of Permanent or Temporary Entertainment Districts Pursuant to Arkansas Code Section 14-54-1412; and For Other Purposes by title only. Seconded by Council Member Knight. Roll was called which resulted in Council Member Baptist yes, Council Member Brown yes, Council Member Freeman yes, Council Member Reed absent, Council Member Donnor yes, Council Member Morrow yes, Council Member Hart yes, Council Member Knight yes, Council Member Lee yes, and Council Member Hamm yes. Motion to read by title only was approved with 9 affirmative and 1 absent vote. The ordinance was read by title only. Baxter Drennon, City Attorney stated that AR Code 14-54-1412 sets out the procedure, the limitations or the allowances for an Arts and Entertainment District. The purpose by the Legislature was to give cities the freedom to create a specific zone in their city, they draw a map of where it is, where individuals can go from an arts or entertainment venue to venue with an open container. The requirements for a city or municipality to be able to do that are you have to have an A&P tax and you have to be in a county authorized to sell alcoholic beverages. Beyond that you have to be able to have a contiguous area that is typically zoned for commercial use. It has to have any number or combination of restaurants, entertainment establishments and those type things. So those are the requirements from the state to set out for the city to qualify for an Arts and Entertainment District. As of today, we meet those

requirements. From there what this ordinance does is it creates a procedure for the establishment of permanent arts and entertainment districts. To have a permanent district you have to have 3 or more private properties that are licensed for on-premise consumption by ABC, it has to be a contiguous area, we have to put up signs and ultimately it has to be approved by this council through ordinance for a permanent district. The ordinance should set out the specific days of the week and the times in which you can have open containers, there should be requirements for those participating in the district on how they are identified either by wristband or by cup to protect from somebody bringing in beverages from outside the establishments that are in the district. The big thing for this is that no permanent district can be created except by ordinance of the council. A temporary district is for someone who wants to have a festival or a district like this for a couple of days. It has to be in an area that has three or more properties to qualify, and they would go through a process of applying for a temporary district and it would go through the Community Development office. They would apply for a permit to do it, there would be approvals, notice to the police department, fire department and emergency services to clear the time so it wouldn't conflict with some other event and put a strain on our first responders. They would bring their application to Community Development; it would be recommended for approval from Community Development then it would have to come before council for a resolution to approve it. The expectation would be that they would have a map of the zone they going to mark it, and there is a way to identify either by wristband or cup. The bulk of the ordinance is for a temporary permit. There is also a process for an appeal if they are denied. The Chief of Police can suspend operation of any district if there is a public health or safety issue. These are being done in a number of cities and I am not aware of any problems anywhere else.

Council Member Morrow stated so this is just a procedure on how to set up an Arts and Entertainment District. Mr. Drennon stated yes. Council Member Morrow stated if a citizen asked why would we do something like this. He stated for him it was a matter of convenience. If you buy a beverage in an open container at a bar and hear live music just down the block, then this allows you to be able to walk outside toward that live music venue without having to dump or very quickly drink your beverage. Mr. Drennon stated that if you wanted to go from place to place if there was something at the Palace Theater and you wanted to have dinner at Little Italy, you could walk out of there with your drink. On Third Thursdays if you wanted to go from the food trucks to the beer garden you could do that. Or from the food trucks to Valhalla their outdoor area, then you could do that. Council Member Morrow stated that it was a matter of maneuvering in a district. Mr. Drennon stated there is currently an Arts and Entertainment at the Palace Theater, the outdoor area and it will remain in place unless a new district is passed to consume that. Council Member Hart asked if the A&P part could be explained. Mr. Drennon stated the Arkansas code section that allows the entertainment district, it specifically says that we have to have and levy a gross receipt tax on prepared food, beverages, and lodgings according to AR Code 25-75-602. The state code that allows the districts require that. Council Member Hart made a motion to adopt Ordinance 5 of 2021. Seconded by Council Member Hamm. Roll was called which resulted in Council Member Baptist yes, Council Member Brown yes, Council Member Freeman yes, Council Member Reed absent, Council Member Donnor yes, Council Member Morrow yes, Council Member Hart yes, Council Member Knight yes, Council Member Lee yes, and Council Member Hamm yes. Ordinance 5 of 2021 was adopted with 9 affirmative and 1 absent vote.



Council Member Hart made a motion for the second reading of Ordinance 11 of 2021 – An Ordinance Amending Ordinance 46 of 2005, as Amended by Ordinance 50 of 2011; Establishing a One and One-Half Percent (1.50%) Tax Upon the Gross Receipts or Proceeds of Hotels, Motels, Restaurants, Cafes, Cafeterias, and Similar Businesses in the City of Benton, Arkansas for Advertising and Promoting the City; and for Other Purposes by title only. Seconded by Council Member Brown. Roll was called which resulted in Council Member Baptist yes, Council Member Brown yes, Council Member Freeman yes, Council Member Reed absent, Council Member Donnor yes, Council Member Morrow yes, Council Member Hart yes, Council Member Knight yes, Council Member Lee yes, and Council Member Hamm yes. The motion to read by title only was approved with 9 affirmative and 1 absent vote. The ordinance was read by title only for its second reading. The Mayor stated that there has been a lot of confusion as to exactly what this pertains to. It basically pertains to any prepared food item that you would purchase at a restaurant, coffee shop, a hotel, or other places like that. It does not affect clothing, washing machines, dryers, or refrigerators. It is basically on prepared foods and hotel stays. We want to be transparent about it, we had the first reading last month, we just had the second reading by title only tonight and the third reading will be on the May agenda. Another public hearing will take place on May 17<sup>th</sup> at the Event Center. It has been publicized in the paper, on Facebook and is on several billboards. We are trying to get the word out to get as many people as possible to the next public hearing, so we can hear what the public has to say. We have heard the comments and some of the confusion that is out there. One thing we have heard is, but the old clause said sunset and it will. The A&P tax will sunset 30 days after the bonds are paid off. This one is to create not a new one but to extend another one to accommodate advertising and promotion for the City of Benton. It is an investment for the future by bringing in tourism for our city, whether it be a soccer complex or through a water park or through bike trails. We are trying to clarify, it is not a tax on anything but prepared food, beverages, and hotels. An example I heard the other day was a tournament team brought in their players to eat in one of our restaurants. It not only brings in dollars from our citizens but from outside from those who visit our city. It is an investment in our future. The Mayor asked for any comments. Tom Hanson, lives in Benton asked if Ordinance 11 of 2021 is a prerequisite for Ordinance 5 of 2021, establishing entertainment district. The Mayor stated that if we don't have an A&P tax then we cannot have an entertainment district. Barbara Elrod, lives in Benton thanked the council and Mayor for trying to get the information out there. At the last public hearing, I asked the council if they had contacted their constituents. Some of them had and some had not. I polled people in different places and there are still a lot of people out there who don't know about this. I don't know what the answer is, but I do appreciate your efforts and it just needs to be really talked up. Not everybody has or does Facebook or takes the Courier. Hopefully your efforts will help but there are still people out there who don't know that this is not a new tax but an extension. I am not against the tax just the way you are going about it. I feel like if you extend the tax that somebody voted on then they should have the ability to vote on whether they want the tax extended not just left up to ten people in our city. The Mayor stated that Council Member Freeman and Council Member Reed have set up a time to discuss this in their ward. Ms. Elrod suggested the rest of the council could also do that. She also asked why the tax had to be done right now since the tax is not going to sunset until after the Event Center is paid off. Could you not give yourself time to be able to get the information out to the people? The Mayor stated that the three-month process that we are going through and trying to get it out is trying to be as

transparent as we possibly can. If we extend it another month, I am afraid we still won't reach all the people. The Mayor asked for any other comments, none.

Council Member Hart made a motion to read Ordinance 20 of 2021 – An Ordinance Creating a New Nuisance Abatement Code, Setting; and For Other Purposes by title only. Seconded by Council Member Morrow. Roll was called which resulted in Council Member Baptist yes, Council Member Brown yes, Council Member Freeman yes, Council Member Reed absent, Council Member Donnor yes, Council Member Morrow yes, Council Member Hart yes, Council Member Knight yes, Council Member Lee yes, and Council Member Hamm yes. The motion to read by title only was approved with 9 affirmative and 1 absent vote. The ordinance was read by the city clerk by title only. The Mayor asked for any comments, none. Council Member Hart made a motion to adopt Ordinance 20 of 2021. Seconded by Council Member Knight. Roll was called which resulted in Council Member Baptist yes, Council Member Brown yes, Council Member Freeman yes, Council Member Reed absent, Council Member Donnor yes, Council Member Morrow yes, Council Member Hart yes, Council Member Knight yes, Council Member Lee yes, and Council Member Hamm yes. Ordinance 20 of 2021 was adopted with 9 affirmative and 1 absent vote. The ordinance will go in effect in 90 days.

Council Member Hart made a motion to read and adopt Resolution 47 of 2021 – A Resolution Exempting Friday, July 2, 2021, From Ordinance 29 of 2007; Providing for Fireworks Displays by Public Pursuant to Ordinance 32 of 2013 on the Same Date; and For Other Purposes. Seconded by Council Member Lee. The resolution was read by the city clerk. The Mayor asked for any comments, none. Roll was called which resulted in Council Member Baptist yes, Council Member Brown yes, Council Member Freeman yes, Council Member Reed absent, Council Member Donnor yes, Council Member Morrow yes, Council Member Hart yes, Council Member Knight yes, Council Member Lee yes, and Council Member Hamm yes. Resolution 47 of 2021 was adopted with 9 affirmative and 1 absent vote.

Council Member Hart made a motion to read and adopt Ordinance 21 of 2021 – An Ordinance Rezoning 3319 Military Road in the City of Benton, Saline County, Arkansas from R2 (Single-Family Residential) to C3 (Service Commercial); and For Other Purposes. Seconded by Council Member Morrow. The ordinance was read by the city clerk. The Mayor asked for any comments, none. Roll was called which resulted in Council Member Baptist yes, Council Member Brown yes, Council Member Freeman yes, Council Member Reed absent, Council Member Donnor yes, Council Member Morrow yes, Council Member Hart yes, Council Member Knight yes, Council Member Lee yes, and Council Member Hamm yes. Ordinance 21 of 2021 was adopted with 9 affirmative and 1 absent vote.

Council Member Hart made a motion to read and adopt Ordinance 22 of 2021 – An Ordinance Rezoning 712 & 730 S. Border Street in the City of Benton, Saline County, Arkansas from HI (Heavy Industrial) to R3 (Single Family Residential); and For Other Purposes. Seconded by Council Member Morrow. The ordinance was read by the city clerk. The Mayor asked for any comments, none. Roll was called which resulted in Council Member Baptist yes, Council Member Brown yes, Council Member Freeman yes, Council Member Reed absent, Council Member Donnor yes, Council Member Morrow yes, Council Member Hart yes, Council Member Knight yes, Council Member Lee yes, and Council

**Member Hamm yes. Ordinance 22 of 2021 was adopted with 9 affirmative and 1 absent vote.**

**Council Member Hart made a motion to read and adopt Ordinance 23 of 2021 – An Ordinance Rezoning a Certain Parcel on Silica Heights Road in the City of Benton, Saline County, Arkansas from AG (Agricultural) to C2 (General Commercial); and For Other Purposes. Seconded by Council Member Donnor. The ordinance was read by the city clerk. The Mayor asked for any comments, none. Roll was called which resulted in Council Member Baptist yes, Council Member Brown yes, Council Member Freeman yes, Council Member Reed absent, Council Member Donnor yes, Council Member Morrow yes, Council Member Hart yes, Council Member Knight yes, Council Member Lee yes, and Council Member Hamm yes. Ordinance 23 of 2021 was adopted with 9 affirmative and 1 absent vote.**

**Council Member Hart made a motion to read and adopt Ordinance 24 of 2021 – An Ordinance Rezoning a Certain Parcel on Silica Heights Road in the City of Benton, Saline County, Arkansas from R2 (Single Family Residential) to R5 (Multi-Family Residential); and For Other Purposes. Seconded by Council Member Donnor. The ordinance was read by the city clerk. The Mayor asked for any comments, none. Roll was called which resulted in Council Member Baptist yes, Council Member Brown yes, Council Member Freeman yes, Council Member Reed absent, Council Member Donnor yes, Council Member Morrow yes, Council Member Hart yes, Council Member Knight yes, Council Member Lee yes, and Council Member Hamm yes. Ordinance 24 of 2021 was adopted with 9 affirmative and 1 absent vote.**

**Council Member Hamm was recognized for a report from the Street & Drainage Committee. Council Member Hamm stated that he wanted to give kudos to the Street Department for what they are doing. Everybody is doing a great job and I want to encourage people in the community to let them know that pick up is available for limbs, leaves and that type thing. They just need to call Tanya in the Street Department to get a time set up.**

**Council Member Donnor was recognized for a report from the Personnel/Health & Safety Committee. Council Member Donnor made a motion to read and adopt Ordinance 25 of 2021 – An Ordinance to Combine the Positions of Permit Technician and City Clerk Assistant; Declaring an Emergency; and For Other Purposes. Seconded by Council Member Lee. The ordinance was read by the city clerk. The Mayor asked for any comments, none. Roll was called which resulted in Council Member Baptist yes, Council Member Brown yes, Council Member Freeman yes, Council Member Reed absent, Council Member Donnor yes, Council Member Morrow yes, Council Member Hart yes, Council Member Knight yes, Council Member Lee yes, and Council Member Hamm yes. Ordinance 25 of 2021 was adopted with 9 affirmative and 1 absent vote. Council Member Donnor made a motion to adopt the emergency clause. Seconded by Council Member Hart. Roll was called which resulted in Council Member Baptist yes, Council Member Brown yes, Council Member Freeman yes, Council Member Reed absent, Council Member Donnor yes, Council Member Morrow yes, Council Member Hart yes, Council Member Knight yes, Council Member Lee yes, and Council Member Hamm yes. The emergency clause was adopted with 9 affirmative and 1 absent vote.**

**Council Member Donnor made a motion to read and adopt Ordinance 26 of 2021 – An Ordinance to Combine the Positions of Recreation Programmer and Special Events Co-Coordinator; Declaring an Emergency; and For Other Purposes. Seconded by Council Member Baptist. The ordinance was read by the city clerk. The Mayor asked for any comments. A citizen asked what this person does. Daniel Baxley stated they handle all the recreational sports, softball, basketball, volleyball both adult and children. They also handle special events, dances, Princess in the park, Santa in the park and those such activities. The citizen asked will that not overwhelm this person. Mr. Baxley stated that there are four people in this position. The Mayor stated that we are continually adding offerings at the parks for the public. Roll was called which resulted in Council Member Baptist yes, Council Member Brown yes, Council Member Freeman yes, Council Member Reed absent, Council Member Donnor yes, Council Member Morrow yes, Council Member Hart yes, Council Member Knight yes, Council Member Lee yes, and Council Member Hamm yes. Ordinance 26 of 2021 was adopted with 9 affirmative and 1 absent vote. Council Member Donnor made a motion to adopt the emergency clause. Seconded by Council Member Brown. Roll was called which resulted in Council Member Baptist yes, Council Member Brown yes, Council Member Freeman yes, Council Member Reed absent, Council Member Donnor yes, Council Member Morrow yes, Council Member Hart yes, Council Member Knight yes, Council Member Lee yes, and Council Member Hamm yes. The emergency clause was adopted with 9 affirmative and 1 absent vote.**

**Council Member Donnor stated thank you to the Police Department. I was listening to the news the other day and Benton is #2 as the safest city in the state of Arkansas. And that is behind Rogers and Fort Smith, ones that we wanted to be like. Now they want to be like us. The Mayor stated that he wanted to echo what Council Member Donnor was saying. Thank you, Chief Hodges and your staff, for a job well done. It is just that we are #2, we need to be #1. We are not satisfied with status quo; we need to keep improving in all that we do. Great job, keep up the good work. Council Member Donnor stated thank you to your men and women on the street that are hitting it every day. I hear about all the reform stuff, standardized training that they want to change at other departments, but Benton already has all that. We are already ahead of the curve.**

**Council Member Lee was recognized for a report from the Public Utility Commission. Council Member Lee stated that he handed out the minutes from the last commission meeting which you can read at your leisure. See attached. Some work will be done in stages on the levies at the reservoir.**

**Council Member Lee was recognized for a report from the A&P Commission. Council Member Lee stated that a copy of the minutes from the April 14<sup>th</sup> commission meeting were distributed and they can be read at your leisure. The next commission meeting will be May 12, 2021 at 3:30 pm. See attached. Council Member Brown stated that at the last commission meeting the commission voted in support of the extension of the A&P tax.**

**Council Member Brown was recognized for a report from the IT Committee. He handed out a report containing the latest status of projects going on. See attached.**

**Council Member Freeman was recognized for a report from the Planning and Zoning Commission. She handed out her report. See attached.**

**The Mayor asked for any old business, new business, or public comments. None.**

**The Mayor stated that May 1<sup>st</sup> was 501 Day in the Central Arkansas area and volunteers would be cleaning up the city. Committee meetings will be held the week of May 9<sup>th</sup> through May 13<sup>th</sup>. On May 12<sup>th</sup> a retirement party will be held for Bill Ford at the Event Center. Another public hearing for the A&P tax will be held May 17<sup>th</sup>. Third Thursday will be held May 20<sup>th</sup> along with Champions Week in the city of Benton. The next council meeting will be May 24<sup>th</sup> and city hall will be closed May 31<sup>st</sup> for Memorial Day.**

**Ms. Elrod asked how many downtown businesses have alcohol permits at this time. Mr. Drennon stated four. She asked how many are required for the Entertainment District? Mr. Drennon stated three.**

**The meeting adjourned at 7:13 p.m.**

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**Cindy Stracener, City Clerk**

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**Tom Farmer, Mayor**

## **ORDINANCE NO. 11 OF 2021**

**AN ORDINANCE AMENDING ORDINANCE NO. 46 OF 2005, AS AMENDED BY ORDINANCE NO. 50 OF 2011, ESTABLISHING A ONE AND ONE-HALF PERCENT (1.50%) TAX UPON THE GROSS RECEIPTS OR PROCEEDS OF HOTELS, MOTELS, RESTAURANTS, CAFES, CAFETERIAS, AND SIMILAR BUSINESSES IN THE CITY OF BENTON, ARKANSAS, FOR ADVERTISING AND PROMOTING THE CITY; AND FOR OTHER PURPOSES.**

**WHEREAS**, in Ordinance No. 46 of 2005 and extended by Ordinance No. 50 of 2011, the City Council of the City of Benton, Arkansas, levied a tax of one and one-half percent (1.5%) upon the gross receipts or proceeds from hotels, motels, restaurants, cafes, cafeterias and similar businesses (the "Tax");

**WHEREAS**, by the terms of Ordinance No. 50 of 2011, the Tax will terminate at the time all bond indebtedness secured by such tax approved by the voters and issued by the City pursuant to Amendment No. 62 to the Arkansas Constitution has been paid or provision is made therefore;

**WHEREAS**, the Advertising & Promotion Commission of the City is responsible for the management of the revenue received from the Tax and for the management of the Benton Event Center, which was acquired, constructed, furnished, and equipped using bond indebtedness secured by such tax approved by the voters and issued by the City pursuant to Amendment No. 62 to the Arkansas Constitution has been paid or provision is made therefore;

**WHEREAS**, through the proper management of the Advertising & Promotion Commission it is anticipated that the bond indebtedness associated with the Benton Event Center will be eligible for payoff approximately six years earlier than anticipated; and

**WHEREAS**, the City Council has determined that there is an ongoing need to advertise and promote the City, to maintain the Benton Event Center, and to provide funding for the construction and operation of additional parks, recreation facilities.

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

**SECTION 1:** Section 10 of Ordinance No. 46 of 2005, as amended by Ordinance No. 50 of 2011 is hereby amended to read as follows:

SECTION 10. *Effective date of Tax; Termination.* The tax levied by this Ordinance shall be in full force and effect from and after the first day of January, 2006 and will remain in effect until December 31, 2041, or, in the event of the issuance of a bond by the City in accordance with Arkansas law, until all bond indebtedness secured by such tax has been paid or provision is made therefore, which ever occurs later.

If the tax levied by this Ordinance is to be abolished after all bond indebtedness secured by such tax has been paid or provision is made therefore, then it shall be abolished on the first date of the month after the occurrence of the following:

(a) The trustee certifies to the City in a written instrument filed in the office of the City Clerk that the trustee has or will have sufficient funds set aside to pay the principal of and interest on the bonded indebtedness when due at maturity or at redemption prior to maturity;

(b) The Mayor certifies in a written instrument filed in the office of the City Clerk that the tax levied by this Ordinance is not pledged to any other bonded indebtedness of the City; and

(c) The City Clerk publishes in a newspaper of general circulation in the City a notice stating that all bonded indebtedness secured by collections of the tax levied by this Ordinance has been paid or provision has been made therefor and that the tax levied by this Ordinance will terminate as provided herein.

**SECTION 2:** This Ordinance shall not take effect until the Advertising and Promotion Commission has created a plan in conjunction with the City Parks Department for the funding of the construction, reconstruction, repair, maintenance, improvement, equipping, operation of new or existing public recreation facilities or city parks.

**SECTION 3:** All other ordinances and parts thereof in conflict in whole or in part with any of the provisions of this Ordinance are hereby repealed to the extent of such conflicts.

**SECTION 4:** If any provision of this Ordinance or the application thereof to any person or circumstance is held to be invalid, such invalidity shall not affect the other provisions or applications of this Ordinance, which can be given effect without the invalid provisions or application, and to this end, the provisions of this Ordinance are hereby declared to be severable.

PASSED AND APPROVED this the \_\_\_\_\_ day of May, 2021.

\_\_\_\_\_  
Tom Farmer, Mayor

\_\_\_\_\_  
Cindy Stracener, City Clerk



**RESOLUTION NO. 48 OF 2021**

**A RESOLUTION AUTHORIZING THE CITY TO ENTER INTO A CONTRACT WITH EVERBRIDGE FOR THE PURCHASE OF A COMMUNICATION SYSTEM TO REACH THE CITIZENS OF BENTON AT A COST OF \$8,000; AND FOR OTHER PURPOSES**

**WHEREAS**, the City of Benton, Arkansas, wishes to enter into an agreement with Everbridge for the purchase of a communication system for the sum of \$8,000 a year for 3 years.

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

**SECTION 1:** The price of this communication system is \$8,000 a year for 3 years with a onetime set up fee added to the first year of \$640.00. This communication system will allow citizens to opt into alerts from any department that the City of Benton want/needs to send out to the citizens.

**SECTION 2:** The Mayor is hereby authorized to execute, on behalf of the City of Benton, Arkansas, a contract for the purchase with Everbridge and to execute such other documents as may be necessary and convenient to accomplish this purpose. The Mayor is likewise authorized to pay Everbridge for the purchase price of \$8,640.00. The contract is attached hereto as Exhibit 1.

PASSED AND APPROVED this the \_\_\_\_\_ day of May, 2021.

\_\_\_\_\_  
Tom Farmer, Mayor

\_\_\_\_\_  
Cindy Stracener, City Clerk



P.O. # 18696

nixe  
Everbridge acquired Nixe in 2014**Quotation****Prepared for:**

Toby Hirscheider  
City of Benton  
114 S. East St.  
Benton AR 72015  
United States  
Ph: 5013156008  
Fax:  
Email: toby.hirscheider@bentonar.org

**Quote #:** Q-70227  
**Date:** 5/4/2021  
**Expires On:** 5/7/2021  
**Confidential**

**Salesperson:** Lauren Hoover  
**Phone:**  
**Email:** lauren.hoover@everbridge.com

**Contract Summary Information:**

Contract Period: 36 Months

Note: \*\*Quantity on this quote represents the population count

## Year 1

QTY	DESCRIPTION	PRICE
35,679	Nixe 360	USD 7,560.00
1	Nixe Data Refresh	USD 440.00
Year 1 TOTAL:		USD 8,000.00

## Year 2

QTY	DESCRIPTION	PRICE
35,679	Nixe 360	USD 7,560.00
1	Nixe Data Refresh	USD 440.00
Year 2 TOTAL:		USD 8,000.00

## Year 3

QTY	DESCRIPTION	PRICE
35,679	Nixe 360	USD 7,560.00
1	Nixe Data Refresh	USD 440.00
Year 3 TOTAL:		USD 8,000.00

**Pricing Summary:**

Year One Fees:	USD 8,000.00
One-time Implementation and Setup Fees:	USD 640.00
Professional Services:	USD 0.00
<b>Total Year One Fees Due:</b>	<b>USD 8,640.00</b>

**Ongoing Fees:**

Year Two Fees:	USD 8,000.00
Year Three Fees:	USD 8,000.00

**Messaging Credit Allowance:**

Year One:	1,000,000
Year Two:	1,000,000
Year Three:	1,000,000

1. This Quote and the Service(s) provided are subject to the Everbridge, Inc. –Nixle Master Service Agreement (“Service Agreement”) executed concurrently with this Quote.
2. Messaging Credits listed above can be used for Notifications and expire at the end of each year. Consumption of Messaging Credits in excess of these amounts in any year will incur additional charges.
3. Subject to sales taxes where applicable.
4. Except for currency designation, the supplemental notes below, if any, supplied in this Quote are for informational purposes and not intended to be legally binding or override the language of the Service Agreement.

Authorized by Everbridge:

Signature:

Date:

\_\_\_\_\_

Name (Print):

Title:

\_\_\_\_\_

\_\_\_\_\_

To accept this quote, sign, date and return:

Signature:

Date:

\_\_\_\_\_

Name (Print):

Title:

\_\_\_\_\_

\_\_\_\_\_

155 North Lake Avenue, Suite 900  
Pasadena, CA 91101 USA  
Tel: +1-818-230-9700  
Fax: +1-818-230-9505

THANK YOU FOR YOUR BUSINESS!



## Everbridge – Nixle Master Services Agreement

This Master Services Agreement ("**Agreement**") is entered into by and between Everbridge, Inc. ("**Everbridge**"), and City of Benton, AR ("**Client**"), effective on the date of Client's signature below ("**Effective Date**"). Everbridge and Client are each sometimes referred to as a "**Party**" and collectively, the "**Parties**."

### 1. SERVICES.

**1.1 Orders.** Everbridge shall provide Client access to its proprietary interactive communication service(s) (the "**Service(s)**") subject to the terms and conditions set forth in this Agreement and the description of services and pricing provided in the applicable quote (the "**Quote**") and the applicable Solution documentation (the "**Documentation**"). If applicable, Everbridge shall provide the training and professional services set forth in the Quote. Everbridge shall provide Client with login and password information for each User (as defined below) and will configure the Solutions based on the maximum number of Contacts (as defined below) or Users, as applicable depending on the Solutions ordered. Client shall undergo the initial setup and training as set forth in the onboarding Documentation within sixty (60) days of the Effective Date. Unless otherwise provided in the applicable Quote or Documentation, Services are purchased as annual subscriptions.

**1.2 Users; Contacts.** "**Users**" are individuals who are authorized by Client from time to time to use the Solutions for the purposes of sending notifications, configuring templates, reporting or managing data, serving as system administrators, or performing similar functions, and who have been supplied user identifications and passwords by Client. Users may include employees and contractors of Client or an Included Department. "**Included Department**" means any enterprise department, office, agency, or other entity that receives a majority of its funding from the same general or enterprise fund, as applicable, as the Client. "**Contacts**" are individuals who Client contacts through the Solutions and/or who provides their personal contact information to Everbridge, including through an opt-in portal. If applicable to the particular Solution, the number of Users and/or Contacts that may be authorized by Client is set forth on the Quote.

**1.3 Affiliated Entities.** Departments, divisions, agencies or governmental entities which are affiliated politically, operationally or otherwise with Client, and which are not an Included Department (each, an "**Affiliated Entity**") may purchase Services to the same extent as Client, provided, that the Affiliated Entity purchases the Services on the same terms and conditions as are contained in this Agreement pursuant to a fully executed Quote agreed to by Everbridge and such Affiliated Entity. Client and the Affiliated Entity shall maintain separate accounts with Everbridge. Solely as to the Agreement between Everbridge and such Affiliated Entity, all terms and references to "Client" shall refer to such Affiliated Entity upon execution of an applicable Quote. By executing a Quote each Affiliated Entity agrees to be bound by all the terms and conditions herein as to such Affiliated Entity. An entity that otherwise qualifies under this definition will be included within the meaning of Affiliated Entity even though it qualifies after the execution of this Agreement.

**2. PAYMENT TERMS.** Everbridge shall invoice Client annually in advance for the Services, and Client shall pay the fees set forth in the Quote within thirty (30) days from date of invoice. If Client exceeds any role-based numbers, messaging credits or other

usage levels specified in the Quote, then Everbridge may invoice Client for any overages at the then applicable rate. Late payments shall accrue interest at a rate of one and one-half percent (1.5%) per month or the highest rate allowed by applicable law, whichever is lower. Such interest shall be in addition to any other rights and remedies of Everbridge. Unless otherwise provided, the fees set forth in the Quote do not include any local, state, federal or foreign taxes, levies or duties of any nature, all of which Client is responsible for paying, except for those relating to Everbridge's net income or property. If Everbridge is legally obligated to collect or pay taxes for which Client is responsible, the appropriate amount shall be invoiced to and paid by Client, unless Client provides a valid tax exemption certificate.

### 3. RESPONSIBILITIES.

**3.1 Client Data.** Client shall retain all ownership rights in all Contact data and all electronic data Client transmits to Everbridge to or through the Services ("**Client Data**"). Client represents that it has the right to authorize and hereby does authorize Everbridge to collect, store and process Client Data subject to the terms of this Agreement. Client shall maintain a copy of all Contact data it provides to Everbridge.

**3.2 Use of Services.** Client is responsible for all activity occurring under Client's account(s) and shall comply with all applicable Privacy Laws (as defined below) and all other applicable U.S. laws and regulations in connection with Client's use of the Services, including its provision of Client Data to Everbridge. Client shall be responsible for ensuring that there is a lawful basis for sending communications through the Solutions to Contacts including, where applicable, obtaining the required consent of Contacts. Client shall use the Services in accordance with Everbridge's then applicable Acceptable Use Policy posted on [www.everbridge.com](http://www.everbridge.com). Client shall promptly notify Everbridge of any unauthorized use of any password or account of which Client becomes aware. Client acknowledges that the Services are a passive conduit for the transmission of Client Data, and Everbridge has no obligation to screen, preview or monitor content, and shall have no liability for any errors or omissions or for any defamatory, libelous, offensive or otherwise unlawful content in any Client Data, or for any losses, damages, claims, or other actions arising out of or in connection with any data sent, accessed, posted or otherwise transmitted via the Services by Client, Users or Contacts, except to the extent such losses are caused directly by the acts or omissions of Everbridge personnel.

**3.3 Data Privacy.** Everbridge shall abide by all applicable Privacy Laws in connection with the operation of the Services. "**Privacy Laws**" means all U.S. federal and state laws and regulations regarding consumer and data protection and privacy.

**3.4 Data Security.** Everbridge's IT security and compliance program includes the following standards generally adopted by industry leading SaaS providers: (i) reasonable and appropriate technical, organizational, and security measures against the destruction, loss, unavailability, unauthorized access or alteration of Client Data in the possession or under the control of Everbridge, including measures to ensure the availability of information following interruption to, or failure of, critical business processes; and (ii) an annual assessment of its security controls performed by an accredited third party audit firm in accordance with the Statement on Standards for Attestation Engagements No. 18 (SSAE 18). Upon request, Everbridge shall provide Client with a copy of its current SSAE 18 SOC 2 report. Everbridge's security

framework is based on the security requirements and controls within US National Institute of Standards and Technology (NIST) Special Publication 800-53 – Security and Privacy Controls for Information Systems and Organizations. The NIST 800-53 security requirement standard has direct mapping to other security and data privacy frameworks, including global information security standard ISO 27001, HIPAA-HITECH, and HITRUST.

**4. TERM.** The term of this Agreement shall begin on the Effective Date and shall expire when all underlying Quotes with Client or its Affiliates have expired in accordance with the terms of such Quotes, unless terminated earlier as provided herein. Services under an applicable Quote will begin as set forth in such Quote and shall continue for the initial term specified therein ("Initial Service Term"). If a Quote contains Services added to an existing subscription, such added Services will be coterminous with the Initial Service Term or applicable renewal Service term ("Renewal Term"), unless otherwise agreed to by the Parties. Client shall be notified at least sixty (60) days in advance of any Renewal Term. If at the end of the applicable Quote, Client intends to renew the Agreement, but has not provided a timely executed written renewal prior to the end of such term, then Everbridge, in its sole discretion, shall continue the Service(s) hereunder for thirty (30) days (the "Grace Period") in order to secure an executed renewal by Client, provided that Client shall pay to Everbridge the annual fee then in effect divided by twelve (12) (the "Monthly Holdover Fee"). The Grace Period is provided to Client as a courtesy so that Services will not be terminated prior to the execution of a renewal. Due to insurance and liability reasons Everbridge can only provide one Grace Period and will charge the Monthly Holdover Fee. The Monthly Holdover Fee is instituted in order to protect Client from termination or suspension of the Services, and to ensure that timely renewals are entered into. Monthly Holdover Fees shall not be returned or refunded to the Client as a credit towards any renewal. Except as set forth in an applicable Quote, or unless this Agreement is terminated as provided herein, upon expiration of the term of any Quote, such Quote shall renew automatically for successive subsequent periods of twelve (12) months unless either party notifies the other party of its intent to terminate at least thirty (30) days prior to the end of the then current term. Everbridge reserves the right to increase its fees in any Renewal Term by three percent (3%).

## **5. TERMINATION; SUSPENSION.**

**5.1 Termination by Either Party.** Either Party may terminate this Agreement upon the other Party's material breach of this Agreement, provided that (i) the non-breaching Party sends written notice to the breaching Party describing the breach in reasonable detail; (ii) the breaching Party does not cure the breach within thirty (30) days following its receipt of such notice (the "Notice Period"); and (iii) following the expiration of the Notice Period, the non-breaching Party sends a second written notice indicating its election to terminate this Agreement. If Client terminates this Agreement due to material breach by Everbridge, Client shall be entitled to a refund of any prepaid unused fees on a pro-rata basis, provided that such refund shall be Client's sole and exclusive remedy.

**5.2 Termination or Suspension for Non-Payment.** If Client fails to pay any amounts due within thirty (30) days of their due date, Everbridge may terminate this Agreement upon thirty (30) days' prior written notice to Client. Termination for non-payment shall not relieve Client of its outstanding obligations (including payment) under this Agreement. In lieu of termination for non-payment, Everbridge may suspend Client's access to the Solutions upon written notice to Client.

**5.3 Suspension.** Everbridge may temporarily suspend Client's access to the Solutions or any portion thereof for (i) emergency network repairs, threats to, or actual breach of network security; or (ii) any legal, regulatory, or governmental prohibition affecting the Solution. Everbridge shall use its best efforts to notify Client through its Client Portal and/or via email prior to such suspension and shall reactivate any affected portion of the Service as soon as possible.

## **6. PROPRIETARY RIGHTS.**

**6.1 Grant of License.** Subject to the terms and conditions of this Agreement, Everbridge hereby grants to Client, during the term of this Agreement, a limited, non-exclusive, non-transferable, non-sublicensable right to use the Service.

**6.2 Restrictions.** Client shall use the Service solely for its internal business purposes. In particular, Client's use of the Solutions shall not include service bureau use, outsourcing, renting, reselling, sublicensing, or time-sharing. Client shall not (i) sell, transfer, assign, distribute or otherwise commercially exploit or make available to any third party the Services except as expressly set forth herein; (ii) modify or make derivative works based upon the Services; (iii) reverse engineer the Solution; (iv) remove, obscure or alter any proprietary notices or labels on the Software or any materials made available by Everbridge; (v) use, post, transmit or introduce any device, software or routine (including viruses, worms or other harmful code) which interferes or attempts to interfere with the operation of the Solution; or (vi) defeat or attempt to defeat any security mechanism of any Solution.

**6.3 Reservation of Rights.** The Solutions (including all associated computer software (whether in source code, object code, or other form), databases, indexing, search, and retrieval methods and routines, HTML, active server pages, intranet pages, and similar materials) and all intellectual property and other rights, title, and interest therein (collectively, "IP Rights"), whether conceived by Everbridge alone or in conjunction with others, constitute Confidential Information and the valuable intellectual property, proprietary material, and trade secrets of Everbridge and its licensors and are protected by applicable intellectual property laws of the United States and other countries. Everbridge owns (i) all voluntary feedback regarding the design or operation of the Services (except for the Client Data) provided to Everbridge by Users, Client and Contacts in conjunction with the Services, and (ii) all aggregated and anonymized transactional, performance, derivative data and metadata generated in connection with the Solutions, which are generally used to improve the functionality and performance of the Services. Except for the rights expressly granted to Client in this Agreement, all rights in and to the Solutions and all of the foregoing elements thereof (including the rights to any work product resulting from Professional Services and to any modification, enhancement, configuration or derivative work of the Solutions) are and shall remain solely owned by Everbridge and its respective licensors. Everbridge may use and provide Solutions and Professional Services to others that are similar to those provided to Client hereunder, and Everbridge may use in engagements with others any knowledge, skills, experience, ideas, concepts, know-how and techniques used or gained in the provision of the Solutions or Professional Services to Client, provided that, in each case, no Client Data or Client Confidential Information is disclosed thereby.

## **7. CONFIDENTIAL INFORMATION.**

**7.1 Definition.** "Confidential Information" means all information of a Party ("Disclosing Party") disclosed to the other

Party ("Receiving Party"), whether orally, electronically, in writing, or by inspection of tangible objects (including, without limitation, documents or prototypes), that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure. Confidential Information includes without limitation, all Client Data, the Solutions, and either Party's business and marketing plans, technology and technical information, product designs, reports and business processes. Confidential Information shall not include any information that: (i) is or becomes generally known to the public without breach of any obligation owed to Disclosing Party; (ii) was known to Receiving Party prior to its disclosure by Disclosing Party without breach of any obligation owed to Disclosing Party; (iii) was independently developed by Receiving Party without breach of any obligation owed to Disclosing Party; or (iv) is received from a third party without breach of any obligation owed to Disclosing Party.

**7.2 Protection.** Receiving Party shall not disclose or use any Confidential Information of Disclosing Party for any purpose other than performance or enforcement of this Agreement without Disclosing Party's prior written consent. If Receiving Party is compelled by law to disclose Confidential Information of Disclosing Party, including under the Freedom of Information Act or other public information request (i.e., "state sunshine" laws) it shall provide Disclosing Party with prior notice of such compelled disclosure (to the extent legally permitted) and reasonable assistance, at Disclosing Party's cost, if Disclosing Party wishes to contest the disclosure. Receiving Party shall protect the confidentiality of Disclosing Party's Confidential Information in the same manner that it protects the confidentiality of its own confidential information of like kind (but in no event using less than reasonable care). Receiving Party shall promptly notify Disclosing Party if it becomes aware of any breach of confidentiality of Disclosing Party's Confidential Information.

**7.3 Upon Termination.** Upon any termination of this Agreement, the Receiving Party shall continue to maintain the confidentiality of the Disclosing Party's Confidential Information and, upon request and to the extent practicable, destroy all materials containing such Confidential Information. Notwithstanding the foregoing, either Party may retain a copy of any Confidential Information if required by applicable law or regulation, in accordance with internal compliance policy, or pursuant to automatic computer archiving and back-up procedures, subject at all times to the continuing applicability of the provisions of this Agreement.

## **8. WARRANTIES; DISCLAIMER.**

**8.1 Everbridge Warranty.** Everbridge shall provide the Services in material compliance with the functionality and specifications set forth in the applicable Service Documentation. Everbridge shall provide 24X7X365 customer support in accordance with its most recently published Support Services Guide. To the extent professional services are provided, Everbridge shall perform them in a professional manner consistent with industry standards. THE FOREGOING REPRESENT THE ONLY WARRANTIES MADE BY EVERBRIDGE HEREUNDER, AND EVERBRIDGE EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW.

**8.2 Disclaimer.** EVERBRIDGE DOES NOT WARRANT THAT THE SOLUTION WILL OPERATE ERROR FREE OR

WITHOUT INTERRUPTION. WITHOUT LIMITING THE FOREGOING, IN NO EVENT SHALL EVERBRIDGE HAVE ANY LIABILITY FOR PERSONAL INJURY (INCLUDING DEATH) OR PROPERTY DAMAGE ARISING FROM FAILURE OF THE SERVICE TO DELIVER AN ELECTRONIC COMMUNICATION, HOWEVER CAUSED AND UNDER ANY THEORY OF LIABILITY, EVEN IF EVERBRIDGE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE.

**8.3 SMS Transmission.** CLIENT ACKNOWLEDGES THAT THE USE OF SHORT MESSAGING SERVICES ("SMS"), ALSO KNOWN AS TEXT MESSAGING, AS A MEANS OF SENDING MESSAGES INVOLVES A REASONABLY LIKELY POSSIBILITY FROM TIME TO TIME OF DELAYED, UNDELIVERED, OR INCOMPLETE MESSAGES AND THAT THE PROCESS OF TRANSMITTING SMS MESSAGES CAN BE UNRELIABLE AND INCLUDE MULTIPLE THIRD PARTIES THAT PARTICIPATE IN THE TRANSMISSION PROCESS, INCLUDING MOBILE NETWORK OPERATORS AND INTERMEDIARY TRANSMISSION COMPANIES. ACCORDINGLY, EVERBRIDGE RECOMMENDS THAT SMS MESSAGING NOT BE USED AS THE SOLE MEANS OF COMMUNICATION IN AN EMERGENCY SITUATION.

## **9. INDEMNIFICATION.**

**9.1 By Client.** To the extent allowed by Arkansas law, Client shall defend, indemnify and hold Everbridge harmless against any loss or damage (including reasonable attorneys' fees) incurred in connection with any third party claim, suit or proceeding ("Claim") against Everbridge arising out of any data sent, posted or otherwise transmitted via the Service by Client or Contacts, or any breach by Client of Sections 3 or 6.

**9.2 By Everbridge.** Everbridge shall defend, indemnify and hold Client harmless from and against any Claim against Client arising out of (i) any breach by Everbridge of applicable Privacy Laws; (ii) any breach by Everbridge of its data security obligations under Section 3.4; or (iii) an allegation that the Solution as contemplated hereunder infringes an issued patent or other IP Right in a country in which the Solution is provided to Client. If (x) any aspect of the Service is found or, in Everbridge's reasonable opinion is likely to be found, to infringe upon the IP Right of a third party or (y) the continued use of the Service is enjoined, then Everbridge will promptly and at its own cost and expense at its option: (i) obtain for Client the right to continue using the Service; (ii) modify such aspect of the Service so that it is non-infringing; or (iii) replace such aspect of the Service with a non-infringing functional equivalent. If, after all commercially reasonable efforts, Everbridge determines in good faith that options (i) - (iii) are not feasible, Everbridge will remove the Infringing items from the Service and refund to Client on a pro-rata basis any prepaid unused fees paid for such Infringing element. The remedies set forth in this Section 9.2 are Client's exclusive remedy for Claims for infringement of an IP Right. Everbridge shall have no obligation or liability for any claim pursuant to this Section to the extent arising from: (i) the combinations, operation, or use of the Service supplied under this Agreement with any product, device, or software not supplied by Everbridge to the extent the combination creates the infringement; (ii) the unauthorized alteration or modification by Client of the Service; or (iii) Everbridge's compliance with Client's designs, specifications, requests, or instructions pursuant to an engagement for Everbridge Professional Services relating to the Service to the extent the claim of infringement is based on the foregoing.

**9.3 Indemnification Process.** The indemnifying party's obligations under this Section 9 are contingent upon the

indemnified party (a) promptly giving notice of the Claim to the indemnifying party once the Claim is known; (b) giving the indemnifying party sole control of the defense and settlement of the Claim (provided that the indemnifying party may not settle such Claim unless such settlement unconditionally releases the indemnified party of all liability and does not adversely affect the indemnified party's business or service); and (c) providing the indemnifying party all available information and reasonable assistance.

**10. LIABILITY LIMITS.** To the maximum extent permitted by law, neither Party shall have any liability to the other Party for any indirect, special, incidental, punitive, or consequential damages, however caused, under any theory of liability, and whether or not the Party has been advised of the possibility of such damage. Except for its indemnification obligations under Section 9.2, notwithstanding anything in this Agreement to the contrary, in no event shall Everbridge's aggregate liability, regardless of whether any action or claim is based on warranty, contract, tort or otherwise, exceed amounts paid or due by Client to Everbridge hereunder during the 12-month period prior to the event giving rise to such liability. The foregoing limitations shall apply even if the non-breaching party's remedies under this Agreement fail their essential purpose.

**11. INSURANCE.** Everbridge will maintain during the term of this Agreement the following coverages: (i) General Liability insurance, with liability limits of at least \$5,000,000; (ii) Network Technology/Cyber Liability coverage with limits of at least \$5,000,000; and (iii) workers' compensation insurance as required by the state or local law in which the work is performed. Upon request by Client, Everbridge shall provide Client a certificate of insurance evidencing such coverages.

## **12. MISCELLANEOUS.**

**12.1 Non-Solicitation.** As additional protection for Everbridge's proprietary information, for so long as this Agreement remains in effect, and for one year thereafter, Client agrees that it shall not, directly or indirectly, solicit, hire or attempt to solicit any employees of Everbridge; provided, that a general solicitation to the public for employment is not prohibited under this section.

**12.2 Force Majeure; Limitations.** Everbridge shall not be responsible for performance under this Agreement to the extent precluded by circumstances beyond Everbridge's reasonable control, including without limitation acts of God, acts of government, flood, fire, earthquakes, civil unrest, acts of terror, labor problems, regional technology interruptions, or denial of service attacks. The Service delivers information for supported Contact paths to public and private networks and carriers, but Everbridge cannot guarantee delivery of the information to the recipients. Final delivery of information to recipients is dependent on and is the responsibility of the designated public and private networks or carriers.

**12.3 Waiver; Severability.** The failure of either Party hereto to enforce at any time any of the provisions or terms of this Agreement shall in no way be considered to be a waiver of such provisions. If any provision of this Agreement is found by any court or other authority of competent jurisdiction to be invalid, illegal or unenforceable, that provision shall, to the extent required, be deemed deleted or revised, and the remaining provisions shall continue in full force and effect to the maximum extent possible so as to give effect to the intent of the Parties.

**12.4 Assignment.** Neither party may assign this Agreement to any third party except upon the other Party's prior written consent, which consent shall not be unreasonably withheld

or delayed; provided, that no such consent shall be required in the event of an assignment to an Affiliated Entity or to a successor-in-interest to the business of the assigning Party resulting from a merger, reorganization, or sale of all or substantially all such Party's assets. Notwithstanding the above, neither Party shall assign this Agreement to any third party which is a competitor of the other Party.

**12.5 Governing Law; Attorney's Fees.** This Agreement shall be governed and construed in accordance with the laws of the State of Arkansas, without regard to its conflicts of laws rules. The U.N. Convention on Contracts for the International Sale of Goods shall not apply. The prevailing party in any action arising out of this Agreement shall be entitled to its reasonable attorneys' fees and costs.

**12.6 Notices.** Legal notices (e.g., claimed breach or termination) to be provided under this Agreement shall be delivered in writing (a) in person, (b) by nationally recognized overnight delivery service, or (c) by U.S. certified or first class mail to the other party as set forth on the signature page hereto. All legal notices shall be deemed to have been given upon receipt or, if under (c), three (3) business days after being deposited in the mail. Either party may change its address by giving notice of the new address to the other party pursuant to this Section and identifying the effective date of such change. Everbridge may provide all other notices to Client's billing contact on the Client Registration Form or, with respect to availability, upgrades or maintenance of the Services, to the Everbridge Support Center.

**12.7 Marketing.** Client consents to Everbridge referencing Client's name as an Everbridge Client in Everbridge publications, its website, and other marketing materials.

**12.8 Equal Employment Opportunity.** Everbridge, Inc. is a government contractor and is subject to the requirements of Executive Order 11246, the Rehabilitation Assistance Act and VEVRAA. Pursuant to these requirements, the Equal Opportunity Clauses found at 41 Code of Federal Regulations sections 60-1.4(a) (1-7), sections 60-250.4(a-m), sections 60-300.5 (1-11) and sections 60-741.5 (a) (1-6) are incorporated herein by reference as though set forth at length, and made an express part of this Agreement.

**12.9 Export Compliant.** Neither Party shall export, directly or indirectly, any technical data acquired from the other pursuant to this Agreement or any product utilizing any such data to any country for which the U.S. Government or any agency thereof at the time of export requires an export license or other governmental approval without first obtaining such license or approval. Client shall not permit Users to send notifications to a Contact in a U.S. embargoed country or in violation of any U.S. export law or regulation.

**12.10 U.S. Government End-Users.** The Solutions and related documentation are "commercial items" as defined at 48 C.F.R. 2.101, consisting of "commercial computer software" and "commercial computer software documentation" as such terms are used in 48 C.F.R. 12.212. Consistent with 48 C.F.R. 12.212 and 48 C.F.R. 227.7202-1 through 227.7202-4, U.S. government customers and end-users acquire licenses to the Solutions and related documentation with only those rights set forth herein.

**12.11 General.** This Agreement, including its Exhibits and any Quote, constitutes the entire agreement between the Parties and supersedes all other agreements and understandings between the Parties, oral or written, with respect to the subject matter hereof, including any confidentiality agreements. This Agreement shall not be modified or amended except by a writing



signed by both Parties. ANY NEW TERMS OR CHANGES INTRODUCED IN A PURCHASE ORDER OR OTHER DOCUMENT ARE VOID AND OF NO FORCE OR EFFECT. EVERBRIDGE'S ACKNOWLEDGEMENT OF RECEIPT OF SUCH DOCUMENT OR ACCEPTANCE OF PAYMENT SHALL NOT CONSTITUTE AGREEMENT TO ANY TERMS OTHER THAN THOSE SET FORTH IN THIS AGREEMENT. There are no third party beneficiaries to this Agreement. Any right, obligation or condition that, by its express terms or nature and context is intended to survive the termination or expiration of this Agreement, shall survive any such termination or expiration hereof. This

Agreement, and any other document referencing and governed by this Agreement may be executed in one or more counterparts, each of which shall be deemed an original but which together shall constitute the same agreement. Each Party agrees to be bound by its digital or electronic signature, whether transmitted by fax machine, in the form of an electronically scanned image (e.g., in .pdf form), by email, or by other means of e-signature technology, and each Party agrees that it shall accept the signature of the other Party transmitted in such a manner.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives.


<p><b>EVERBRIDGE, INC.</b></p> <p>By: _____          Print Name: _____          Title: _____          Date: _____</p> <p>Address:          25 Corporate Drive          Burlington, Massachusetts 01803</p> <p><b>For legal notice:</b>          Attention: Legal Department</p> <p>  <small>By: Suzanne Goldberg          2:07 pm, May 04, 2021</small></p>	<p><b>CLIENT:</b> _____</p> <p>By: _____          Print Name: _____          Title: _____          Date: _____</p> <p><b>Client's Address:</b>          _____          _____          _____</p> <p>Attn: _____</p> <p><b>Address for Legal Notice:</b>          _____          _____          _____</p> <p>Attn: _____</p>
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EXHIBIT A  
Additional Business Terms

*The following additional business terms are incorporated by reference into the Agreement as applicable based on the particular products and services described on the Quote.*

**Nixle® Branded Products:**

1. Client grants to Everbridge a non-exclusive, royalty free, worldwide and perpetual right and license (including sublicense) to (a) use, copy, display, disseminate, publish, translate, reformat and create derivative works from communications Client sends through the Service or [www.nixle.com](http://www.nixle.com) for public facing communications to citizens and other public groups (collectively, "Communications"), (b) use and display Client's trademarks, service marks and logos, solely as part of Communications to Contacts or to and on other websites where Everbridge displays your Communications, and for marketing the Services, and (c) place a widget on Client's website in order to drive Contact registrations. Client further acknowledges and agrees that all personal information from public users registering through the Nixle branded websites is owned expressly by Everbridge and such information will be governed by the Privacy Policy.

**Nixle® Branded or Everbridge Suite Products:**

1. **Messaging Credits.** The Solutions include units of usage ("Messaging Credits") for communications sent by Client through the Solutions to multiple Contacts via one or more communication paths ("Notifications"). No Messaging Credits shall be required to send Notifications by push notification (Everbridge mobile application), by email or by pager. If Client's use of the Solutions exceeds the amount of Messaging Credits allocated to the account or previously purchased, Client shall pay for such overages and charges back to the date they were incurred. Unused Messaging Credits expire at the end of the annual billing period under the applicable Quote and are not refundable. Additional Messaging Credits may be purchased separately.
2. **Usage.** Messaging Credits shall be applied per Notification sent by Client through the Solutions. A single Notification is defined as follows:
  - a. SMS Text messages:
    - i. For messages that contain only GSM characters, each 153 characters or portion thereof.
    - ii. For messages that contain any non-GSM characters, each 67 characters or portion thereof.
    - iii. GSM characters include only characters in the GSM 7-bit default alphabet.
    - iv. Character limits for SMS Text messages are determined by telecommunication providers. Everbridge reserves the right to change the length of a single SMS Text message if telecommunication providers update these amounts.
  - b. Voice messages or Conference Voice: One minute or portion of a minute of the voice message, calculated on a cumulative basis per month, per destination country.
  - c. TTY: One minute per TTY message.
  - d. Fax: Per page transmitted.
3. **Role-based Limits.** If Client exceeds any role-based limits (such as the number of Contacts, Resolvers or authorized users of a Solution) set forth on the applicable Quote, Client shall pay for such additional role-based numbers as of the date that the overage began. Payment shall be at the role-based number rate in the Quote and shall be paid for the duration of the term of such Quote.
4. **Other Usage Limits.** If the applicable Quote sets forth any geographic, departmental, entity-based or other limitation on usage of the Solutions, then Client's use of the Solutions is expressly limited to Contacts who are based in such geographic area, department or entity or who otherwise meet the usage limitation criteria specified in the Quote. Client's use of the Solutions with any Contacts who are not included within such limitations shall constitute a material default under this Agreement and shall subject such Client to additional charges for such unauthorized usage.
5. **Data Feeds.** Client shall not use any automated device, computer program, software, tool, algorithm, bot or similar process to mine or systematically scrape or extract data from any of the products, except as authorized in writing by Everbridge. Notwithstanding anything to the contrary in this Agreement, to the extent that Client has purchased or accesses Data Feeds, the content such feeds are provided solely on an "AS IS" and "AS AVAILABLE" basis and Everbridge disclaims any and all liability of any kind or nature resulting from (a) any inaccuracies or failures with respect to such Data Feeds or (b) any actions taken by Client as a result of its use of the Solutions or its content. All Data Feeds are provided solely as a convenience and do not constitute an endorsement by Everbridge. The sole and exclusive remedy for any failure, defect, or inability to access the content of such Data Feed shall be to terminate the Data Feed with no further payments due. "Data Feed" means data content or websites licensed or provided by third parties to Everbridge and supplied to Client in connection with the Solution (e.g., real time weather system information and warnings, 911 data, third party maps, and situational intelligence) or publicly-available information that Client accesses on the Internet while using the Services. Clients purchasing Visual Command Center or Signal products further agree that they will comply with the Data Feed Terms and Conditions found at <https://www.everbridge.com/wp-content/uploads/Data-Feed-Terms-and-Conditions-Oct-2019.pdf>.

6. **Incident Management/IT Alerting.** If a Client is purchasing the Incident Management or IT Alerting Solution, (a) Clients may only designate the number of Users set forth on the Quote, and such individuals shall only have the access rights pursuant to such designation and role; (b) "Incident Administrators" are authorized by Client as an administrator for the Incident Management or IT Alerting Solution components and are typically responsible for the configuration of IT Alerting as well as managing and reporting on Incidents ; (c) "Incident Operators" are authorized by Client as an operator of the Incident Management or IT Alerting Solution and are typically responsible for launching/managing Incidents; and (d) "Group Managers" shall have the ability to build, manage and/or participate in on-call schedules to receive IT related notifications. Everbridge may limit or throttle Client's automated use of the Incident Management or IT Alerting Solution in order to protect the stability and security of the Solution.
1. **Secure Messaging.** If a Client is purchasing peer to peer secure messaging solutions ("**Secure Messaging**"), Everbridge shall comply with all applicable privacy laws, including the Health Insurance Portability and Accountability Act of 1996 ("**HIPAA**"), the Health Information Technology for Economic and Clinical Health Act ("**HITECH Act**"), the Gramm-Leach-Bliley Act, and the Fair Credit Reporting Act, as applicable based on solution purchased. Our Secured Messaging products for healthcare are subject to our Business Associate Agreement, available at <https://www.everbridge.com/wp-content/uploads/2015/07/Business-Associate-Form-lkd-v1-7.7.15.pdf>, which is incorporated and made a part of this Agreement. Client acknowledges and agrees that Secure Messaging solutions are intended to deliver non-critical, non-emergency messages between users as a convenience to facilitate communications and are not intended for or suitable for use in situations where a failure or time delay of, or errors or inaccuracies in, the content, data or information provided through the services could lead to death, personal injury or property damage. The P2P Solutions are provided on an "AS IS" and "AS AVAILABLE" basis. Technical difficulties or failures may occur at any time, and the solutions are used at your sole risk. The sole remedy for a failure of the P2P Solution is to terminate such services with no further payments due.

EXHIBIT B  
IPAWS- CMAS/WEA Addendum

*This addendum is incorporated by reference into the Agreement as applicable based on the purchase of IPAWS-CMAS/WEA services on the Quote.*

1. **IPAWS Authorization.** Client represents and warrants to Everbridge that any employee, agents, or representatives of Client who access IPAWS-OPEN using Client's credentials provided by FEMA (each, an "IPAWS User"), are authorized by FEMA to use IPAWS-OPEN, have completed all required training, and Client has executed an IPAWS Memorandum of Agreement ("MOA") with FEMA. Client shall contact Everbridge immediately upon any change in Client or any IPAWS User's right to access IPAWS-OPEN. Client shall only access IPAWS-OPEN using its designated credentials and FEMA issued digital certificate ("Digital Certificate"). Client acknowledges and agrees that Everbridge shall not have access to its credentials and that Client assumes full responsibility for maintaining the confidentiality of any credentials issued to it. Client shall be solely responsible for any and all claims, damages, expenses (including attorneys' fees and costs) that arise from any unauthorized use or access to IPAWS-OPEN.
2. **Credentials.** Client shall load and maintain within its Everbridge account Organization, its Digital Certificate, COG ID, and Common Name. Client authorizes and requests Everbridge to use the foregoing stored information to connect Client to IPAWS-OPEN.
3. **Messaging.** Client acknowledges and agrees that: (i) upon submission of messages to IPAWS-OPEN, Everbridge shall have no further liability for the distribution of such message, and that the distribution through IPAWS-OPEN, including, but not limited to, delivery through the Emergency Alert System or the Commercial Mobile Alert System, is in no way guaranteed or controlled by Everbridge; (ii) Everbridge shall not be liable as a result of any failure to receive messages distributed through IPAWS-OPEN; (iii) IPAWS may include additional features not supported through the Everbridge system, and Everbridge shall not be required to provide such additional features to Client; and (iv) Client shall be solely responsible and liable for the content of any and all messages sent through IPAWS-OPEN utilizing its access codes.
4. **Term.** Client acknowledges and agrees that access to IPAWS-OPEN shall be available once Client has provided Everbridge with the Digital Certificate and any other reasonably requested information to verify access to the system. Upon termination of the Agreement access to IPAWS-OPEN shall immediately terminate. In addition, Everbridge may immediately terminate, without liability, access to IPAWS-OPEN, if Client breaches this Addendum, the MOA, or FEMA changes the IPAWS-OPEN system so that it materially change the business terms and/or feasibility for Everbridge to provide such access.

**RESOLUTION NO. 49 OF 2021**

**A RESOLUTION AUTHORIZING THE CITY TO ENTER INTO A CONTRACT WITH THE SALINE COUNTY CAREER TECHNICAL CAMPUS FOR THE PLACEMENT OF ONE SCHOOL RESOURCE OFFICER WITHIN THE DISTRICT FOR A FIVE-YEAR PERIOD, BEGINNING WITH THE 2021-2022 SCHOOL YEAR; AND FOR OTHER PURPOSES**

**WHEREAS**, the City of Benton, Arkansas, and Saline County Career Technical Campus desire to enter into an agreement for the placement of one (1) school resource officer for a five-year period beginning with the 2021-2022 school year; and

**WHEREAS**, it has been determined that it is in the best interest of the city and the local students to enter into this agreement.

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

**SECTION 1:** The Mayor or his designee is hereby authorized to execute, on behalf of the City of Benton, a contract with the Saline County Career Technical Campus for the placement of one school resource officer for a five-year period beginning with the 2021-2022 school year. The contract is attached hereto as Exhibit 1.

PASSED AND APPROVED this the \_\_\_\_\_ day of May, 2021.

\_\_\_\_\_  
Tom Farmer, Mayor

\_\_\_\_\_  
Cindy Stracener, City Clerk



**Saline County Career Technical Campus & Benton Police Department**  
**(Memorandum of Understanding for School Resource Officer Staffing)**

**A. Purpose:**

The purpose of this Memorandum of Understanding (hereinafter "MOU") is to establish an agreement between the Benton Police Department (hereinafter "BNPD") and the Saline County Career Technical Campus (hereinafter "CTC") on the collaborative funding of a School Resource Officer (hereinafter "SRO") for a five-year period, beginning with the 2021 – 22 school year.

**B. Objectives:**

It is intended that the BNPD and CTC will work together to provide one (1) SRO yearly for the CTC. An Officer at this location is a tremendous benefit to both parties. The SRO's out of school assigned duties will be tailored by the BNPD.

**C. Funding:**

Effective July 1, 2022; CTC agrees to refund a total of \$64,284 to the BNPD for the second year, \$65,924 for the third year, \$67,565 for the fourth year, and \$69,203 for the fifth year, which will help to offset the cost to the BNPD to provide an SRO to the CTC per year at 191 days during each year of this agreement. The CTC will be billed quarterly, beginning in July of each year.

**D. Hiring Process:**

The Assistant Vice Chancellor of the CTC will accept recommendations from the BNPD Chief of Police for candidates to hire for the SRO position. The CTC will work in conjunction with the BNPD Chief of Police to select the appropriate SRO candidate.

**E. Points of Contact:**

BNPD – Chief of Police at 501-776-5983  
CTC – Assistant Vice Chancellor 501-332-0264

**F. Term of Agreement:**

The terms of this agreement are from the date of execution listed below to be revisited in April of each year in the future. Cancellation of this agreement must be given in writing by either party, a minimum of thirty (30) days in advance. Failure of either party to fulfill the terms of this MOU would result in immediate termination of the agreement. Notification of any funding reductions would be given by the CTC thirty (30) days prior to any position being eliminated

when possible. However, should either Party submit a cancellation of this agreement or the MOU be terminated for any and all reasons, the unpaid cost of the first year shall be submitted for payment with equal annual payments, to be paid in full, by July 1, 2025.

**G. Signature Section:**

***Saline County Career Technical Campus, Board Chairman***

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

Signature: \_\_\_\_\_

***Saline County Career Technical Campus, Assistant Vice Chancellor***

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

Signature: \_\_\_\_\_

***Benton Police Department, Chief of Police***

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

Signature: \_\_\_\_\_

***City of Benton, Mayor***

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

Signature: \_\_\_\_\_

**Date of Agreement Execution: \_\_\_\_\_**

**RESOLUTION NO. 50 OF 2021**

**A RESOLUTION AUTHORIZING THE CITY TO ENTER  
INTO A CONTRACT WITH THE BENTON SCHOOL  
DISTRICT FOR THE PLACEMENT OF SEVEN SCHOOL  
RESOURCE OFFICERS WITHIN THE DISTRICT; AND  
FOR OTHER PURPOSES**

**WHEREAS**, the City of Benton, Arkansas, and the Benton School District desire to enter into an agreement for the placement of seven (7) school resource officers for the 2021-2022 school year; and

**WHEREAS**, it has been determined that it is in the best interest of the city and the local students to enter into this agreement.

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

**SECTION 1:** The Mayor or his designee is hereby authorized to execute, on behalf of the City a contract with the Benton School District for the placement of seven school resource officers for the 2021-2022 school year. The contract is attached hereto as Exhibit 1.

PASSED AND APPROVED this the \_\_\_\_\_ day of May, 2021.

\_\_\_\_\_  
Tom Farmer, Mayor

\_\_\_\_\_  
Cindy Stracener, City Clerk





# **Benton School District & Benton Police Department**

## **(Memorandum of Understanding for School Resource Officer Staffing)**

### **A. Purpose:**

The purpose of this Memorandum of Understanding (hereinafter "MOU") is to establish an agreement between the Benton Police Department (hereinafter "BNPD") and the Benton School District (hereinafter "BSD") on the collaborative funding of School Resource Officers (hereinafter "SRO") for the 2021 – 2022 school year.

### **B. Objectives:**

It is intended that the BNPD and BSD will work together to provide seven (7) SRO's yearly for the school district. These Officers are a tremendous benefit to both parties. The SRO's out of school assigned duties will be tailored to provide services to students of the school district outside of the school setting.

### **C. Funding:**

Effective July 1, 2021; BSD agrees to refund a total of \$322,840 to the BNPD yearly, which will help to offset the cost to the BNPD to provide seven (7) SRO's to the BSD per year at 191 days each during this agreement. The BSD requests that the BNPD bill the district quarterly, beginning in July of each year.

### **D. Hiring Process:**

The superintendent of schools will accept recommendations from the BNPD Chief of Police for candidates to hire for each SRO position. The BSD will work in conjunction with the BNPD Chief of Police to select final candidates for recommendation to the school board. Upon final candidate selection, the Director of Human Resources will make a recommendation to the superintendent and the board for hiring approval.

### **E. Points of Contact:**

BNPD – Chief of Police at 501-776-5983

BSD – Superintendent of Schools 501-776-5717

**F. Term of Agreement:**

The terms of this agreement are from the date of execution listed below to be revisited in April of each year in the future. Cancellation of this agreement must be given in writing by either party a minimum of thirty (30) days in advance. Failure of either party to fulfill the terms of this MOU would result in immediate termination of the agreement. If funding is eliminated or reduced by state or federal reductions, or unforeseen circumstances, the last SRO position added and each position subsequently, would be reduced accordingly. Notification of any funding reductions would be given by the BSD thirty (30) days prior to any positions being eliminated when possible.

**G. Signature Section:**

***Benton School District, School Board President***

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

Signature: \_\_\_\_\_

***Benton School District, Superintendent of Schools***

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

Signature: \_\_\_\_\_

***Benton Police Department, Chief of Police***

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

Signature: \_\_\_\_\_

***City of Benton, Mayor***

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

Signature: \_\_\_\_\_

**Date of Agreement Execution:** \_\_\_\_\_

**RESOLUTION NO. 51 OF 2021**

**A RESOLUTION EXPRESSING THE WILLINGNESS OF THE  
CITY OF BENTON TO UTILIZE FEDERAL AID  
RECREATIONAL TRAILS PROGRAM FUNDS**

**WHEREAS**, the City Council of the City of Benton, Arkansas, understands that Federal Aid Transportation Alternatives Program Funds are available at 80% federal participation and 20% local match to develop or improve natural surface biking and walking trails along the Saline River.

**WHEREAS**, the City understands that Federal Aid Transportation Alternatives Program Funds are available for this project on a reimbursable basis, requiring work to be accomplished and proof of payment prior to actual monetary reimbursement, and

**WHEREAS**, this project, using federal funding, will be open and available for use by the general public and maintained by the applicant for the life of the project.

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

**SECTION 1.** The City of Benton will participate in accordance with its designated responsibilities including maintenance of this project.

**SECTION 2.** Tom Farmer, Mayor, or his designee is hereby authorized and directed to execute all appropriate agreements and contracts necessary to expedite the construction of this city project.

**SECTION 3.** The City of Benton City Council pledges its full support and hereby authorizes the Arkansas State Highway and Transportation Department to initiate action to implement this project.

THIS RESOLUTION adopted this \_\_\_\_\_ day of May, 2021.

\_\_\_\_\_  
Tom Farmer, Mayor

\_\_\_\_\_  
Cindy Stracener, City Clerk

**RESOLUTION NO 52 OF 2021**

**A RESOLUTION EXPRESSING THE WILLINGNESS OF THE  
CITY OF BENTON, ARKANSAS TO UTILIZE FEDERAL AID  
RECREATIONAL TRAILS PROGRAM FUNDS**

**WHEREAS**, the City Council of City of Benton, Arkansas, understands that Federal Aid Recreational Trails Program Funds are available at 80% federal participation and 20% local match to develop or improve natural surface biking and walking trails along the Saline River;

**WHEREAS**, the City understands that Federal Aid Recreational Trails Program Funds are available for this project on a reimbursable basis, requiring work to be accomplished and proof of payment prior to actual monetary reimbursement; and

**WHEREAS**, this project, using federal funding, will be open and available for use by the general public and maintained by the applicant for the life of the project.

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

**SECTION 1.** The City of Benton will participate in accordance with its designated responsibilities including maintenance of this project.

**SECTION 2.** Tom Farmer, Mayor, or his designee, is hereby authorized and directed to execute all appropriate agreements and contracts necessary to expedite the construction of this city project.

**SECTION 3.** The City Council of the City of Benton, Arkansas, pledges its full support and hereby authorizes the Arkansas State Highway and Transportation Department to initiate action to implement this project.

THIS RESOLUTION adopted this \_\_\_\_\_ day of May, 2021.

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Tom Farmer, Mayor

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Cindy Stracener, City Clerk

**ORDINANCE NO. 27 OF 2021**

**AN ORDINANCE ACCEPTING THE PUBLIC STREETS,  
UTILITIES, AND STORM DRAINAGE FOR MAINTENANCE  
WITHIN PHASE 1 FIELDS AT HURRICANE LAKE; AND FOR  
OTHER PURPOSES**

**WHEREAS**, the City of Benton, Arkansas, desires to accept the public streets, utilities, and storm drains of Phase 1 Fields at Hurricane Lake, which is within the Hurricane Lake Subdivision for maintenance by the City.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF  
THE CITY OF BENTON, ARKANSAS:**

**SECTION 1:** That the presently existing public streets, city utilities, and storm drains within Phase 1 Fields at Hurricane Lake, within the Hurricane Lake Subdivision, an Addition to the City of Benton, Arkansas, be and are hereby accepted for maintenance by the City of Benton, Arkansas.

Passed and Approved this \_\_\_\_ day of May, 2021.

\_\_\_\_\_  
Tom Farmer, Mayor

\_\_\_\_\_  
Cindy Stracener, City Clerk

DESIGNATED FOR PUBLICATION

**ORDINANCE NO. 28 OF 2021**

**AN ORDINANCE ACCEPTING THE PUBLIC STREETS,  
UTILITIES, AND STORM DRAINAGE FOR MAINTENANCE  
WITHIN PHASE 4 RICHLAND HILLS SUBDIVISION; AND FOR  
OTHER PURPOSES**

**WHEREAS**, the City of Benton, Arkansas, desires to accept the public streets, utilities, and storm drains of Phase 4 Richland Hill Subdivision for maintenance by the City.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF  
THE CITY OF BENTON, ARKANSAS:**

**SECTION 1:** That the presently existing public streets, city utilities, and storm drains within Phase 4 Richland Hills, within the Richland Hills Subdivision, an Addition to the City of Benton, Arkansas, be and are hereby accepted for maintenance by the City of Benton, Arkansas.

Passed and Approved this \_\_\_\_ day of May, 2021.

\_\_\_\_\_  
Tom Farmer, Mayor

\_\_\_\_\_  
Cindy Stracener, City Clerk

DESIGNATED FOR PUBLICATION

**ORDINANCE NO. 29 OF 2021**

**AN ORDINANCE ACCEPTING THE PUBLIC STREETS,  
UTILITIES, AND STORM DRAINAGE FOR MAINTENANCE  
WITHIN PHASE 4C COLDWATER CREEK SUBDIVISION; AND  
FOR OTHER PURPOSES**

**WHEREAS**, the City of Benton, Arkansas desires to accept the public streets, utilities, and storm drains of Phase 4C Coldwater Creek Subdivision for maintenance by the City.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF  
THE CITY OF BENTON, ARKANSAS:**

**SECTION 1:** That the presently existing public streets, city utilities, and storm drains within Phase 4C Coldwater Creek, within the Coldwater Creek Subdivision, an Addition to the City of Benton, Arkansas, be and are hereby accepted for maintenance by the City of Benton, Arkansas.

Passed and Approved this \_\_\_\_ day of May, 2021.

\_\_\_\_\_  
Tom Farmer, Mayor

\_\_\_\_\_  
Cindy Stracener, City Clerk

DESIGNATED FOR PUBLICATION

**RESOLUTION NO 53 OF 2021**

**A RESOLUTION CALLING A PUBLIC HEARING TO HEAR  
THE PETITION OF BENTON UTILITIES TO ABANDON A  
STREET LOCATED ON DALE STREET INSIDE THE CITY OF  
BENTON; CALLING FOR PUBLIC NOTICE OF THE HEARING;  
AND FOR OTHER PURPOSES**

**WHEREAS**, pursuant to Arkansas Code § 14-301-110 a property owner whose lands abut a public street may petition the City Council to abandon the street;

**WHEREAS**, the City Council is required to hold a public hearing on the petition and to notify all abutting landowners of the petition;

**WHEREAS**, the City Council is also required to publish notice of the public hearing in a paper of general circulation within the city; and

**WHEREAS**, Benton Utilities has filed a petition to vacate a city street located on Dale Street in the City of Benton, a copy of which is attached to this resolution as Exhibit 1; and

**WHEREAS**, in compliance with the law, the City shall hold a public hearing as set forth below.

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Benton, Arkansas, that:

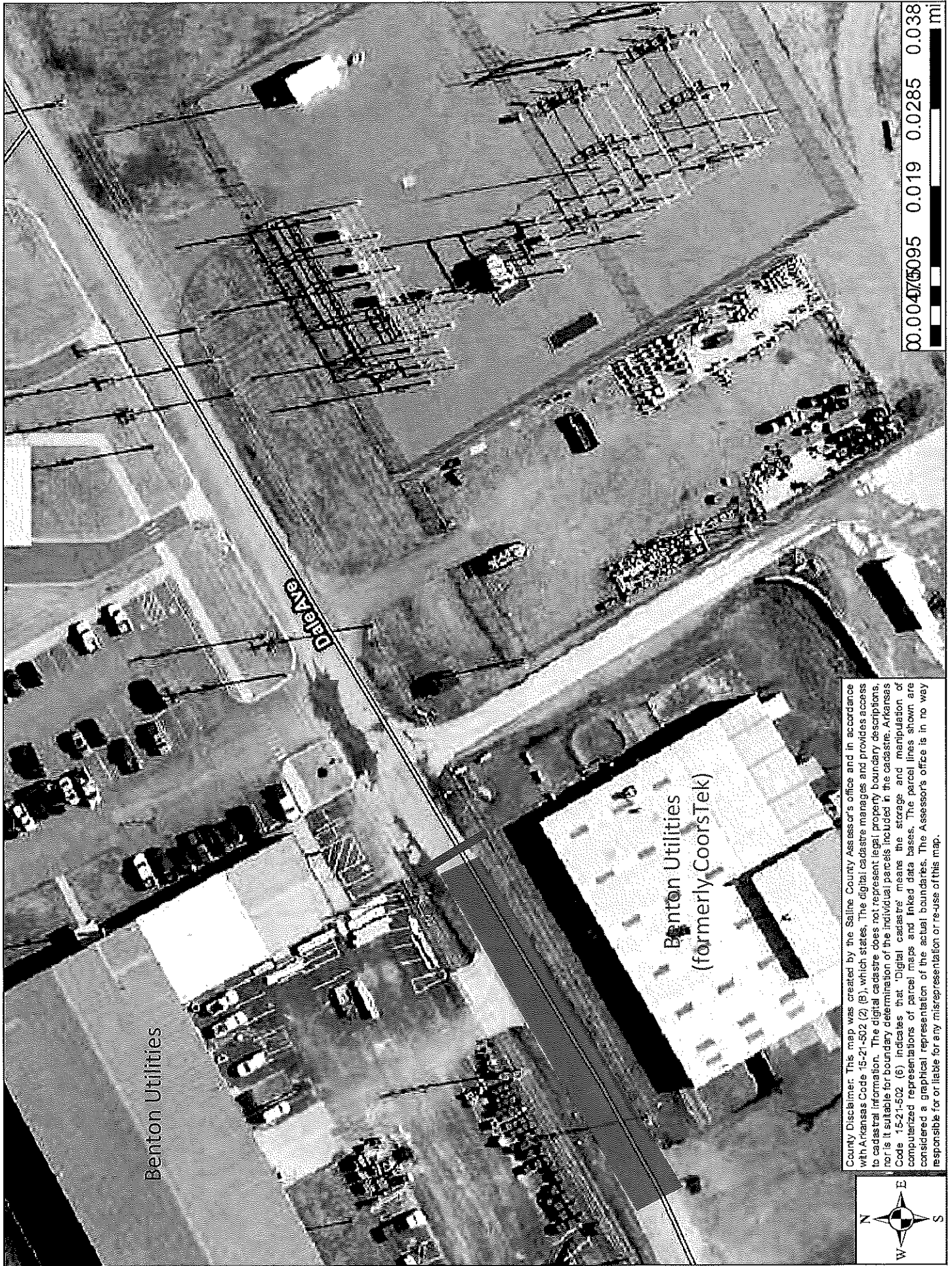
**SECTION 1:** Pursuant to Arkansas Code § 14-301-110 the City of Benton does hereby call a public hearing which shall be held on the 28th day of June, 2021 at 5:50 P.M. at the Benton Municipal Complex, Benton, AR to consider the petition filed by Benton Utilities. The City Clerk shall publish notice of the hearing as required by the statute which is one time per week for two consecutive weeks. The office of community development shall notify the abutting landowners of the petition and notify them of the public hearing.

PASSED AND APPROVED this the \_\_\_\_ day of May, 2021.

\_\_\_\_\_  
Tom Farmer, Mayor

\_\_\_\_\_  
Cindy Stracener, City Clerk



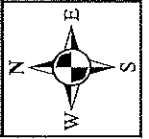


Benton Utilities

Benton Utilities  
(formerly CoorsTek)

Deane

County Disclaimer: This map was created by the Saline County Assessor's office and in accordance with Arkansas Code 15-21-502 (2) (B), which states: The digital cadastre manages and provides access to cadastral information. The digital cadastre does not represent legal property boundary descriptions, nor is it suitable for boundary determination of the individual parcels included in the cadastre. Arkansas Code 15-21-502 (6) indicates that "Digital cadastre" means the storage and manipulation of computerized representations of parcel maps and linked data bases. The parcel lines shown are considered a graphical representation of the actual boundaries. The Assessor's office is in no way responsible for any misrepresentation or re-use of this map.



**RESOLUTION NO. 54 OF 2021**

**A RESOLUTION AUTHORIZING THE CITY TO ENTER INTO SETTLEMENT AGREEMENTS WITH DENNIS MITCHELL AND ERNEST COPPOCK ARISING FROM OVERPAYMENTS ASSOCIATED WITH THEIR RETIREMENT; AND FOR OTHER PURPOSES**

**WHEREAS**, the City of Benton, Arkansas, in connection with the retirements of former firemen Dennis Mitchell and Ernest Coppock ,compensated Mitchell and Coppock for the full value of their unused, paid leave;

**WHEREAS**, Mitchell received an overpayment in the amount of \$12,818.45;

**WHEREAS**, Coppock received an overpayment in the amount of \$10,560.87;

**WHEREAS**, Mitchell and Coppock have offered to enter into settlement agreements with the City wherein all potential claims by the City and all potential claims by Mitchell and Coppock are released and Mitchell and Coppock will repay a portion of the overpayment; and

**WHEREAS**, because it will allow the City to maximize its recovery of the overpaid amounts without expending additional amounts and will resolve all claims, it has been determined that it is in the best interest of the City to enter into settlement agreements with Mitchell and Coppock.

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

**SECTION 1:** The Mayor or his designee is hereby authorized to execute, on behalf of the City the settlement agreement with Dennis Mitchell attached hereto as Exhibit 1 and the settlement agreement with Ernest Coppock attached hereto as Exhibit 2.

PASSED AND APPROVED this the \_\_\_\_\_ day of May, 2021.

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Tom Farmer, Mayor

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Cindy Stracener, City Clerk

## JOINT SETTLEMENT AND RELEASE AGREEMENT

This Settlement Agreement and Release ("Agreement") is made and entered into by Dennis Mitchell and the City of Benton, Arkansas, through its authorized representative Mayor Tom Farmer. Mitchell and the City may be individually referred to in this Agreement as a "Party" and are collectively referred to in this Agreement as "Parties."

### STATEMENTS OF FACT

1. In accordance with Arkansas law, it is the policy of the City of Benton, Arkansas, to compensate qualifying firemen upon retirement for up three months of qualifying unused, paid leave.

2. Upon retirement, Dennis Mitchell qualified for payment of three months of unused, paid leave. Despite that, due to an error, Mitchell was paid for the full value of his unused, paid leave, resulting in an overpayment to Mitchell in the amount of \$12,818.45 (the "Overpayment").

3. Mitchell and the City wish to resolve any and all claims that either could have against the other arising from the overpayment. To accomplish that, on May 10, 2021, representatives of the City met with Mitchell and his representatives and reached agreement, subject to approval of the City Council of the City to compromise and resolve any and all claims or potential claims between the Parties arising before that date.

4. Accordingly, to effectuate that compromised settlement and because the Parties desire to finally and completely resolve, compromise, and settle all claims arising out of and related to Mitchell's employment with the City, the Overpayment, and all other claims or potential claims between the Parties, the Parties agree on the terms set forth in this Agreement.

### TERMS AND CONDITIONS

In consideration of the mutual covenants, payments, and promises contained in this Agreement and other good and valuable consideration, the sufficiency of which the Parties acknowledge, the Parties agree as follows:

### ARTICLE 1 - DEFINITIONS

1.1 "Agreement" means this Settlement Agreement and Release.

1.2 "City" means the City of Benton, Arkansas.

1.3 "Effective Date" means the date on which the Parties have executed this Agreement.

1.4 “Final Settlement Date” means the date that each and every condition set forth in Article 2 has been satisfied or completed.

1.5 “Mitchell” means Dennis Mitchell.

1.6 “Released Claims” means, collectively, the “Released Mitchell Claims” and the “Released City Claims.”

1.7 “Released City Claims” means, as of the Settlement Date, any claims, demands, rights, liabilities, or causes of action, in law or in equity, accrued or un-accrued, fixed or contingent, of every nature and description whatsoever, whether based on federal, state, local, statutory, or common law or any other law, rule, or regulation, including the law of any jurisdiction outside the United States, belonging to the City against Mitchell arising out of or relating in any way to his employment with the City, the Overpayment, any other claims or potential claims, whether now known or unknown, which the City had against Mitchell.

1.8 “Released Mitchell Claims” means, as of the Settlement Date, any claims, demands, rights, liabilities, or causes of action, in law or in equity, accrued or un-accrued, fixed or contingent, of every nature and description whatsoever, whether based on federal, state, local, statutory, or common law or any other law, rule, or regulation, including the law of any jurisdiction outside the United States, belonging to Mitchell against the City arising out of or relating in any way to his employment with the City, the Overpayment, any other claims or potential claims, whether now known or unknown, which Mitchell had against the City.

## **ARTICLE 2 – SETTLEMENT TERMS**

2.1 Settlement Terms. The Parties have agreed to complete the following within 30 days of the Effective Date (or such other date as the Parties shall agree in writing):

2.1.1 Payment. Mitchell shall pay to the City \$7,988.21.

2.1.2 Attorney’s Fees, Costs, etc. Each Party will be responsible for its own attorney’s fees, costs, expenses, and other amounts related to or arising out of this matter, the preparation of this Agreement, or otherwise.

## **ARTICLE 3 – RELEASES UPON FINAL SETTLEMENT DATE**

3.1 Releases. On the Final Settlement Date, by operation of this Agreement, the Parties will be deemed to have fully, finally, and forever released, relinquished, and discharged the City and Mitchell from the Released City Claims and the Released Mitchell Claims, respectively, and no other action, demand, suit, or other claim may

be pursued by a Party with respect to the Released City Claims and the Released Mitchell Claims.

3.2 Assumption of Risk. On the Final Settlement Date, each Party will be deemed to have, and by operation of this Agreement will have, assumed the risk of any mistake of fact or law. If any Party should later discover that any fact that the Party relied upon in entering into this Agreement is not true, or that the Party's understanding of the facts or law was incorrect, the Party will not be entitled to modify, reform, or set aside this Agreement, in whole or in part, by reason of any mistake of fact or law. Notwithstanding the foregoing, all representations, warranties, covenants, and obligations in this Agreement and in any certificate or document executed or delivered pursuant to this Agreement will survive the Final Settlement Date.

#### **ARTICLE 4 – AGREED JUDGMENT**

4.1 Agreed Judgment. Mitchell understands that this a compromised settlement and that the City is accepting a settlement amount less than the Overpayment. If Mitchell fails to abide by Article 2 – Settlement terms, Mitchell agrees that a judgment in the amount of the Overpayment should be entered against him.

#### **ARTICLE 5 – MISCELLANEOUS**

5.1 Full and Final Settlement. By signing below, the Parties acknowledge that they fully understand the terms of this Agreement, that this document and its exhibits, are a complete integration of the terms of the settlement, and that they have entered into this Agreement with the intention that the consummation of this Agreement will be full and final compromise and settlement of all claims related to the Lawsuit, or otherwise, whether known or unknown as of the Effective Date, by the Parties. Each person signing this Agreement on behalf of the Parties warrants and represents that it has read it and understands what it says and means, that such person or entity has voluntarily and without coercion or duress of any kind entered into this Agreement, and that all signatories of the Party have full authority to enter into this Agreement on behalf of the respective Parties.

5.2 No Admission of Liability. It is understood and agreed by the Parties to this Agreement that this Agreement comprises a settlement of disputed claims existing by and between the Parties, and that this Agreement will not be construed as an admission of liability by either Party to this Agreement, both of whom expressly deny any liability.

5.3 Entire Agreement; No Reliance. This Agreement constitutes the entire agreement between the Parties with respect to the subject matter, and the terms and conditions of this Agreement are contractual and not mere recitals. No Party is relying upon any statement or representation not specified in this Agreement.

5.4 Cooperation. The Parties and their representatives agree to cooperate as necessary in order to take all reasonable and lawful actions required to carry out the terms of this Agreement.

5.5 Joint Preparation. The Parties to this Agreement assume joint responsibility for the form and composition of each and all of the contents of this Agreement. The Parties further agree that the terms of this Agreement will be interpreted and construed as though each of them participated equally in its preparation.

5.6 Binding Nature. To the fullest extent allowed by law, the terms of this Agreement inure to the benefit of and bind the members, shareholders, managers, owners, directors, officers, employees, agents, subsidiaries, parents, affiliates, successors and assigns of the Parties.

5.7 Receipt of Advice of Counsel. The Parties acknowledge, agree, and specifically warrant to each other that they have read this Agreement, to the extent desired have received legal advice with respect to the advisability of entering into this Agreement, and fully understand its legal effect.

5.8 Severability. If any provision of this Agreement is held invalid or unenforceable by any court of competent jurisdiction, the other provisions of this Agreement will remain in full force and effect. If any provision of this Agreement is held invalid or unenforceable only in part or degree, the provision will be ineffective only to the extent of any prohibition or invalidity, without invalidating the remainder of the provision or any remaining provisions of this Agreement.

5.9 Counterparts. This Agreement may be executed in multiple counterparts, each of which will be an original, but which together constitute one and the same instrument.

5.10 Governing Law. This Agreement will be governed by and construed in accordance with the laws of the State of Arkansas without reference to the conflicts of laws principles of Arkansas.

5.11 Headings. Articles or other headings contained in this Agreement are for reference purposes only and are not intended to affect in any way the meaning or interpretation of this Agreement.

5.12 Amendment. Neither this Agreement nor any of the provisions of this Agreement can be changed, waived, discharged, or terminated, except by an

instrument in writing which specifically references this Agreement and which is signed by the party against whom enforcement of the change, waiver, discharge, or termination is sought.

[Signature Pages to Follow]

IN WITNESS WHEREOF, the parties have executed this Agreement.

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

Name: Dennis Mitchell

ACKNOWLEDGMENT

STATE OF ARKANSAS

COUNTY OF SALINE

On this the \_\_\_\_\_ day of \_\_\_\_\_, 2021, before me, a  
Notary Public, personally appeared Dennis Mitchell, an individual, who executed  
the foregoing instrument for the purposes therein contained, by signing his name  
thereto.

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

Notary Public

My Commission Expires:



IN WITNESS WHEREOF, the parties have executed this Agreement.

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

Name: Tom Farmer, Mayor

STATE OF ARKANSAS

COUNTY OF SALINE

On this the \_\_\_\_\_ day of \_\_\_\_\_, 2021, before me, a  
Notary Public, personally appeared Tom Farmer, Mayor of Benton, Arkansas, who  
executed the foregoing instrument for the purposes therein contained, by signing  
her name thereto.

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

Notary Public

My Commission Expires:

## **JOINT SETTLEMENT AND RELEASE AGREEMENT**

This Settlement Agreement and Release ("Agreement") is made and entered into by Ernest Coppock and the City of Benton, Arkansas, through its authorized representative Mayor Tom Farmer. Coppock and the City may be individually referred to in this Agreement as a "Party" and are collectively referred to in this Agreement as "Parties."

### **STATEMENTS OF FACT**

1. In accordance with Arkansas law, it is the policy of the City of Benton, Arkansas, to compensate qualifying firemen upon retirement for up three months of qualifying unused, paid leave.

2. Upon retirement, Ernest Coppock qualified for payment of three months of unused, paid leave. Despite that, due to an error, Coppock was paid for the full value of his unused, paid leave, resulting in an overpayment to Coppock in the amount of \$10,560.87 (the "Overpayment").

3. Coppock and the City wish to resolve any and all claims that either could have against the other arising from the overpayment. To accomplish that, on May 10, 2021, representatives of the City met with Coppock and his representatives and reached agreement, subject to approval of the City Council of the City to compromise and resolve any and all claims or potential claims between the Parties arising before that date.

4. Accordingly, to effectuate that compromised settlement and because the Parties desire to finally and completely resolve, compromise, and settle all claims arising out of and related to Mitchell's employment with the City, the Overpayment, and all other claims or potential claims between the Parties, the Parties agree on the terms set forth in this Agreement.

### **TERMS AND CONDITIONS**

In consideration of the mutual covenants, payments, and promises contained in this Agreement and other good and valuable consideration, the sufficiency of which the Parties acknowledge, the Parties agree as follows:

#### **ARTICLE 1 - DEFINITIONS**

- 1.1 "Agreement" means this Settlement Agreement and Release.
- 1.2 "City" means the City of Benton, Arkansas.
- 1.3 "Effective Date" means the date on which the Parties have executed this Agreement.

1.4 "Final Settlement Date" means the date that each and every condition set forth in Article 2 has been satisfied or completed.

1.5 "Mitchell" means Ernest Coppock.

1.6 "Released Claims" means, collectively, the "Released Coppock Claims" and the "Released City Claims."

1.7 "Released City Claims" means, as of the Settlement Date, any claims, demands, rights, liabilities, or causes of action, in law or in equity, accrued or unaccrued, fixed or contingent, of every nature and description whatsoever, whether based on federal, state, local, statutory, or common law or any other law, rule, or regulation, including the law of any jurisdiction outside the United States, belonging to the City against Coppock arising out of or relating in any way to his employment with the City, the Overpayment, any other claims or potential claims, whether now known or unknown, which the City had against Mitchell.

1.8 "Released Coppock Claims" means, as of the Settlement Date, any claims, demands, rights, liabilities, or causes of action, in law or in equity, accrued or unaccrued, fixed or contingent, of every nature and description whatsoever, whether based on federal, state, local, statutory, or common law or any other law, rule, or regulation, including the law of any jurisdiction outside the United States, belonging to Coppock against the City arising out of or relating in any way to his employment with the City, the Overpayment, any other claims or potential claims, whether now known or unknown, which Coppock had against the City.

## **ARTICLE 2 – SETTLEMENT TERMS**

2.1 Settlement Terms. The Parties have agreed to complete the following within 30 days of the Effective Date (or such other date as the Parties shall agree in writing):

2.1.1 Payment. Coppock shall pay to the City \$6,264.70.

2.1.2 Term. The payment referenced in Paragraph 2.1.1. shall be made in 18-monthly installments with the first payment to be made within 30 days of the Effective Date of this Agreement.

2.1.3 Attorney's Fees, Costs, etc. Each Party will be responsible for its own attorney's fees, costs, expenses, and other amounts related to or arising out of this matter, the preparation of this Agreement, or otherwise.

## **ARTICLE 3 – RELEASES UPON FINAL SETTLEMENT DATE**

3.1 Releases. On the Final Settlement Date, by operation of this Agreement, the Parties will be deemed to have fully, finally, and forever released, relinquished, and discharged the City and Coppock from the Released City Claims and the Released Coppock Claims, respectively, and no other action, demand, suit, or other claim may be pursued by a Party with respect to the Released City Claims and the Released Coppock Claims.

3.2 Assumption of Risk. On the Final Settlement Date, each Party will be deemed to have, and by operation of this Agreement will have, assumed the risk of any mistake of fact or law. If any Party should later discover that any fact that the Party relied upon in entering into this Agreement is not true, or that the Party's understanding of the facts or law was incorrect, the Party will not be entitled to modify, reform, or set aside this Agreement, in whole or in part, by reason of any mistake of fact or law. Notwithstanding the foregoing, all representations, warranties, covenants, and obligations in this Agreement and in any certificate or document executed or delivered pursuant to this Agreement will survive the Final Settlement Date.

#### **ARTICLE 4 – AGREED JUDGMENT**

4.1 Agreed Judgment. Coppock understands that this a compromised settlement and that the City is accepting a settlement amount less than the Overpayment. If Coppock fails to abide by Article 2 – Settlement terms, Coppock agrees that a judgment in the amount of the Overpayment should be entered against him.

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5.2 No Admission of Liability. It is understood and agreed by the Parties to this Agreement that this Agreement comprises a settlement of disputed claims existing by and between the Parties, and that this Agreement will not be

construed as an admission of liability by either Party to this Agreement, both of whom expressly deny any liability.

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5.6 Binding Nature. To the fullest extent allowed by law, the terms of this Agreement inure to the benefit of and bind the members, shareholders, managers, owners, directors, officers, employees, agents, subsidiaries, parents, affiliates, successors and assigns of the Parties.

5.7 Receipt of Advice of Counsel. The Parties acknowledge, agree, and specifically warrant to each other that they have read this Agreement, to the extent desired have received legal advice with respect to the advisability of entering into this Agreement, and fully understand its legal effect.

5.8 Severability. If any provision of this Agreement is held invalid or unenforceable by any court of competent jurisdiction, the other provisions of this Agreement will remain in full force and effect. If any provision of this Agreement is held invalid or unenforceable only in part or degree, the provision will be ineffective only to the extent of any prohibition or invalidity, without invalidating the remainder of the provision or any remaining provisions of this Agreement.

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5.11 Headings. Articles or other headings contained in this Agreement are for reference purposes only and are not intended to affect in any way the meaning or interpretation of this Agreement.

5.12 Amendment. Neither this Agreement nor any of the provisions of this Agreement can be changed, waived, discharged, or terminated, except by an instrument in writing which specifically references this Agreement and which is signed by the party against whom enforcement of the change, waiver, discharge, or termination is sought.

[Signature Pages to Follow]

IN WITNESS WHEREOF, the parties have executed this Agreement.

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

Name: Ernest Coppock

ACKNOWLEDGMENT

STATE OF ARKANSAS

COUNTY OF SALINE

On this the \_\_\_\_\_ day of \_\_\_\_\_, 2021, before me, a Notary Public, personally appeared Ernest Coppock, an individual, who executed the foregoing instrument for the purposes therein contained, by signing his name thereto.

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

Notary Public

My Commission Expires:

IN WITNESS WHEREOF, the parties have executed this Agreement.

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

Name: Tom Farmer, Mayor

STATE OF ARKANSAS

COUNTY OF SALINE

On this the \_\_\_\_\_ day of \_\_\_\_\_, 2021, before me, a Notary Public, personally appeared Tom Farmer, Mayor of Benton, Arkansas, who executed the foregoing instrument for the purposes therein contained, by signing her name thereto.

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

Notary Public

My Commission Expires: