MINUTES OF A MEETING
OF THE
CITY COUNCIL
FEBRUARY 5, 2002

A meeting of the Fayetteville City Council will be held on February 5, 2002 at 6:30 p.m. in Room 219 of the City Administration Building located at 113 West Mountain Street, Fayetteville, Arkansas.

PRESENT: Mayor Coody, Aldermen Trumbo, Davis, Santos, Jordan, Reynolds, Thiel, and Young, Interim City Attorney Kit Williams, City Clerk Heather Woodruff, Staff, Press, and Audience.

AWARDS PRESENTATION

Mayor Coody recognized Peggy Vice for her award of the Certified Public Purchasing Officer Designation. Melissa Terry was awarded from the Arkansas Chapter of the Sierra Club for Environmental Educator of the year. Steve Catteneo reaching the designation of Code Enforcement and Administration Professional.

NOMINATING COMMITTEE REPORT:

- The confirmation of the appointment of Janet Richardson to the Fayetteville Housing Authority Board of Commissioners.
- The appointment of Tommy DeWeese to the NW Regional Airport Board.

Alderman Santos moved approve the nominations. Alderman Reynolds seconded. Upon roll call the motion carried unanimously.

CONSENT AGENDA

APPROVAL OF THE MINUTES:

RIDGEWAY WATER LINE: A resolution approving a construction contract with Fayette Tree & Trench, Inc. for E. Ridgeway area water line replacements project in the amount of $248,295. A project contingency amount of $37,244 (15%), and approval of a budget adjustment.

RESOLUTION 9-02 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

BUTTERFIELD TRAIL VILLAGE: $23,000,000 Fayetteville Public Facilities Board Revenue Refunding Bonds, Series 2002.

RESOLUTION 10-02 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

DUNCAN AND ASSOCIATES: A resolution approving a change order in the amount of $7,500 for five additional "person-days" for Duncan Associates to attend additional impact fee meetings and approval of a budget adjustment.

RESOLUTION 11-02 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

AIRPORT TAXIWAY EXTENSION: A resolution approving Amendment No. 2 to the agreement with McClelland Engineering for engineering services in the amount of $116,730 and approval of Task Order No. 9, Engineering and Construction Observation for Taxiway "A" Extension.

RESOLUTION 12-02 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

FOREST SERVICE: A resolution approving an lease agreement with USDA Forest Service in the amount of $28,160.00 for the lease of 12.8 acres of Fayetteville Municipal Airport property and the approval of a budget adjustment.

RESOLUTION 13-02 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

OMI: A resolution approving Amendment No. 7 to OMI's contract for operation and maintenance of the Wastewater Treatment Facilities, the annual contract amount for 2002 being $3,845,957.00, including a fixed fee of $91,128.00, non-overwrite costs for odor control of $196,080 and Phase IV SCADA upgrade of $44,000.00. Approval of a budget adjustment is also requested.

RESOLUTION 14-02 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

AIRPORT: A resolution approving a grant agreement up to $200,000 plus a 10% contingency. Upon grant approval contracts will be submitted to City Council for approval.

RESOLUTION 15-02 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

BLOCK GRANT: A resolution approving the 2001 Juvenile Accountability Incentive Block Grant Program application and attached budget adjustment. This grant is in the amount of $34,440 plus a 10% match requirement of $3,827 for a total of $38,267. The proposed use of these grant funds is for software and equipment.

RESOLUTION 16-02 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

WRMC: A resolution authorizing the Mayor to execute a contract for the purchase of real property from Washington Regional Medicorp for the new city library in the amount of $268,000.

RESOLUTION 17-02 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

Alderman Davis moved to approve the Consent Agenda. Alderman Santos seconded the motion. Upon roll call the motion carried unanimously.

OLD BUSINESS

CIVIL SERVICE VETO: Veto of Civil Service Ordinance.
Mr. Williams stated if they wanted to override the veto, then they needed to make a motion to override the veto. It would require six affirmative votes to override the Mayor's veto.

Alderman Trumbo moved to override the mayor's veto. Alderman Davis seconded.

Alderman Davis read memo from the Mayor explaining their change in hiring policy. Was there any way that they could make it a resolution or ordinance.

Mr. Williams stated he did not believe that they could. The statute stated that the Mayor shall hire. The mayor was free to have any procedure that he wanted. The only other option was to have the Civil Service hire, then they were free to have any procedure. The City Council could override the Mayor's decision.

Alderman Trumbo stated he concurred with Alderman Thiel in that they should not waste the money and time to go through a national search but to hire Rick Hoyt. The Mayor was free to do whatever he wanted and did not have to use the same system they used for the Fire Chief.

Mr. Williams stated the Mayor was free to use whatever procedure that he wanted at this point in time.

Mayor Coody stated he would continue to use the same process that he had been using.

Mayor Coody asked shall the motion pass. Upon roll call the motion failed by a vote of 5-2-0. Santos and Jordan voting nay.

MOTION TO OVERTURN VETO FAILED.

MOTOR VEHICULAR RACEWAYS: An ordinance to regulate motor vehicular raceways. The ordinance was left on the second reading as amended at the January 15, 2002 meeting.

Alderman Thiel moved to suspend the rules and move to the third and final reading. Alderman Reynolds seconded the motion. Upon roll call the motion carried unanimously.

Mr. Williams read the ordinance for the third and final time.

Alderman Thiel stated she felt this ordinance was a fair compromise.

Alderman Reynolds stated he was pleased with the new management and thought that it was going to be good for everyone involved.

Alderman Santos stated he thought it was a good compromise. He wished that they could have done it as an agreement rather than an ordinance. He was going to vote against the ordinance on the principle that he did not want them trying to regulate nuisances outside city limits.

In response to questions, Mr. Williams stated the problem with an agreement was enforcement. They would have to go to court if someone breached the contract. The other was that the agreement was only good with the people that they made it with.

Alderman Young stated he would be voting against this because he did not believe that they should be regulating outside city limits. Being legal and being right are two different things.

Mayor Coody asked shall the ordinance pass. Upon roll call the ordinance passed by a vote of 5-2. Santos and Young voting nay.

ORDINANCE 4366 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

CABLE RATES: A resolution expressing the City Council's opposition to the proposed seventy-five percent rate increase for basic cable television service proposed by Cox Communications, Inc. The item was tabled at the January 2, 2002, meeting.

Alderman Trumbo moved to table the item until Alderman Zurcher was here. Alderman Davis seconded the motion.

Mr. Hugh Earnest, Urban Development Director, stated he has instructed their attorney to deal with the Washington Attorney of Cox regarding a reduced lifeline tier. They were also discussing an institutional network that can and should be a part of their franchise discussion with Cox.

Alderman Davis stated he had received complaints about MSNBC being taken off. They would like to still have that as a program option.

Alderman Santos stated they wanted the sub-basic tier, a lifeline tier. Cox has been negotiated into doing this in other places. They wanted to work on the institutional network and the life-line tier. **Upon roll call the motion carried unanimously.**
THE RESOLUTION WAS TABLED UNTIL THE NEXT CITY COUNCIL MEETING.

NEW BUSINESS

RZN 02-1.00: An ordinance approving RZN 02-1.00 as submitted by Robert Schmitt for property located at 1140 Hendrix and 1110 Hendrix. The property is zoned R-1, Low Density Residential, and contains approximately 1.36 acres. The request is to rezone to R-1.5, Moderate Density Residential.

Mr. Williams read the ordinance for the first time.

Mr. Rick Osborne, attorney, stated this property had been used as C-1 zoning for over thirty years. It had been used as a mechanic's garage. Mr. Thompson had bought the land with the intent of building three triplexes. The city's zoning map showed the property to be R-1.5. The bank had required a letter of confirmation from Planning on the R-1.5. The property was on Garland and did go into a nice neighborhood. Another property had built triplexes with the same error in zoning.

Mr. Earnest stated the property had be categorized R-1.5 in error in the mid 1990's. The applicant had been informed, at the time they had thought the owner and the applicant was Bob Schmitt. The owner is Broc Thompson. The city had represented the property as a certain category. Other properties had been developed in the area. This was a better use of the property than what had been there.

Ms. Joyce Richards, an area resident, stated she had spoken at Planning Commission. Some of the problems are the amount of traffic on Garland and Hendrix. There were no sidewalks on Hendrix. There were a number of apartment complexes and triplexes in the area. There was also a crime area. There was also a drainage problem in the area. If they covered the ground it would only increase the problem. She had spoken with Mr. Thompson. He was planning on putting up the two one story triplexes and add two units to the existing house. For a total of nine units. That would require thirty-six parking spaces. That was a lot of cars. R-1 would allow him to put up duplexes. She asked them to limit it to duplexes, which would be fewer people and fewer cars. She felt they needed to control the growth in the area. They should leave it as R-1, if they could put in duplexes.

Mr. Williams stated the Planning Commission had recommended approval based upon a bill of assurance.

Alderman Thiel asked what the problems would be if they turned down the rezoning.

Mr. Williams stated they had statutory immunity for any mistakes that they made. Nothing intentional had been done. There had been an error made when they were transferring information from the old map the digital format. There had been a clerical error made. He did not believe that they had a legal problem. He thought they were immuned from their negligence in a case like this. They did have some responsibility for the situation that this owner was in.

Alderman Young stated the question was the zoning. The old State law stated that the zoning was what was on the official map. It did not matter whether or not there had been an ordinance passed. It had to do with the map. In his opinion was that if they turned it down he thought that they could file a law suit. There would not be any damages, but they could get a court to say that it was R-1.5 or whatever.

Alderman Davis stated he believed in the do right rule. Mr. Thompson had bought the property based upon a letter from the City stating the property was zoned R-1.5.

ORDINANCE WAS LEFT ON THE FIRST READING.

RZN 02-2.00: An ordinance approving rezoning request RZN 02-2.00 as submitted by Craig Hull of Nickle-Hill Group on behalf of Andy Bethell for property located at the northeast corner of Joyce Blvd. and Crossover Road. The property is zoned C-1, Neighborhood Commercial and contains approximately 1.94 acres. The request is to rezone to C-2, Thoroughfare Commercial.

Mr. Williams read the ordinance for the first time.

Mr. Craig Hull, Nickle-Hill, stated the rezoning was for the east corner of Joyce and Crossover. The Planning Commission had recommended approval unanimously. They had offered a bill of assurance to restrict other uses in C-2.

ORDINANCE WAS LEFT ON THE FIRST READING.

RZN 02-3.00: An ordinance approving rezoning request RZN 02-3.00 as submitted by Bob Hill of Nickle-Hill Group on behalf of Al and Lucile Cathcart and Anne England for property located at 2684 W. Sixth Street. The property is zoned R-O, Residential Office and C-2, Thoroughfare Commercial and contains approximately 4.75 acres. The request is to rezone the entire tract to C-2, Thoroughfare Commercial.

Mr. Williams read the ordinance for the first time.

Mr. Bob Hill stated two-thirds of this tract had been rezoned to C-2. There had been no ordinance designating what that legal description was. Their solution was to rezone the entire property.

In response to questions, Mr. Hill stated they were considering a restaurant and a hotel.

Alderman Davis stated he thought this would be a good addition to the city.
Alderman Santos moved to suspend the rules and move to the second reading. Alderman Jordan seconded the motion. Upon roll call the motion carried unanimously.

Mr. Williams read the ordinance for the second time.

Alderman Jordan moved to suspend the rules and move to the third and final reading. Alderman Reynolds seconded the motion. Upon roll call the motion carried unanimously.

Mr. Williams read the ordinance for the third and final time.

Mayor Coody asked shall the ordinance pass. Upon roll call the ordinance passed unanimously.

ORDINANCE 4367 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

ADM 01-39.00: An ordinance approving ADM 01-39.00 to revise the Flood Damage Prevention Code by adding / revising the setback required from a stream bank in Zone A and Zone X flood zones as shown on the FEMA Flood Insurance Rate Map.

Mr. Williams read the ordinance for the first time.

Mr. Conklin stated this amendment would take the technical code which had been adopted by reference and incorporate that into their Unified Development Ordinance. They felt the entire ordinance was important for developers to have when they purchased the ordinance. The actual amendment would establish a minimum set back from the stream in a Zone A, which was a hundred year flood plain, where no detailed flood study had been conducted, no floodway has been established. That setback was two and half times the width of the stream from bank to bank. The other amendment was five times the width of the stream bank. They were proposing to reduce that to the same standard at two and half times. Looking at their flood insurance rate maps that were published by FEMA, this setback was more in line with the actual floodways that were calculated. **Alderman Davis moved to suspend the rules and move to the second reading. Alderman Santos seconded. Upon roll call the motion carried unanimously.**

Mr. Williams read the ordinance for the second time.

Alderman Davis moved to suspend the rules and move to the third and final reading. Alderman Santos seconded the motion. Upon roll call the motion carried unanimously.

Mr. Williams read the ordinance for the third and final time.

Mayor Coody asked shall the ordinance pass. Upon roll call the ordinance passed unanimously.

ORDINANCE 4368 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

LIBRARY: An ordinance waiving the requirement of competitive bidding in the burial of utilities for new Fayetteville Public Library.

Mr. Williams read the ordinance for the first time.

Mr. Jim Foster, architect for library, stated there would be bidding in this process.

Mr. Kip Guther, Garver Engineers, stated that he had met with Foster, Green Anderson Engineering and with SWEPCO in December and had discussed the best way to ensure quality and safety and the best price the city and library for the burial of the utilities. It was an unanimous decision that SWEPCO and AEP had three select contractors that they like to use. They were Hickman Trenching, Denny Excavating, and Fayetteville Tree and Trench. The size of the project gave them the possiblity of selecting contractors that may or may not sublet some of their work to local contractors. The size of the project may generate general contractors from outside the state and were unfamiliar with SWEPCO's way of doing things. They had expressed concern that a different contractor would require more onsite inspection by the utility companies. If they could go with a local contractor who they felt confident with, then it would still be a competitive bid with these three contractors. This would decrease the time required for onsite inspection. All the utility locations could then be taken care of at one time.

Alderman Santos moved to suspend the rules and move to the second reading. Alderman Davis seconded. Upon roll call the motion carried unanimously.

Mr. Williams read the ordinance for the first time.

Alderman Santos moved to suspend the rule and move to the third and final reading. Alderman Jordan seconded the motion. Upon roll call the motion carried unanimously.

Mr. Williams read the ordinance for the second time.

Mr. Geary Lowery, an area resident, expressed objection to the removal of competitive bidding.

Mr. Williams explained that when they had normal competitive bidding, they opened it up totally. They had to make a decision to restrict it some what from the normal process that was why they had to have the ordinance.

Mr. Lowery stated they were cutting out other individuals that might be wanting to bid on this. There were other people who were qualified to do this. They were just going to let these people decide for the city who was going to be the competitive bidding.

Mayor Coody asked shall the ordinance pass. Upon roll call the ordinance passed unanimously.

ORDINANCE 4369 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

BOYS AND GIRLS CLUB: A resolution to waive the building permit fees and other developmental fees for the construction of the new Fayetteville Boys and Girls Club.

Alderman Thiel stated she wanted the public to be aware of the amount of the money the city was going to be giving the Boys and Girls Club. Based on a nine million dollar building, the building permits would be approximately $20,707. She was not opposed to this, she just wanted the public to know how much this amounted to. She wanted to discuss a policy about giving to a non-profit that they support. She had brought forth a resolution on Habitat for Humanity and SFCD based on the fact that they provided low cost housing. They had waived approximately $250.00 per house. Alderman Davis stated the reason he thought they could waive the permit fees was that the Boys and Girls Club would be good for the community and everyone would be able to use it. It was a non-profit. It was like the library. He expected them to waive the library's fees when it came through the process. This amount of money was equal to a big toy that they could spend their money on for the children, versus having to put it into building permits.

Mayor Coody stated he felt this was another way the city could show support for this project.

Mr. Mike Hill, Boys and Girls Club, stated they had been given the approval to start the ground breaking. He appreciated all the help that they had received from the city. They would be able to purchase a swing set or mats for the gym with the savings.

Alderman Santos moved to approve the resolution. Alderman Jordan seconded. Upon roll call the motion carried unanimously.

RESOLUTION 18-02 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

EGIS CONSULTING: A resolution approving Amendment No. 2 in the amount of $55,700 to the contract with EGIS Consulting for additional services and deleting $134,946 from Amendment No. 1.

Mr. Gary Dumas, Utility Services Director, stated this project had been around for twelve to thirteen years. EGIS had been doing some work for the city. Their contract had began in 1999. Amendment No. 1 was a contract for $164,000. They had done some work on the contract before all work had been stopped in December of 2000. Of that contract, they had only expended about $16,000. The project had been put on hold. In November of last year they had began to review the project to possibly revive it. The mitigation plan for this was in the neighborhood of $700,000 to a million dollars. In talking with the Corp and other people, they felt that was too much. They thought it would be appropriate to reiterate the project, but they needed to reevaluate the mitigation plan. Right now approximately $134,000 exists in the contract for work. They were looking to change the scope of services to evaluation of the mitigation plan, modification of plan to bring it down to a reasonable level, to make sure that it accomplished the environmental aspects that they were interested in. The failure of earlier efforts was the involvement of the environmental community and the business community and to define what the community wanted on this project. One of the work tasks in their contract is to lead several planning surveys. They needed to have a team environment put together. The engineering firm needed to be on board as a full team member so they could meet the deadline of this fall to fulfill the requirements of the grants that had been received. The two key elements in the contract is the review of the mitigation plan and bringing it down in scale and involve all the interested parties.

Mayor Coody stated they would like to make this a business technology park centered around an environmentally sensitive area. They were going to be approaching this project as if the Darter fish were on the endangered species list.

In response to questions, Mr. Dumas stated the contract with EGIS was for $55,700. The engineering cost in the next item was not related to the environment. It was related to the infrastructure. They were for two different issues, but they needed both player involved. They needed to create the team so that once they have come to a community resolution about what the area of mitigation was going to be, then the designer was ready to start work so they could be letting construction contracts for phase one and the mitigation. The engineering contract was for hard cost so that they could begin building. There would be additional contracts for construction in the mitigation area. EGIS will be designing the mitigation work to be done in the mitigation area.

Mayor Coody stated the Chamber had been granted a half-million dollar grant last October. They had one year to let bids or the grant money would revert back to the State. It was important that they had some bids let by October.

Alderman Thiel stated under the scope of services, it did include working with the Nature Conservancy and other organizations. Last summer, Tim Snell with National Conservancy had discussed the Arkansas Darter. She had asked him if the plans for the Tech Park would endanger what they were considering giving to the city. He had indicated that with they type of business that was going to be there and the amount of land that was left was adequate.

Alderman Davis stated he had been under the impression that Engineering had put together a road and entry for this facility and that what needed to be mitigated as far as the environmental wetlands had been done. Why were they wanting to go back and redo this.

Mayor Coody stated the original plan that they looked at was unacceptable to what they wanted to do with the park. It basically took out half of the tree preserve. They were going to take what they could, but there was a lot that they could not use. They needed to redesign.

Alderman Davis stated since they knew where the wetlands were from the prior drawings why did they need to go back and spend the money. Why did they just not just stay out of it.

Mr. Dumas stated they were going to have a landscape architect on staff to help them design a subdivision for the type of development that they wanted. The design that they had now was industrial looking. They were going to try and create a campus type environment.

Mr. Emanuel Barnes stated that the project had to comply with the Clean Water Act. He was excited about dealing with the city who was willing to work with the environmental community. To have a unified team to look at all angles from economic and ecology. Wilson Spring was a preservation area. If there were opportunities to create better habitat for the fish, it would come out in these planning charts. They wanted to have a project that was economically viable as well as compatible. The city was going beyond the basic requirement of State and Federal law. They were opening up the discussion of other conservation ideas.

Alderman Young stated there had been a lot of stops and starts with the project. He was concerned that they might be doing this again. If they were going to do some thing out there, there needs to be a clear city policy on what they were going to be doing. He thought they were going to start designing before the public had an opportunity to speak to the issue.

Mr. Dumas stated before they could begin to design anything they would make a presentation to the Council on what they were going to be designing. The purpose of having McClelland before them today was so that they could create a design team, so when they knew what they were going to need environmentally and knew what the limits of the mitigation area were, then they would ready to begin the design process for the infrastructure for Phase I. They were hoping to met the deadline for the grant funds.

Mr. Dumas stated they would know early on if they were going to run into a time constraint. There was a third party in this, which was the public interest groups. If they ran into some issues they would keep the City Council informed.

Mr. Emanuel Barnes stated that in this type of effort they needed the engineering entity with them. If there was a concern about a particular street, the relocation would have a major impact on the economics and the engineering. They needed the engineering and the economic personnel involved in the planning effort so that they could come up with something that was very feasible.

Alderman Young stated in Section 2 of the McClelland contract they were directed to get the preliminary plat, before they had public input or know what they were going to do with wetlands.

Mr. Dumas stated there were provisions for those issues.

Mayor Coody stated he wanted to make it clear that they wanted the environmental consultants and the engineering consultants to work hand in hand with the public and this administration to produce something that they could be very proud of.

In response to questions regarding time lines, Mr. Barnes stated he would agree to work in tandem with McClelland and the city to meet the time requirements.

Alderman Young moved to amend the contract to add Item 12 that EGIS will complete their work in a timely manner so that McClelland's contract time line to meet the October deadline. The motion failed from lack of a second.

Ms. Andrea Radwell, an area resident, stated her major concern was that the city did not have a plan on the area. They had a general idea for what they wanted to do. She asked what they wanted to do with the Wetlands. At the beginning of 2001 a meeting had been called regarding the plan and the amount of mitigation that had to be done. The consensus at that time was that the plan was not economically or environmentally sound. There has been no communication with the people who were interested int he plan for the last year. The Nature Conservancy had proposed an alternative and a conservation agreement with the city that they would help to implement this. Nothing had become of that. She had called them last week to see where the offer stood. She presented a copy of their proposal. An offer had been made to the City of Fayetteville. That plan needed to be aired to the public.

In response to concerns, Alderman Santos stated they were hiring EGIS to help define their vision and develop a plan.

Mr. Robert Farrell, an area resident, stated they had waited ten years. They had tried to more forward at a slow pace. The plan as it has been presented with EGIS and McClelland allow for public input, it was a gradual thing. He asked them to approve this. He would like to see them go forward.

Alderman Young moved to approve the contract with the amendment to reflect the wishes of the Council. Alderman Jordan seconded.

Mr. Williams stated they would be approving a resolution to implement the contract as they have instructed to have all parties work together to complete the project by the October deadline.

Upon roll call the motion carried unanimously.

RESOLUTION 19-02 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

ARKANSAS BUSINESS TECHNOLOGY PARK: A resolution approving a contract with McClelland Engineering for design, bidding, and construction phase administration in the development of the preliminary plat of Phase I for the Arkansas Business Technology Park. Fee will be based on a per hour charge, not to exceed $128,158 and approval of a budget adjustment.

Mr. Dumas stated they had chosen the per hour and not to exceed the contract was because a lot of work had been done by the city's engineering department. They hoped to salvage the majority of that work. The more that they could salvage, then the less number of hours they would have to use. **Alderman Young moved to approve the resolution to reflect the wishes of the Council, that the first four items under "fees" can begin immediately, but no other work can begin until the Council approved EGIS plan. Alderman Jordan seconded.**

Mr. Johnny Quinn, McClelland Engineers, stated he thought he understood, but there were stipulations that they had put into the contract for meeting the October 30, bid opening date. In order for them to meet that this contract stipulated that they had to be authorized to start the detailed design of Phase I no later than June 1. This was like running a relay race. McClelland was going to have to carry the baton on the last leg of the race. He could not be too far behind when it is handed off to them. They were willing to do everything they could to work with staff, but it had to be within some sort of reason. It has been made very clear to him that it was going to be a team effort. They were to use much of the engineering's information.

Mr. Williams asked what their intent was. He thought that he had heard that they wanted to ensure that their engineers with the charts and public process before they began work on the plat.

Alderman Young stated he believed the Council needed to sign off on the plan before McClelland started the plat work.

In response to questions, Mr. Dumas stated he would be back in front of them well before the first meeting in May. He thought they would be approving EGIS plan before the first meeting in May so that McClelland could meet their deadline. He would not mind giving them an update every month. He thought he could give them an update in March.

Upon roll call the motion passed unanimously.
RESOLUTION 20-02 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

DUKE SOLUTIONS AND HARMONY PRODUCTS: A resolution approving a proposal for solids supply agreement to negotiate with Duke Solutions and Harmony Products.

Mr. Williams stated a new page three had been drafted to meeting concerns about the exclusivity time frame.

Alderman Jordan asked if they had looked at other companies that did this type of work.

Mr. Boettcher, Public Works Director, stated McGoodwin, Williams and Yates did a facility plan and looked at a number of alternatives for slug disposal. They included: doing our own system, another location in Helena (a bio-solid fertilizer operation), and this alternative. Due to the lower costs that this alternative offers it is the one being investigated at this point. This alternate is within the predicted cost for the rate increase that they had presented to the public in November. This alternate is less costly than the others. They were at the facility planning process. They have not started final design. It was in the planning process, they were considering this seriously.

Alderman Young asked if the exclusivity referred to the same type of technology or any other type of alternative.

Mr. Williams read, "the city agrees not to pursue or participate in the development of any other energy, waste to energy or waste to energy or fertilizer projects during the time they were negotiating."

Mr. Boettcher stated this was a non-binding contract and in the time frame of this project, sixty days was not a problem as far as their project progress. There were other activities that they needed to be working on aside from this. The fall back position as they look at one option was what would happen if this option did not bear fruit. What they had was the Helena option, at a greater cost, landfilling, and they also had the option as they entered into the design, of handling their own. There was also some discussion of a regional type of concept. There was ongoing options and thoughts. At this time, this was what appeared to be the best long term solution.

Alderman Trumbo stated this was unproven technology. They did have a plant that took on the chicken litter, but not the slug. It was innovative and cutting edge. Duke Solutions was a subsidiary of Duke Energy and Harmony Products reputable. They did not have a chicken litter problem in Fayetteville, but the region does, and so does the water. They did have a problem with their slug and their hay field applications. If it does what they said it could do, it would be a good benefit to the area.

In response to questions, Mr. Boettcher stated it was his understanding that gasification was a process not as extreme as incineration. It dried the moisture out and did not go on to combustion. As they move forward he was sure that issue of process and approvals will come out. Complying with Arkansas Clean Air laws will be a responsibility of Harmony. The city was not a partner in their operation. They were more obtaining a service.

Alderman Trumbo stated the City of Fayetteville would like to be a partner with the other municipalities to solve the phosphoreus and the other nitrogen problems in the water sheds. It was his understanding the proposed plant was to be built between Tonitown and Siloam Springs. There would not a financial obligation on the City of Fayetteville other than keeping their obligations of having their slug de-watered and transported to this facility.

Mr. Boettcher stated if there were a problem there was always interim landfilling until they could develop another plan. They were not joining them in their adventure. They did not have a formal agreement. This agreement would lead to a formal agreement.

Alderman Thiel stated she assumed they were going to learn more about this process before they entered into a binding contract. The information that they had received so far was just fluff.

Mr. Williams stated the exclusivity stated we would give them notice if we wanted to begin negotiating with a competitor. It was more of a jester of good faith.

Alderman Reynolds stated Beta-Rubican had wanted to present something to them.

Alderman Trumbo stated they had given out information to the Council tonight. What they did was research the company and give a third party opinion or evaluation of the process and how viable the project was.

Mayor Coody stated he hoped other cities would agree to help pay his fee since they could use the information too.

Alderman Trumbo stated this has never been done before.

Mr. Jim Ulmer, McGoodwin Williams and Yates, stated he thought Duke Harmony would be happy to make a presentation to them. Gasification was a process of controlling the heat where all the combustible components were extracted out of the material. All that they had left was an inert ash which was then turned into the fertilizer.

Mr. Tom Brown, an area resident, expressed his dissatisfaction with the research preformed by McGoodwin Williams and Yates. He also expressed concerns about wasting the areas organic fertilizers.
Mayor Coody stated they were not going to be able to use their land application method. They had to find something to do with fifteen hundred tons of slug a month. They had to find a solution. One of which would be landfilling, this looked like a viable alternative.

Mr. Brown expressed his dissatisfaction with the research done and the lack of facts provided for this discussion.

Alderman Santos moved to approve the resolution. Alderman Jordan seconded. The motion carried by a vote of 5-2-0. Reynolds and Thiel voting nay.

RESOLUTION 21-02 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

WASTEWATER SYSTEM: A resolution approving a Consultant Contract Amendment for the Wastewater System Improvement Project in the amount of not more than $578,918.24, and approval of a budget adjustment.

Alderman Trumbo stated the Water and Sewer Committee had met for three hours to discuss this item. There were errors made from all parties in terms of not having the scope of the contracts brought back before the City Council for formal approval. That formal process and approval did not take place. He stated there was some concern if the unauthorized work had to be done. The answer from their discussion had to be done and was required. The city did receive a work product from the unauthorized work. His personal recommendation would be to approve the budget adjustment minus the five percent built in professional fees of Hanifin and EcoSystem. They have determined that the work that McGoodwin, Williams and Yates was done and done properly and was needed in order to get to where they were today.

Alderman Santos stated that the entire $578,000 included work that had not been done yet.

In response to questions, Mr. Boettcher stated the professional fee on sub-contract work was on labor and did not include sub-contract expenses such as travel, printing and telephone. The work done by McGoodwin, Williams and Yates did in-house with their people had approximately a fifteen percent professional fee. The work that they subcontracted had a five percent professional fee. He had asked them to give him a cost of where they were today, he also asked them to prepare an estimate to complete the facility planning work and all of the other work that they needed to do to get through this stage of the project.

Alderman Santos suggested they separate the work that had been done from the work to be done.

Alderman Thiel stated the overrun for work already done was $376,908 plus the profit for a total of $417,463. The work still to be done was $178,000.

Alderman Young stated McGoodwin, Williams and Yates did an amended Facility Plan. He asked why they did the amended Facility Plan?

Mr. Ulmer, McGoodwin, Williams and Yates, stated earlier in the process when they began discussing the Revolving Loan, the discussion had been that someone had to take the lead with that. Their experience in Arkansas with ADEQ and the Revolving Loan fund leant itself for them to take the lead in that. They agreed to do, with formal agreement to do that. They took the lead in creating the document with the consent of staff.

Alderman Young asked why the city did not go back to CH2M Hill and have them amend the facility plan. They had paid them to do it once and it was suppose to be done right the first time.

Mr. Don Bunn, former Public Works Director, stated the facility plan that CH2M Hill did was approved by the State in 1997. In entering into the Revolving Loan Fund, the State required the city to do two things. One was to revise the Facility Plan. The logical thing to do, since they were doing the preliminary design reports, was to incorporate the preliminary design reports into the revised Facility Plan. They also required a revised EID. A more extensive EID. Why they accepted it in 1997 and decided a year or so later that it needed to be revised, they would need to ask them. The reason that they asked McGoodwin to do this was that they were very familiar with the processes at ADEQ. They had done many facility plans. Of the four consultants that they had hired they were the logical choice to do that. They considered having CH2M Hill revise the plan, but considering that they were to incorporate work that would be done by the four consultants, they felt it would be more cost affect to have them do the work.

Alderman Young stated according to the time line he had been given, there was a big gap for several months. He asked why an amendment had not been done during that time.

Mr. Ulmer presented a letter dated July 5, 2001. The letter directed him to create information for Water Sewer Committee on July 9. The letter gave them a feeling of the involvement of the staff and the understanding that they were taking the lead. Regarding the time line, in April, Don and I went to ADEQ and had a meeting to discuss the RLF and the facility plan. They had agreed that they could use the facility plan created in 1997 to the extent of it be applicable. They continued the original scope of work through March to May, when they finished their work. In March, they had discussed funding options. He had been instructed to create a document and presented it to them on July 17, 2001. At those meetings they had discussed the project in great detail. They had every expectation that they knew exactly what they were doing. If someone had asked them to stop they would have. They had made a judgement call to pursue the revolving loan fund, the program requirements were very extensive. It was not unusual for a plan to take a year to be created. Ninety-seven percent of the total effort was expended between the end of May and the end of October, when they submitted the final facility plan. It was a public document that informed the public of all the issues in writing. In order to complete the program requirements, that was what they had to do. They had to jump through hoops. They worked nights and weekends. In the memo of understanding that they entered into in December had a requirement for the submission of the facility plan. The day they signed it, the program requirements were already finished and complete.

Alderman Young asked why they did not submit a request for an amendment to contract.

Mr. Ulmer stated until May there was no commitment to go forward with the RFL. They were $200,000 under their original contract. They did not get there until July. During that time the effort was very intense. To stop and create the documentation they would have had to stop the process. It would have been very difficult for them to project all of the issues that were before them and all the things they had to do. Once the commitment was made to go for the facility plan, there was no looking back. They had to create it within the time frame that was before them.

Alderman Young stated they could have come forward with an amendment to the contract with an estimated amount of time and expense. If it had not worked, then they could have come back for another one.

Mr. Carl Yates, stated the city did not make a decision until May or July that they wanted to enter into the Revolving Loan Fund. There had been a very intensive effort put forth to complete the document in the time frame.

Alderman Santos stated they were notified in August 7, 2001 memo from Don Bunn which stated Amendment No. 1 would be presented at a later date. They were told that there would be a contract amendment coming.

In response to questions, Mayor Coody stated personally the only argument he had about the contract was the part with Hanifin. He did not believe they got their money's worth there. He did not believe that they came close to getting their money's worth there, but that was his personal opinion. If they had it to do over again he would not have agreed with that. It was up to this Council on what they were going to do tonight. In response to questions, he stated if he could push a button and make it happen, he would have them approve all parts of the contract with the exception of Hanifin and he would go back to them to renegotiate that number, but that was his opinion.

In response to questions, Mr. Williams stated that Arkansas did recognize the unjust enrichment principle when there has not been a valid contract, yet the city has received benefit. If it was litigated, then the court has told them that the award was measured by the value of the benefit.

Mr. Yates stated they were convinced that Hanifin put in the time she said she did. The other aspect was, was it worth while? There was no way to know that. The election results were the result of a team effort of informing the public. The other issue, a reduction in their professional fee, they felt they got more than a fair market value. He felt that they should be paid, however, it was important for them to move ahead with this project. In the interest of keeping the good relationship that they had they were willing to accept Alderman Trumbo's suggestion. The proposed professional fees that they had built in was five percent of the labor cost and not the total cost, which was a deduction of $15-16,000.

Mr. Geary Lowery, an area resident, expressed opposition to paying the contract amendment because they had not received prior approval for the work.

Mr. Don Bunn stated two things happened with the result of Hanifin's work. In 1997 the original Facilities Plan had been completed and they held a public hearing. The hearing could only be described as a public officials nightmare. When they were putting together this contract the staff understood that could not happen again. It would defeat the entire project. One of the reasons that McGoodwin was selected was because they had proposed a public information program. Hanifin was apart of that program. They met property owners around the plants. Because they did not have the same kind of public meeting that they had in 1997 and the fact that the sales tax election was successful was a result of them meeting with the neighbors and providing information on the project. They had provided information about the plant and provided them some assurances that the city would do what was necessary to make the plant not a nuisance. He did not know if they could put a price on that.

Mr. Jeff Erf, an area resident, stated he hoped there would some monetary amount withheld. His concern was the hiring of Hanifin to provide the education program. He felt there was a conflict with her working for McGoodwin. He felt the turn out was very poor at the public meetings. He questioned if they would have continued her services if they had known about the overage.

Mr. Tom Wilkerson, Citizens for Clean Water Committee, stated his committee would not have been able to do anything until they had been educated. They received a lot of information from Hanifin. Without her work they would not be trying to find a way to talk their sewer customers into paying for a new plant.

Alderman Trumbo moved to approve the resolution as presented, minus the five percent professional fees for Hanifin and Eco for amount done above the previous agreed upon contracts. The money for work that has not been done, but billed, would not be paid until it had been properly submitted. Alderman Santos seconded.

Alderman Jordan stated it was the alderman's job to handle the tax payers money properly. The problem he had with this was that anything about the approved amount was suppose to come before the City Council. He could not support the budget adjustment.

Alderman Young stated only engineers and future contractors were the ones going to look at their vote. Their words were meaningless. Their vote was going to set whether or not this city had an open check book or not.

Upon roll call the motion carried by a vote of 5-2-0, Young and Jordan voting nay.

RESOLUTION 22-02 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

Mr. Williams stated he would like to have a separate vote on the Butterfield Revenue Bonds. They had requested an emergency clause in the resolution. An emergency clause would require a separate vote.

Alderman Davis moved to approve the resolution. Alderman Santos seconded. The motion carried unanimously.

Alderman Davis moved to approve the emergency clause. Alderman Santos seconded. Upon roll call the motion carried unanimously.

The meeting adjourned at 11:30 p.m.