FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

FINAL AGENDA
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.

AWARDS PRESENTATION

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.

A. CONSENT AGENDA

1. **APPROVAL OF THE MINUTES:** 12/18/01 - 1/15/02

2. **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.

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

4. **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.

5. **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.

6. **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.

7. **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.

8. **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.

9. **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.

10. **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.

B. OLD BUSINESS

1. **CIVIL SERVICE VETO:** Veto of Civil Service Ordinance.

2. **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.

3. **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.

C. NEW BUSINESS

1. **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.

2. **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.

3. **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.

4. **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.

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

6. **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.

7. **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.

8. **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.

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

10. **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.

City Council February 5, 2002

	Roll.			Nomination committee. KS/RR.	
~~Zurcher~~	—				
Trumbo	✓			✓	
Davis	✓			✓	
Santos	✓			✓	
Jordan	✓			✓	
Reynolds	✓			✓	
Thiel	✓			✓	
Young	✓				
Coody	✓				

Consent	BD KS.				
~~Zurcher~~					
Trumbo	✓				
Davis	✓				
Santos	✓				
Jordan	✓				
Reynolds	✓				
Thiel	✓				
Young	✓				
Coody					

City Council February 5, 2002

CIVIL SERVICE VETO.	# to 3D override veto.				
Zurcher					
Trumbo	✓				
Davis	✓				
Santos	✗				
Jordan	✗				
Reynolds	✓				
Thiel	✓				
Young	✓				
Coody	5-2-0.				

motor vehicular Racing	BT 2R. 3RD	PASS			
Zurcher					
Trumbo	✓	✓			
Davis	✓	✓			
Santos	✓	✗			
Jordan	✓	✓			
Reynolds	✓	✓			
Thiel	✓	✓			
Young	✓	✗			
Coody		5-2.			

City Council February 5, 2002

CABLE RATE	H. to table BD.				
~~Zurcher~~					
Trumbo	✓				
Davis	✓				
Santos	✓				
Jordan	✓				
Reynolds	✓				
Thiel	✓				
Young	✓				
Coody					

RZN 02-1.00					
~~Zurcher~~					
Trumbo					
Davis	Left X				
Santos	15				
Jordan	or				
Reynolds	[illegible]				
Thiel					
Young					
Coody					

City Council February 5, 2002

RZN 02-200					
~~Zurcher~~					
Trumbo	left 1st on reading				
Davis					
Santos					
Jordan					
Reynolds					
Thiel					
Young					
Coody					

RZN 2-3.00	KS 2ND VJ	VJ RR 3RD	PASS		
~~Zurcher~~					
Trumbo	✓	✓	✓		
Davis	✓	✓	✓		
Santos	✓	✓	✓		
Jordan	✓	✓	✓		
Reynolds	✓	✓	✓		
Thiel	✓	✓	✓		
Young	✓	✓	✓		
Coody					

City Council February 5, 2002

ADM 1-39.	BD 2ND KS.	BD KS 3RD	Pass		
~~Zurcher~~					
Trumbo	✓	✓	✓		
Davis	✓	✓	✓		
Santos	✓	✓	✓		
Jordan	✓	✓	✓		
Reynolds	✓	✓	✓		
Thiel	✓	✓	✓		
Young	✓	✓	✓		
Coody					

LIBRARY	KS BD 2ND	KS LJ 3RD.	PASS		
~~Zurcher~~					
Trumbo	✓	✓	✓		
Davis	✓	✓	✓		
Santos	✓	✓	absent for vote.		
Jordan	✓	✓	✓		
Reynolds	✓	✓	✓		
Thiel	✓	✓	✓		
Young	✓	✓	✓		
Coody					

City Council February 5, 2002

Boys & Girls Club	KS CJ. pass				
Zurcher					
Trumbo	✓				
Davis	✓				
Santos	✓				
Jordan	✓				
Reynolds	✓				
Thiel	✓				
Young	✓				
Coody					

EG/S	CJ amend CO add item 12: amend failed lack of second.	[illegible]	CJ JJ. approve amend CO to all items of council as stated.		
~~Zurcher~~					
Trumbo			✓		
Davis			✓		
Santos			✓		
Jordan			✓		
Reynolds			✓		
Thiel			✓		
Young			✓		
Coody					

City Council February 5, 2002

CJ amend contract [illegible] 1CC. 1st 4 items [illegible] until [illegible] approved [illegible] work.

Ark Bus Tech	LJ.				
~~Zurcher~~					
Trumbo	✓				
Davis	✓				
Santos	✓				
Jordan	✓				
Reynolds	✓				
Thiel	✓				
Young	✓				
Coody					

KS to approve.

Duke Solutions	KS LJ.				
Zurcher					
Trumbo	✓				
Davis	✓				
Santos	✓				
Jordan	✓				
Reynolds	✓				
Thiel	✓				
Young	✓				
Coody					

City Council February 5, 2002

Waste water amend ++ approx. deduct KS w/ 5% of professional fee amounts, Amendm & Eco.					
~~Zurcher~~					
Trumbo	✓				
Davis	✓				
Santos	✓				
Jordan	✗				
Reynolds	✓				
Thiel	✓				
Young	✗				
Coody					

5-2.

~~Zurcher~~					
Trumbo					
Davis					
Santos					
Jordan					
Reynolds					
Thiel					
Young					
Coody					

meeting adjourned.

City Council February 5, 2002

Butterfield refund.	Resolution BP KS	BP KS. Emergency Clause			
~~Zurcher~~					
Trumbo	✓	✓			
Davis	✓	✓			
Santos	✓	✓			
Jordan	✓	✓			
Reynolds	✓	✓			
Thiel	✓	✓			
Young	✓	✓			
Coody					

Zurcher					
Trumbo					
Davis					
Santos					
Jordan					
Reynolds					
Thiel					
Young					
Coody					

adjourned 11:30.

FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

FINAL AGENDA
CITY COUNCIL
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AWARDS PRESENTATION- Peggy / Steve Cattaneo / Melissa Terry +

NOMINATING COMMITTEE REPORT:

Pass

-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.

A. **CONSENT AGENDA**

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113 WEST MOUNTAIN 72701 501 521-7700
FAX 501 575-8257

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B. OLD BUSINESS

FAILED

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PASS

3. **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. NEXT MTG.

TABLED

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left 1st on reading

left on 1st.

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PASS

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PASS

4. **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.

PASS

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

PASS

6. **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.

approve amended

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PASS amended

8. **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.

PASS

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PASS

10. **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.

PASS

11). votes → Butterfield trail Resolution - emergency clause.
emergency clause.

adjourn 11:30

FAYETTEVILLE
THE CITY OF FAYETTEVILLE, ARKANSAS

KIT WILLIAMS, CITY ATTORNEY
DAVID WHITAKER, ASST. CITY ATTORNEY

LEGAL DEPARTMENT

DEPARTMENTAL CORRESPONDENCE

TO: **Dan Coody**, Mayor
City Council Members

FROM: **Kit Williams**, City Attorney

DATE: **December 26, 2001**

RE: **Cable rate increase for basic tier service only**

We misunderstood Alderman Zurcher's request concerning his opposition to the increase in the lowest level of cable service (Basic tier). Alderman Zurcher called me and asked that I redraft the Resolution so that its passage would result in an actual legal challenge to the cable rate increase. I have done so, and attached hereto is the expanded Resolution.

Under federal law, the City can only challenge increases in this lowest level of service. Cable companies can charge whatever they want for cable services above this lowest level.

In light of Alderman Zurcher's new Resolution to require a legal challenge, I wanted to provide you a letter provided to me from the last person who conducted such an audit and challenge to a cable rate increase for us, Mr. Brian Grogan (our cable franchise negotiator and advisor). I wrote to Mr. Grogan about this issue and three others in

June once I found out about the proposed cable rate increase. His letter of June 26, 2001 addressing these issues is attached. Also attached is his letter of October 2, 2001 about this issue.

I shared this letter with the Telecommunications Board and spoke with them at a couple of meetings about this issue. Attached is a memo from Marvin Hilton dated December 21 in which he reports to you that the Telecommunications Board voted unanimously not to recommend to the City Council that an audit of Cox's basic tier rate be undertaken.

FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

DEPARTMENTAL CORRESPONDENCE

TO: MAYOR COODY AND CITY COUNCIL MEMBERS

FROM: MARVIN HILTON, CABLE ADMINISTRATOR MH 12-21-01

SUBJECT: CABLE BASIC RATE INCREASE

DATE: DECEMBER 21, 2001

The Telecommunications Board, at their October 18, 2001 meeting, voted 4-0 to not recommend to the City Council that a an audit of Cox's Basic Rate increase be done.

In a July 10, 2001 letter, Cox included FCC forms 1240 and 1205 justifying the basic rate increase. This consists of 34 pages of complex accounting. The Telecommunications board, after discussing the rate increase at three of their meetings, decided that the several thousand dollars necessary to engage a specialist in the complex and esoteric process of auditing Cox's justification would not be money well spent.

See the attached "Basic Rate and Channel Increase"

CC: Hugh Earnest, Urban Development Director
Kit Williams, City Attorney

BASIC RATE AND CHANNEL INCREASE

CURRENT PRICE OF LIMITED BASIC - $9.00 for 15 channels
REBUILT PRICE OF LIMITED BASIC - $15.85 for 23 channels

REBUILD LINE UP:

*= added channel with rebuild

***= must- carry channels

2-TBS SUPERSTATION
*3-ESPN
4-UPN/KFDF
5-KFSM/CBS***
6-KSBN/IND***
7-KHOG/ABC***
8-K15DR/FOX***
9-KFAA/NBC***
10-KOLR/CBS
*11-TV GUIDE CHANNEL
12-KTUL/ABC
13-KAFT***
14-UATV
15-WGN
16-GOVERNMENT ACCESS
17-C-SPAN
18-PUBLIC ACCESS
*19-HOME SHOPPING NET.
*20-KWBS/PAX TV
*21-K45/FAMILY NET.
*22-QVC
*53-LEASED ACCESS
*64-CABLE MART

MOSS & BARNETT
A Professional Association

BRIAN T. GROGAN
612.347.0340
GroganB@moss-barnett.com

4800 Wells Fargo Center
90 South Seventh Street
Minneapolis, MN 55402-4129
Telephone 612.347.0300
Facsimile 612.339.6686
www.moss-barnett.com

VIA FACSIMILE AND U.S. MAIL

June 26, 2001

Kit Williams, Esq.
City Attorney
113 West Mountain, Room 302
Fayetteville, AR 72701

Re: Response to June 25, 2001 Letter

Dear Kit:

I am in receipt of your letter of June 25, 2001 which encloses a memorandum prepared by Marvin Hilton, Cable Administrator for the City of Fayetteville ("City"). Mr. Hilton's memorandum addresses the following four issues:

1. Local Spanish Language Channel;
2. Cable Rate Increase;
3. PEG Channel Signal Quality; and
4. Telecommunications Board Review of Franchise Agreement.

I will address these issues in the order in which they are presented.

1. Local Spanish Language Channel.

Recently, the City's Telecom Board listened to a presentation by a representative of a local Spanish speaking channel which is seeking carriage on Cox's cable system. While Cox carries several Spanish speaking channels none of them are local. Mr. Hilton forwarded on a copy of the requirement from the Austin, Texas franchise which requires two Spanish language channels.

Obviously, there are differences between the populations of Austin, Texas and Fayetteville, Arkansas, particularly with respect to the percentage of the population which is Hispanic. However, I see no problem with a franchising authority requiring the inclusion of certain foreign language channels to meet the needs and interests of the community. The important issue is how specific the City chooses to be in imposing such a requirement. For example, if the City seeks to impose a requirement that Cox provide a "local" Spanish speaking channel, chances are there is only one channel which will meet this criteria. This in essence is specifying a particular channel which Cox must carry on the cable system which likely presents a concern. However, if the City chose to use more generic language similar to the Austin, Texas franchise, referencing the carriage of one or two Spanish language channels this should not present a problem although it would also not be likely to change the present channel lineup which already includes one or more Spanish speaking channels.

I do not believe the City has authority to specify where on the channel lineup channels should be located nor can the City specify on which tier of service such a channel should be located. Federal law allows the City to require only a basic service tier which must include the local over the air broadcast stations as well as any PEG access channels. The cable operator has discretion to add any additional channels it chooses to the basic service tier and to otherwise rearrange and retier channels at its sole discretion.

In my experience it is generally not a good policy for the City to become involved in programming disputes because there is simply no limit to the number of channels which various segments of the Fayetteville population are interested in. City's which have previously fought for WGN seeking to provide Cubs baseball and Bulls basketball programming have later found difficulty trying to explain to a minority group or religious group why the City will not take up programming issues on their behalf. By limiting the City's involvement to include certain "broad categories of video programming" the City will be establishing a reasoned public policy without becoming embroiled in a no win situation with respect to the programming lineup. In addition, the City will avoid the inevitable battle with Cox regarding Cox's first amendment right to select the programming lineup it chooses.

2. Cable Rate Increase.

As we discussed on the telephone, Cox has the right to adjust its rates to reflect inflation, cost of living and other external costs, the addition or deletion of a specific program from a service offering, the addition or deletion of specific channels from an existing service tier, the restructuring or division of existing tiers of service or the adjustment of rates as a result of the addition, deletion or substitution of channels. 47 C.F.R. § 76.922. However, 47 C.F.R. § 76.981 also provides that such changes listed above are impermissible if they constitute a fundamental corporate change in the nature of an existing service or tier of service.

One argument which the City could set forth is that the extraordinary increase in the basic service tier and the large increase in the number of channels to be now provided over the basic service tier constitutes a "negative option." While I am not aware of any reported cases by the FCC regarding this issue it is certainly possible the City could pursue such a claim. The theory would be that individuals who subscribe to only the basic service tier are not being provided a choice and certainly have never affirmatively requested the additional channels and fees. We would need to investigate further whether a subscriber has the option of canceling their service as a result of the proposed rate increase without incurring any disconnection or downgrade fees. To the extent Cox charges disconnection or downgrade fees, subscribers are clearly placed in a no win situation.

The only tier of service which remains subject to rate regulation is the basic service tier and associated equipment and installation charges. All other tiers of service and offerings provided by Cox are free from rate regulation. In order to regulate rates the City must review FCC forms submitted by Cox which are intended to provide justification for the basic service tier rate. The form generally calculates a per channel rate which when multiplied by the total number of channels provides the overall basic service tier rate.

The main question for the City is whether the cost of reviewing the basic service tier rates and/or fighting a claim regarding a negative option violation would be worth it to the City. If only a small percentage of overall cable customers are effected, it is possible the costs of undertaking such a review and challenge could outweigh the true benefits to the City and its residents.

Finally, with respect to the $214,520 refund referenced in Mr. Hilton's materials, generally such amounts are addressed in subsequent rate filings by providing an offset from otherwise permissible rate increases. Based on the information presently before me I am unable to determine the status of this issue and therefore I have instructed my assistant to contact the FCC to obtain further clarification. As soon as we received word on this matter I will forward the results to your attention.

3. PEG Channel Signal Quality.

This issue is being addressed in the franchise negotiations although final agreement has yet to be achieved. Cox has argued that the rebuild of its cable system should result in improved picture quality both on the downstream distribution portion of the system which goes from Cox's headend to subscriber's homes as well as the associated return paths which would extend from the City's administration building and the PEG center building. In the ongoing negotiations with Cox we will continue to address the return paths referenced by Mr. Hilton to ensure improved signal quality.

4. Review of Franchise Agreement by the Telecommunications Board.

As you and I have discussed, my client is the City of Fayetteville, Arkansas and you serve as my contact for the City. I recognize you are obtaining input from both staff and elected officials and I will leave to your judgment how best to weigh input from the various groups within the City. Previously, the Telecommunications Board has served as a valuable resource to City officials although I recall there has not always been complete agreement between the Telecommunications Board, City Council, Mayor, City staff and City attorney's office. I am certainly happy to assist in addressing any proposed changes which the Telecommunications Board may suggest, however, I will continue to look to your office for the final word unless otherwise instructed.

I hope this letter is responsive to the issues presented within your June 25, 2001 correspondence. If I can provide any additional information or assistance, please feel free to contact me. Otherwise, I look forward to discussing with you a plan of strategy to move forward in the renewal process and ultimately bring a franchise agreement before your City council for review and consideration.

Very truly yours,

Brian

Brian T. Grogan

BTG/tlh

431864/1

Oct-03-01 08:50am From-MOSS & BARNETT +4900 T-892 P.02/02 F-221

MOSS & BARNETT

A Professional Association

4800 Wells Fargo Center
90 South Seventh Street
Minneapolis MN 55402-4129
Telephone 612 347 0300
Facsimile 612 339 6686
www.moss-barnett.com

BRIAN T. GROGAN
612 347 0340
GroganB@moss-barnett.com

VIA FACSIMILE AND U.S. MAIL

October 2, 2001

Kit Williams, Esq.
113 West Mountain, Room 302
Fayetteville, AR 72701

Re: Cable Television Rate Regulations – City of Fayetteville, Arkansas ("City")

Dear Kit:

Pursuant to our telephone conversation you requested that I prepare a brief letter to your attention regarding the status of the City's rate regulation efforts in 1994. At that time the City retained Moss & Barnett to review FCC forms submitted by the City's cable operator with respect to the rates for cable service. In 1994 Time Warner Cable served the City and was required by federal law to submit FCC Forms 1200, 1205 and 1215. These forms outlined the maximum permitted rates which Time Warner was authorized to charge to Fayetteville subscribers with respect to the Basic Service Tier, Cable Programming Services Tier (a/k/a Expanded Basic Cable) and the charges for remote controls, converters and installations.

Moss & Barnett submitted a report to the City on December 6, 1994 which included a recommended rate order with respect to Time Warner Cable's proposed rates. The rate form identified the maximum permitted rates to be charged. Rates charged by Time Warner Cable in excess of the maximum permitted rates were to be refunded to subscribers and/or credited in subsequent rate filings. However, it is possible Time Warner Cable's rates were at or below the maximum permitted levels and therefore no refunds or credits would be due. Our records do not include copies of Time Warner Cable's subsequent rate filings and therefore we are unable to verify whether any refunds or credits were applicable.

Since that time, franchising authorities have lost the right to regulate the rates for the Expanded Basic Tier. Therefore, the only remaining tier subject to the City's regulatory authority is the Basic Service Tier. Given that FCC regulations specify benchmark rates for the Basic Service Tier based on a per channel formula, the City has very little ability to require a reduction in Basic Service Tier rates if Cox complies with the FCC formula.

I hope this letter is responsive to the questions you have raised. If you should have any further questions or if I can provide any additional information or assistance, please feel free to contact me.

Very truly yours,

Brian T. Grogan

Brian T. Grogan

BTG/tlh/454969/1

Exp..: - 7 Matches
Cont.: - ORD Sel-(B=Browse)

Sel	Ref.	Date	Item	Action	Brief Description	(P=Print)
_	ORD	1/02/2002	4358		AMEND CHAPTER 34/FINANCE & REVENUE	
_	ORD	1/02/2002	4359		ANX 01-5.00/DOUBLE SPGS RD/OWL CRK	
_	ORD	1/02/2002	4360		RZN 01-24.00/DOUBLE SPGS & OWL CRK	
_	ORD	1/02/2002	4361		RZN 01-27.00/DOUBLE SPRNGS/OWL CRK	
_	ORD	1/02/2002	4362		RZN 01-26.00/SHILOH DR & PORTER RD	
_	ORD	1/02/2002	4363		RZN 01-28.00/SHILOH DRIVE & PORTER	
_	ORD	1/15/2002	4365		RESEARCH AND TECHNOLOGY PARK	

4364 = Veto by MAYOR (1-16-02)

Page 1 of 1

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start w/ 4366

015 03 City of Fayetteville 2/07/2002
1/01/2002 - 2/28/2002 Maintenance/Inquiry 13:42:45
Exp..: - 8 Matches
Cont.: - RES Sel-(B=Browse)
(P=Print)

Sel	Ref.	Date	Item	Action	Brief Description
_	RES	1/02/2002	1-02		CRICKET AGREEMENT LEASE
_	RES	1/02/2002	2-02		ADVANTAGE ARKANSAS PROGRAM
_	RES	1/15/2002	3-02		ELIMINATION OF PUBLIC PARKING
_	RES	1/15/2002	4-02		WAIVE BUILDING PERMIT FEE/HABITAT
_	RES	1/15/2002	5-02		WAIVE BUILDING PERMIT FEE
_	RES	1/15/2002	6-02		WASTE/RECYCLING RECEPTACLES
_	RES	1/15/2002	7-02		SOFTWARE AND IMPLEMENTATION SEVICES
_	RES	1/15/2002	8-02		HALF TIME EQUIVALNT POSITION/FLEET

Page 1 of 1
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FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

FINAL AGENDA
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.

AWARDS PRESENTATION (Peggy Vice; Steve Cattaneo; Melissa Terry)

Passed **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.

Passed **A. <u>CONSENT AGENDA</u>**

1. **APPROVAL OF THE MINUTES:**

RES. 9-02 2. **<u>RIDGEWAY WATER LINE</u>:** 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.

RES. 10-02 3. **<u>BUTTERFIELD TRAIL VILLAGE</u>:** A resolution $23,000,000 Fayetteville Public Facilities Board Revenue Refunding Bonds, Series 2002.

RES. 11-02 4. **<u>DUNCAN AND ASSOCIATES</u>:** 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.

RES. 12-02 5. **<u>AIRPORT TAXIWAY EXTENSION</u>:** 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.

RES. 13-02 6. **<u>FOREST SERVICE</u>:** 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.

113 WEST MOUNTAIN 72701 501 521-7700
FAX 501 575-8257

RES. 14-02 7. **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.

RES. 15-02 8. **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.

RES. 16-02 9. **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.

RES. 17-02 10. **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.

B. OLD BUSINESS

FAILED 1. **CIVIL SERVICE VETO:** Veto of Civil Service Ordinance.

ORD. 4366 2. **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.

TABLED (until next C.C. Mtg.) 3. **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.

C. NEW BUSINESS

LEFT ON FIRST READING 1. **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.

Broc Thompson.

LEFT ON FIRST READING 2. **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.

P

ORD. 4367 3. **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.

P

ORD. 4368 4. **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.

P

ORD. 4369 5. **LIBRARY**: An ordinance waiving the requirement of competitive bidding in the burial of utilities for new Fayetteville Public Library.

P

RES. 18-02 6. **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.

P amended

RES. 19-02 7. **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.

P amended

RES. 20-02 8. **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.

P

RES. 21-02 9. **DUKE SOLUTIONS AND HARMONY PRODUCTS**: A resolution approving a proposal for solids supply agreement to negotiate with Duke Solutions and Harmony Products.

P

RES. 22-02 10. **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.

took 5% off

(NO NUMBER) 11. BUTTERFIELD TRAIL: RESOLUTION (W/EMERGENCY CLAUSE) (Passed on Consent)

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 Northwest Regional Airport Board.

MINUTES OF A MEETING
OF THE
CITY COUNCIL
DECEMBER 18, 2001

A meeting of the Fayetteville City Council was held on December 18, 2001 at 6:30 p.m. in Room 219 of the City Administration Building located at 113 West Mountain, Fayetteville, Arkansas.

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

AWARD PRESENTATION: Presentation of the GFOA Distinguished Budget Presentation Award. Mr. Steve Davis, Budget Manager, presented the GFOA award.

CONSENT

APPROVAL OF THE MINUTES

SUNBRIDGE AND GREGG: A resolution awarding a contract to Mobley Contractors, Inc. in the amount of $241,627.00 (contingent upon receiving an easement or right-of-way from the Arkansas & Missouri Railroad), approve funding of $30,000 for project contingency and of $3,000 for materials testing for the project entitled "Sunbridge Drive and Gregg Avenue Intersection Improvements" and approval of a budget adjustment.

RESOLUTION 171-01 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

MICROSOFT OFFICE: A resolution approving the purchase of 223 Microsoft Office XP software licenses from Dell Incorporated. The purchases are authorized through the State of Arkansas Contract Award ST-98-0491; and approval of a budget adjustment.

RESOLUTION 172-01 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

US ABLE LIFE: A resolution renewing employee group policies from US Able Life to provide life, AD&D, and LTD coverage and Section. 125 Cafeteria Plan Administration.

RESOLUTION 173-01 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

TROLLEY: A resolution accepting the renewal agreement with Jones Transportation for trolley operations for the period of January 1, 2002, through June 30, 2002. This is in accordance with the provision of Resolution 11-99.

RESOLUTION 174-01 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

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

OLD BUSINESS

ANX 01-4.00: An ordinance approving annexation request ANX 01-4.00 as submitted by Dave Jorgensen of Jorgensen and Associates on behalf of Mark Foster for property owned by Eugene Nottenkamper and Anthony Turchi and located north of Wedington Drive on the east side of 51st Street. The request is to annex into the city approximately 30.99 acres located in the Planning Area. The ordinance was left on the second reading at the December 4, 2001, meeting.

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

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

Alderman Thiel stated this made sense to her because it complemented what was already there. All the infrastructure was already there.

Alderman Jordan stated they were at ninety-four percent sewer capacity. There was going to be approximately one hundred and twenty-three houses in this development. The sewer capacity in 1991 was approximately eighty-six percent. They were averaging over the last ten years about seven hundred eighty-one units per year. They were starting to add a lot of units on this sewer treatment plant and they were creating what he considered urban sprawl. He was concerned about the stress and strain this was going to put on the sewer treatment plant. They were putting more pressure on the infrastructure of this city with their trash and streets and they have yet to bring in impact fees. He would have a difficult time supporting any more expansion until they addressed these issues.

Alderman Davis stated they did not guarantee any sewer hook-ups.

Mr. Tim Conklin, Planning Director, stated they had been requiring developers to sign sewer capacity warning forms. Basically stating that they were in the process of building a new sewage treatment facility and there was no guarantee between now before the plant opened that they would be allowed to hook on. Alderman Young has asked the Public Works division to look at their sewer plant capacity every year and to do an analysis to see if they can continue to grow. On any annexation, the Planning Division has started asking all the different departments and divisions to provide comments to them. They wanted to make sure that their recommendations to the Planning Commission were based on input from everyone within the city. With regard to this annexation, 1982 was the annexation of thirteen hundred acres all the way to Double Springs Road. About twenty years ago a decision had been made by the city to annex land all the way out to Double Springs Road. They had utilities and services which were being provided in this area since 1982. They spent 1.8 million dollars to cost share with the highway department for Wedington Road. They were going to spend $750,000 for Rupple Road for the new Boys and Girls Club. They have done improvement in this area. They were building a new wastewater treatment facility. He had a master street plan. He required right-of-way dedications from individuals. He had a future land use plan which showed commercial nodes. The point he was trying to make was that they had a lot of planning in this area. This was in their planning area. There are planned street connections to tie these neighborhoods together.

Alderman Thiel stated she had a major concern about septic systems and their affect on our ground water. An area like this was going to develop. It would not have as many homes, but it could have quite a few on septic systems. She would rather have them hooked onto the sewer system.

In response to questions, Mr. Greg Boettcher, Public Works Director, stated the capacity of the plant was rated by the State. As growth occurs, they will be monitoring how the plant performs. Their permit stated that they had to meet certain limits to discharge in the receiving streams. They will begin to see that they are having more difficulty meeting limits. If they get to a point where they were at one hundred percent capacity and that they were having trouble meeting limits, at that point the city may need to look at other options as far as controlling connections. But, he also thought that if they were close to the completion of the project the State would work with them to maintain proper treatment and continue with growth. They may need to allocate building permits for a period of time. The public has approved the project and they were moving ahead.

Alderman Young stated seven hundred units was more than the city of Elkins. So, every time they did that they were adding the city of Elkins to the City of Fayetteville. Then, it put into context all of the other things that they were supposed to provide for a city.

Mr. Jeff Erf, an area resident, asked if there was anything that prohibited the developer from putting in an septic system if it were annexed into the city.

Mr. Williams stated there was an ordinance which required them to hook up to the sewer if they were within two hundred and fifty feet.

Mr. Erf stated one of the benefits of the new system was that it would help water quality and they would avoid septic systems. He thought they should require all new annexation to be hooked up to the wastewater system.

Mayor Coody asked shall the ordinance pass. Upon roll call the ordinance passed by a vote of 6-2-0, Zurcher and Jordan voting nay.

ORDINANCE 4355 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

RZN 01-22.00: An ordinance approving rezoning request RZN 01-22.00 as submitted by Dave Jorgensen of Jorgensen and Associates on behalf of Mark Foster for property owned by Eugene Nottenkamper and Anthoney Turchi and located north of Wedington Drive on the east side of 51st

Street. The property is zoned A-1, Agricultural, and contains approximately 30.99 acres. The request is to rezone to R-1, Low Density Residential. The ordinance was left on the second reading at the December 4, 2001, meeting.

Alderman Davis 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.

In response to questions, Mr. Conklin stated they were growing in Northwest Arkansas. They had a planning area boundary. This was in their planning area boundary. The purpose of that boundary was to plan for future growth and development. They were currently providing services in this area. As a planner and the Planning Commission recommended that it would be better to develop this and urbanize this for a city, Urban Development. They were trying to create a city that was efficient. They had many ordinances that managed their growth and development. They led the State of Arkansas with their ordinances to manage growth and development.

Alderman Zurcher stated they did not want a city every where. He thought they were looking at this as regional to the determent of Fayetteville. He did not consider this an urban area. To him this was sprawl and they were losing the natural spaces out there. He thought they should be less dense on the edge of town.

Mayor Coody asked shall the ordinance pass. Upon roll call the ordinance passed by a vote of 6-2-0, Zurcher and Jordan voting nay.

ORDINANCE 4356 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

BUDGET: A resolution adopting the 2002 Operating Budget. The resolution was tabled at the December 4, 2001, meeting.

Alderman Trumbo stated that they were anticipating using about two and half million dollars in reserves this year, about two million for next year.

Mr. Jim Foster, Downtown Dickson Enhancement Project, stated the level of funding they would be receiving would put them out of business. They were the economic development for downtown Fayetteville and they could not survive without a major public commitment to them. He asked them if it was the right time to put the brakes on economic development.

Mr. Bruce Johanson, Bank of Fayetteville, Fayetteville has a strong history where the city has teamed up with public and private sectors to create the culture and community that they enjoy today. For example the Walton Arts Center. DDEP was established as a partnership between the city, businesses, and residential owners within the project area. This program has served their community well and it needed to continue. He requested the city locate the funding needed for this project. They were requesting forty thousand in city funds for the 2002 budget. They have secured 1.95 million dollars in funds that will be available to work the Dickson Street renewal area.

In response to questions, Mr. Johanson stated they had approximately one hundred and eighty people.

Alderman Davis stated if they went to those members and asked for sixty-two dollars, they would have their additional funding. They were running two million dollars in the hole now. They had to be very careful on the money they were spending.

Alderman Thiel asked if they had sought funding from the A&P Commission. She felt it was appropriate for them to fund this.

Ms. Bootsie Ackerman, DDEP, stated they will be applying to the A&P Commission. They normally asked them for funding in April. DDEP should have been included in the Citizens Survey Growth and Development Services. They were currently contracted with the city for design, planning, and economic development. Had they been included, they would have placed fourth position on the priority. Their project was a model public/private partnership. The streetscape improvement on Dickson Street are expected to begin in the spring and they would be able to see progress. Ongoing marketing and public relations were readily apparent in approximately seventy -five million dollars in private investment that has been attracted to the area. Resulting property sales and HMR Tax reflect the growth and development. The city's investment represented about one-third of their budget.

Alderman Davis suggested that they may allocate some additional money when they approve their rollforward money from 2001, but he did not believe they could pass the budget tonight with any additional increase.

Alderman Thiel stated if they increased the funding at all, she would like for them to look at it in the rollover funding.

Mr. Rick Alexander, an area resident, stated this project brought home the bacon. This was a group of interested citizens that have come together three or four years ago with the goal of facilitating and fostering the rehabilitation and renovation of their downtown area. This was the time to put their money where their mouth was. This organization has brought in a million and five dollars of federal money. The city did not bring that money in, the DDEP brought that money in. That money was being matched by the city. They have returned more than any other investment the city has made and they have not even done the improvements yet. They had items for transportation systems that were empty. This project needed their support, they were just at the beginning of what they envisioned for the rehabilitation of their downtown area. Many of the people who have invested in downtown have done so with the knowledge that this project was going forward.

Mr. Steve Davis, an area resident, stated he had a business on Dickson Street. He felt it was important to have a strong and effective DDEPT office working for the businesses and the property owners.

In response to questions, Ms. Ackerman stated the funding they received from the city up front each year was drawn on as needed. The $35,000 in funding they received last year ran the office until about August.

In response to questions, Mr. Steve Davis, Budget Manager, stated staff will prepare the rollforward list, the council will then decide what to do with the money. He added, city divisions did cut a 1.3 million dollars out of operating budgets to make this budget work. Seventy-nine percent of their general budget was personnel service.

Alderman Santos moved to approve the budget. Alderman Trumbo seconded. Upon roll call the motion carried unanimously.

RESOLUTION 175-01 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

SALE OF MUNICIPALLY OWNED PROPERTY: An ordinance amending Chapter 34, Finance and Revenue, of the Code of Fayetteville to establish a formal process for the sale of municipally owned real property. The item was forwarded to the Ordinance Review Committee at the November 20, 2001, meeting.

Mr. Williams read the ordinance.

In response to questions, Mr. Williams stated the South Industrial Park, the Technology Park along 540 and the new one next to the Genesis Project, would be for sale. The purpose for this land was to develop Fayetteville economically. It had a different purpose than general property would be.

Ms. Fran Alexander, an area resident, stated on "C" "two appraisals shall be obtained" it did not say by whom. Whether it was the city or the purchaser.

Mr. Williams stated it would be clear in his mind that it would be the city getting the appraisals.

Ms. Alexander recommended the insertion of, "the city shall obtain". Also on "E", "upon affirmative vote of the city council, the city shall solicit sealed bids" she asked them to think about the highest and best use of land. They always equate the highest bid as the most valuable. If somebody proposed a better land quality use for a parcel, yet was not the highest bidder, she thought it would be nice if the council had the option to consider that proposed use of the land as important as the highest money. Highest and best use of land did not always equate with money. On "H", "the sale of industrial, business, technology park land, the sale of real property to other public entities." This was public land and the public did need to know about it.

Mr. Williams stated land could not be sold without consent of the city council. It would have to come before the council. There would be notices then. Often when there was a sell from government to government, there were often other issues involved.

Ms. Alexander stated her concern was citizen notification. Public notification needed to come forth on land sales, other than just the agenda.

In response to discussion, Mr. Williams stated he could draft a revision with two sections under (h) the first on being "the sale of industrial, business, and technology park land are expressly exempt from provisions of this section." The next one, (h)(b) "that the sale of real property to other public entities are expressly exempt from the provisions of this section, except that they must provide the same notification as required by sale to charities." Which would be one advertisement in the paper and the certified mail and the signs.

Alderman Santos moved to amend the ordinance as recommended. Alderman Zurcher seconded. Upon roll call the motion carried unanimously.

THE ORDINANCE WAS LEFT ON THE FIRST READING AS AMENDED.

NEW BUSINESS

ANX 01-5.00: An ordinance approving annexation request ANX 01-5.00 as submitted by Raymond C. Smith on behalf of Gerald and Irene Griscom and Sylvester and Carol Guist for property located east of Double Springs Road and south of Owl Creek Subdivision. The property is in the Planning Area and contains approximately 13.61 acres. The request is to annex into the city.

Mr. Williams read the ordinance for the first time.

Mr. Charlie Sloan, developer, stated he had done several subdivisions back in the 90's. Most of the development would be residential, single family homes. There would also be town homes. There would be a home owners association that would do all the maintenance, that was what they did at North Heights. They also had some land that they could make a park out of. There was a subdivision to the north and to the west of them. They would like to access Double Springs Road the land to the east.

Alderman Thiel asked if there was any consideration in making this a PUD?

Mr. Sloan replied he did not know enough about a PUD. He did not know yet. There were only going to be four families per acre. They were willing to do what ever it took to make it work.

Alderman Jordan asked how many house they were going to put in?

Mr. Sloan stated they had platted right now, one hundred and twenty-two to twenty-three total lots. That counted the eighteen duplex lots. Because it was such a big project they would not be building all lots now. They were wanting to make the purchase of the land. He wanted to make sure that it zoned correctly and that he could continue on. They would try and build the front of Double Springs first and to do all the improvements along it. They would then work their way in starting close to the creek.

Alderman Davis stated he would like every one to look at some of the developments Mr. Sloan has put in. They were quality. He would like to see that out in this area.

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

Mr. Williams read the ordinance for the second time.

THE ORDINANCE WAS LEFT ON THE SECOND READING.

RZN 01-24.00: An ordinance approving rezoning request RZN 01-24.00 as submitted by Raymond C. Smith on behalf of Conley and Virginia Worley, Gerald and Irene Griscom and Sylvester and Carol Guist for property located east of Double Springs Road and south of Owl Creek Subdivision. The property is zoned A-1, Agricultural and contains approximately 41.90 acres. The request is to rezone to R-1, Low Density Residential.

Mr. Williams read the ordinance for the first time.

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

Mr. Williams read the ordinance for the second time.

THE ORDINANCE WAS LEFT ON THE SECOND READING.

RZN 01-27.00: An ordinance approving rezoning request RZN 01-27.00 as submitted by Raymond C. Smith on behalf of Conley and Virginia Worley, Gerald and Irene Griscom and Sylvester and Carol Guist for property located east of Double Springs Road and south of Owl Creek Subdivision. The property is zoned A-1, Agricultural and contains approximately 8.74 acres. The request is to rezone to RMF-6, Low Density Multi-Family Residential.

Mr. Williams read the ordinance for the first time.

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

Mr. Williams read the ordinance for the second time.

ORDINANCE WAS LEFT ON THE SECOND READING.

RZN 01-26.00: An ordinance approving rezoning request RZN 01-26.00 as submitted by Dave Jorgensen of Jorgensen and Associates on behalf of Tom and Louise Sager and Paul and Bernice Guisinger for property located west of Shiloh Drive and north of Porter Road. The property is zoned A-1, Agricultural and contains approximately 12.08 acres. The request is to rezone to C-2, Thoroughfare Commercial.

Mr. Williams read the ordinance for the first time.

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

Mr. Williams read the ordinance for the second time.

THE ORDINANCE WAS LEFT ON THE SECOND READING.

RZN 01-28.00: An ordinance approving rezoning request RZN 01-28.00 as submitted by Dave Jorgensen of Jorgensen and Associates on behalf of Tom and Louise Sager and Paul and Bernice Guisinger for property located west of Shiloh Drive and north of Porter Road. The property is zoned A-1, Agricultural and contains approximately 11.68 acres. The request is to rezone to R-2, Medium Density Residential.

Mr. Williams read the ordinance for the first time.

Mr. Chris Brackett, Jorgensen and Associates, stated they did not have a concept for this property yet. The owners were looking to sell the property.

Mr. Conklin stated they allowed property owners to petition for rezonings, if it was consistent with their land use plan, staff would make a recommendation. The Planning Commission did recommend approval for this property. This was shown as regional commercial area. The property was also within the Overlay District.

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

Mr. Williams read the ordinance for the second time.

THE ORDINANCE WAS LEFT ON THE SECOND READING.

SENIOR CITIZEN CENTER: A resolution authorizing a change order for activities associated with construction of the Senior Citizen Center.

Mayor Coody stated they had a meeting on Monday with the Senior Citizen folks and they had given them a letter stating that they would pay for the planning and the equipment.

Mr. Williams stated there had been a letter written by Rodney Ryan, President for Council on Aging, which stated, "the Council on Aging will provide the funding for the kitchen design change and the equipment" they will be providing the funding for this add-on.

Alderman Trumbo moved to approve the resolution. Alderman Davis seconded the motion. Upon roll call the motion carried unanimously.

RESOLUTION 176-01 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

MUNICIPAL JUDGE: An ordinance amending Ordinance 3765 to add Municipal Judge to the City Officials listed in Section 1.

Mr. Williams read the ordinance for the first time.

Alderman Davis 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 Zurcher moved to suspend the rules and move to the third and final reading. Alderman Davis 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 motion carried unanimously.

ORDINANCE 4357 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

DOWNTOWN DICKSON ENHANCEMENT PROJECT: A resolution approving an amendment for Downtown Dickson Enhancement Project in the amount of $120,972.03 to address: (1) easement revisions - $9,660.00, (2) construction engineering - $39,552.03, and (3) project construction inspection - $71,760.00 (option to allow use of Engineering Division personnel for full-time inspection. Current contract amount is $530,227.62 to $651,200.15.

Alderman Trumbo moved to approve the resolution. Alderman Davis seconded. Upon roll call the motion carried unanimously.

RESOLUTION 177-01 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

CAT: A resolution approving a contract in the amount of $34,500.00 with Community Access Television for public access television services for 2002.

Alderman Jordan moved to approve the resolution. Alderman Santos seconded.

Mr. Bob Emennegger, CAT, asked if they were discussing a six month contract? He asked if they could add an option to renew at the end of this.

Mr. Williams stated that he did not believe that they could, because there was no money budgeted to fund the option to renew.

Alderman Davis stated they had approved the budget based on the $34,500 for CAT.

Mr. Williams stated they were still in negotiations with Cox. He was hoping that they would receive some money from them to apply to this contract. There was no guarantee.

Mr. John Zimmer, CAT, stated Cox paid $420,000 per year to the city. In return the city only gave CAT one-sixth of that amount. Now they wanted to cut them down to one-twelveth. They were not asking them to give them more money. They were asking them to take less money. Let them have enough to operate on. They could not run the station on $34,500. He did not see why they did not fund the full amount.

Mr. Morty Newmark, an area resident, stated the money used to fund CAT did not come from taxpayer dollars, it came from the money negotiated from Cox Cable. CAT uses up to eight percent of the station. The majority of the money should come to them. One of the things they may want to consider was it in the best interest of the city to be in the television business. Would it not be best to take that money that came from Cox and give it to CAT to serve as the government provider and the community access provider. They could not operate on $34,500 a year. He would like to see them funded by some of the rollover money. They were leasing right of way to Cox and the city needed to get what it was worth.

In response to questions, Mr. Williams stated the contract that they had was for one year and not six months.

Alderman Zurcher moved to amend the contract to six month. Alderman Santos seconded. Upon roll call the motion carried unanimously.

Mr. Williams stated the contract would now begin on the first day of January, 2002 and end on June 30, 2002.

Mr. Jim Bemis, an area resident, stated they should look at it from the stand point of the people that were using the station to participate in their government. It was not just money. They were having mega mergers in the communications industries. They were combining all of the cable companies, the entertainment business, every media is being combined. Who was going to do the local productions? It was going to be done by them.

Upon roll call the motion carried unanimously.

RESOLUTION 178-01 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

ELDERLY TAXI PROGRAM: A resolution approving a contract with the Area Agency on Aging for the Elderly Taxi Program.

Alderman Reynolds stated they needed to do a better job with their transportation. He suggested they review their ordinances after the first of the year.

Alderman Trumbo moved to approve the resolution. Alderman Reynolds seconded the motion.

Mr. Williams stated this was basically the same contract that the city had been adopting for the past several years. It had concerned him because they were waiving their immunity, if the Area on Aging were sued. He had not heard of any suits and it was not very likely that they would be sued. But if they were sued they would have to pay.

Alderman Davis asked Mr. Williams what his opinion was.

Mr. Williams stated that he was concerned. He has asked them to modify the language, but they had not agreed to any modification. He was very conservative when it came to assuming risks. He thought that they needed to fund the program, but he could not recommend that they sign this. He would not make a big objection if they did not. His policy has been they should not waive their immunity. On the other hand he thought it was remote that they would be sued. The other cities were not worried about it. Our city had not been worried about it for several years before he became city attorney.

Mr. Davis explained the way the program worked. The participant did not know where the money was coming from. All they knew was that they received it through the community development office.

Mr. Ted Webber, Administrative Services Director, stated this amount would serve one hundred and thirty-three residents. It was thirty dollars per month. Each coupon was worth two dollars. They received fifteen a month. There were a lot of administrative costs associated with this grant.

Upon roll call the motion failed unanimously.

THE RESOLUTION FAILED.

The meeting adjourned at 10:05 p.m.

RESOLUTION N0. ______

A RESOLUTION RATIFYING THE RESOLUTION OF THE FAYETTEVILLE PUBLIC FACILITIES BOARD APPROVING REFUNDING REVENUE BONDS (BUTTERFIELD TRAIL VILLAGE PROJECT), SERIES 2002 IN A PRINCIPAL AMOUNT OF NOT TO EXCEED $25,000,000; AND DECLARING AN EMERGENCY

WHEREAS, The Fayetteville Public Facilities Board (the "Board"), is a public body politic and corporate with the power of perpetual succession created by Ordinance Number 2485, as amended (the "Ordinance") of the Board of Directors of the City of Fayetteville, Arkansas (the "City") under the constitution and laws of the State of Arkansas (the "State"), including the Public Facilities Board Act as codified at Arkansas Code annotated §14-137-101 et seq. (1987 & Supp. 1995), as amended (the "Act"); and

WHEREAS, the Board is authorized by the Act and the Ordinance to issue and sell its revenue bonds and to use the proceeds thereof for the purpose of financing housing and health care facilities in the City to secure payment of such revenue bonds as therein provided (including bond insurance or letters of credit) and to issue refunding bonds, all in accordance with the provisions of the Act and the Ordinance; and

WHEREAS, the Board has determined that the economic interest and public purpose of the Board are served by issuing its Adjustable Rate Demand Refunding Revenue Bonds, Series 2002 (Butterfield Trail Village Project) (the "Bonds") in an aggregate principal amount of not to exceed $25,000,000 for the purpose of providing moneys to refund prior bonds, pay the costs of issuing the Bonds and for other purposes related thereto: and

WHEREAS, the Bonds are not a debt of or pledge of the credit of either the City or the Board and neither the City or the Board is obligated to pay debt service on the Bonds; and

WHEREAS, the Act provides that none of the powers granted to the Board under the provisions of the Act shall be subject to the supervision or regulations or require the approval or consent of the State or of any municipality or political subdivision of the State, except as provided in the Ordinance; and

WHEREAS, pursuant to the provisions of the Ordinance, resolutions adopted by the Board which authorize the approval of bonds for financing residential housing, health care and related facilities for the elderly which are owned by non-profit corporations shall be ratified by the City; and

WHEREAS, the Board adopted a resolution on February 4, 2002 to approve the Bonds subject to the ratification by the City and subsequent approval by the Board of final financing terms; and

WHEREAS, such resolution adopted by the Board on February 4, 2002, authorized the Chairman and Secretary to execute documents to effect the issuance of the Bonds; and

WHEREAS, the City, as an exercise of its ministerial powers should ratify the Board's resolution in recognition that the City is not a part of the deliberative process of approval of the issuance of the Bonds and provided further that the City should ratify the resolution adopted by the Board on February 4, 2002, based upon a determination that the Board has solely and independently exercised its powers and responsibilities in a manner which complies with the Ordinance; and

WHEREAS, the City Council finds that an emergency exists due to the fact that the bonds in question must be refunded before March 1, 2002 in order to avoid default.

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF FAYETTEVILLE, ARKANSAS

Section 1. **Recognition of Board's Authority.** The Board is authorized by the Act and the Ordinance to approve the issuance of its not to exceed $25,000,000 Adjustable Rate Demand Refunding Revenue Bonds, Series 2002 (Butterfield Trial Village Project) (the "Bonds") for the purpose of providing moneys to refund prior bonds, pay the costs of issuing the Bonds and for other purposes related thereto and shall comply with other provisions of the Act and the Ordinance. The bonds by statute and intent of this city council are not a debt of or pledge of the credit of either the City or the Board and neither the City or the Board is obligated to pay debt service on the Bonds whether or not said bonds have been properly issued.

Section 2. **Ratification of Board's Resolution.** The provisions of the Board's resolution approved February 4, 2002, a copy of which is filed with the Clerk of the City, are hereby ratified by the City.

Section 3. **Severability.** If any provision of this Resolution shall be held or deemed to be or shall, in fact, be illegal, inoperative or unenforceable, the same shall not affect any other provision or provisions herein contained or render the same invalid, inoperative or unenforceable to any extent whatever.

Section 4. **Repeal of Resolutions in Conflict.** All resolutions and parts of resolutions in conflict herewith are hereby repealed to the extent of such conflict.

Section 5. **Emergency Clause.** That the City Council having found that immediate ratification is necessary in order to avoid default, hereby declares this resolution to be necessary to preserve the public peace, health, safety and welfare, and because of such, an emergency is hereby declared to exist and this resolution shall be in full force and effect from the date of its passage and approval.

PASSED and **APPROVED** this the _____ day of February, 2002.

APPROVED:

By: ____________________________

DAN COODY, Mayor

ATTEST:

By: ____________________________

Heather Woodruff, City Clerk

RESOLUTION NO. _____

A RESOLUTION EXPRESSING THE CITY COUNCIL'S OPPOSITION TO THE SEVENTY-SIX PERCENT (76%) RATE INCREASE FOR THE BASIC TIER CABLE TELEVISION SERVICE BY COX COMMUNICATIONS, INC., TO AUTHORIZE HIRING AN EXPERT TO AUDIT AND CHALLENGE THE INCREASE BEFORE THE FCC AND TO APPROVE A BUDGET ADJUSTMENT OF $6,000.00

WHEREAS, the programming on the Fayetteville Government Channel and Community Access Television is currently available only to Cox Cable subscribers; and

WHEREAS, the low and moderate income residents of the City of Fayetteville have come to rely on the availability of a reasonably priced basic cable rate plan in order to receive the programming on the Fayetteville Government Channel and Community Access Television; and

WHEREAS, the proposed Seventy-Six percent (76%) rate increase for basic cable television service proposed by Cox Communications, Inc. is not justified and would place a significant financial burden on low and moderate income residents wishing to receive said programming; and

WHEREAS, Cox Communications, Inc. submitted FCC forms 1240 and 1205 with 34 pages of complex accounting to justify its rate increase; and

WHEREAS, it will be necessary to hire an expert in the accounting procedures and rules of the FCC to analyze and challenge this basic tier rate increase.

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

Section 1. That the City Council of the City of Fayetteville, Arkansas hereby expresses its opposition to the proposed Seventy-Six Percent (76%) rate increase for basic cable television service proposed by Cox Communications, Inc.

Section 2. That the City Council of the City of Fayetteville, Arkansas authorizes and directs the Mayor to challenge this increase in cable rates for the basic tier, to hire a specialist to conduct an audit and examination of FCC forms

1240 and 1205 and supporting documents from Cox, and to file a complaint or challenge based upon this audit with the FCC.

Section 3. That the City Council of the City of Fayetteville, Arkansas approves a budget adjustment in the amount of Six Thousand Dollars ($6,000.00) to pay some or all of the expert's fee to audit, examine, and challenge the rate increase for the basic tier cable fee increase.

PASSED and APPROVED this _____ day of January, 2002.

APPROVED:

By: ______________________________

DAN COODY, Mayor

ATTEST:

By: ______________________________

Heather Woodruff, City Clerk

MINUTES OF A MEETING
OF THE
CITY COUNCIL
JANUARY 15, 2002

A meeting of the Fayetteville City Council was held on January 15, 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 Young, Trumbo, Davis, Santos, Jordan, Reynolds, and Thiel, City Attorney Kit Williams, City Clerk Heather Woodruff, Staff, Press, and Audience.

ABSENT: Alderman Zurcher absent.

STATE OF THE CITY ADDRESS
Mayor Coody gave the State of the City Address. See Attachment A.

OTHER BUSINESS
Mayor Coody stated Stan Green has resigned from the Northwest Regional Airport Board. It was his responsibility to recommend a new appointee. The council would have to vote on his recommendation. His recommendation was Tommy Deweese.

It was the conscious of the council to put the nomination on the next City Council Agenda.

CONSENT AGENDA

APPROVAL OF THE MINUTES.

PUBLIC PARKING: A resolution to eliminate public parking directly in front of the federal building restricting parking to government official use only.

RESOLUTION 3-02 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

HABITAT FOR HUMANITY: A resolution to waive the building permit fee and other development fees for homes to be constructed by Habitat for Humanity.

RESOLUTION 4-02 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

SFCDC: A resolution to waive the building permit fees and development fees for homes to be constructed by South Fayetteville Community Development Corporation.

RESOLUTION 5-02 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

Alderman Davis moved to approve the Consent Agenda with the exception of the minutes. Alderman Jordan seconded the motion. Upon roll call the motion carried unanimously.

OLD BUSINESS

MOTOR VEHICULAR RACEWAYS: An ordinance to regulate motor vehicular raceways. The ordinance was left on the first reading at the January 2, 2002, meeting.

Alderman Trumbo moved to suspend the rules and move to the second reading. Alderman Davis seconded the motion.

Mr. Williams read the ordinance for the second time.

Mr. Berry, track owner, asked the council how they were elected? By the majority of the people? We submitted twelve hundred signatures in support of the speedway. They only had a hundred and fifty. They won by majority. He thought they should drop the issue.

Mr. Mike Baker, manager of speedway, stated he knew the owner of the property was going to follow through, but it had nothing to do with him. He was going to work with everyone. They were going to have the races over early every night. Hopefully they would not have any problems with the neighbors. They were going to start at 6:00 p.m. and be done by 10:00 p.m. at the latest.

Alderman Trumbo asked Mr. Baker if he had any problems with the proposed ordinance.

Mr. Baker stated the time was the only thing that bothered him. He hoped that they got done every time by 10:00. He did not foresee a problem. It has been done before. He thought that they would get done by ten, if not earlier.

Alderman Davis stated Mr. Baker had stated in the paper that ten o'clock might be difficult for them to meet all the time.

Mr. Baker stated on a two day event, it might be difficult to make it on Friday. If it looked like it was going to run late then they would stop and start earlier the next day. He did not think there would be a problem on a weekly deal. The problem would be on the two day events because there would be more cars. He did not foresee a problem on Saturdays. The only problem should be on Friday night, because people worked. There were only five events scheduled. The first race, March 29, could be a problem.

Alderman Davis stated too many times they had citizens come up here and tell them that they had ordinances on the books and that they did not enforce those ordinances. He was concerned that if they set a ten o'clock time, then they needed to be done by then. He did not see that they could have any leniency. He suggested an amendment to this ordinance changing the time to 10:30.

Mr. Baker stated he had thought it was going to be a problem and had told the City Attorney that, but he did not believe it was going to be a problem.

Alderman Davis moved to amend the ordinance by changing the time from 10:00 p.m. to 10:30 p.m. Alderman Trumbo seconded the motion.

Mr. Baker stated they would be helpful. He was still going to start at 6:00 p.m.

Alderman Santos suggested three warnings a year and to add it to the penalty section.

Mr. Williams stated he thought on the warnings it would be better to leave it with the police and the prosecutor. He did not know of another ordinance that allowed three chances. He thought it would be better to trust the city's employees.

Alderman Thiel stated she thought that they would be lenient at first to give everyone time to get use to it and feel it out. She had a lot of constituents that were set on the ten o'clock, however, that along with the other compromises make this a win-win situation. She thought this was better than a law suit. She thought that they could live with the ten-thirty. As long as it is ten-thirty. The goal should be to stop at ten. Tempers were going to get heated if it was ten-thirty and it went on to eleven. If it was ten going to ten-thirty, that was okay. She was willing to compromise at ten-thirty. There were people that were not happy with the five two-day races. They were not happy that this ordinance did not do anything about monitoring the noise. She felt that they had to make some compromises.

Alderman Reynolds stated he wanted everyone on that petition to be happy and he wanted this business to survive. He was going to support this amendment because it was workable.

Upon roll call the amendment passed unanimously.

Alderman Thiel moved to accept Section 2 as read tonight. Alderman Davis seconded.

Mr. Troy Olson, an area resident, stated this seemed to him to be similar to the noise problems that they were having on Dickson Street.

Alderman Thiel stated the decibel level at the race track was considerably higher than Dickson Street.

Mr. Olson stated they had a very nice track. The council needed to work with the business to make it better.

Upon roll call the motion carried unanimously.

Alderman Davis moved to suspend the rules and move to the third and final reading. The motion died from lack of a second.

THE ORDINANCE WAS LEFT ON THE SECOND READING AS AMENDED.

NEW BUSINESS

RECYCLING RECEPTACLES: A resolution approving the purchase of 27 waste/recycling receptacles from Windsor Barrell Co. for the Downtown Area, the Square and Dickson Street in the amount of $19,353.00

Mayor Coody stated this was an effort to clean up the downtown area. Half the trash can is for recyclables and the other half is for trash.

Alderman Santos stated the only problem he had with this was that he would like to see it as a part of a unified design theme for the whole Downtown Dickson Street Project. He had been told that if they came up with a unified design theme then these would be placed in other places around town.

Alderman Santos moved to approve the resolution. Alderman Jordan seconded the motion.

In response to concerns from Alderman Davis, Mr. Dumas stated they were bolted to the sidewalk so they could not be removed easily. They would not be moved during special events. They had spoken with the DDEP and they did not have a problem with the design, however, if they did chose a different design, then they could move these to a different location. They were planning on using mollies to bolt them to the sidewalk.

Alderman Reynolds stated those containers were quiet large and their sidewalk was small in some areas.

Mr. Dumas stated at this time this was the only size they were getting. If they found that there were some locations where they needed a container then they could move some smaller sizes in. There were some options. They were going to find out what their needs were.

Mr. Jordan stated he was concerned about what the public was going to put in them. The public would probably put everything in there. He was concerned about the contamination that might occur.

Mr. Dumas stated if there was significant contamination, then it would go into the waste stream instead of the recycling stream. There would be a learning curve for the community.

Alderman Jordan stated he thought they need to educate the public better on recycling. A lot of people contaminated because they simply did not know.

Alderman Thiel state that she would like to see local artisans brought into the picture.

Upon roll call the motion carried unanimously.

RESOLUTION 6-02 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

WORKORDER SYSTEM: A resolution approving a contract for Software and Implementation Services with Hansen Technology, Inc. in the amount of $487,600.00; and approval of a budget adjustment.

Mr. Ted Webber, Administrative Services Director, stated this did represent a significant amount of work put in by city staff off a significant time frame. He emphasized that bringing Hansen into the city would be a significant building block on the future systems that they had in the city. They will be replacing some existing, non-compatible, non-intergraded computer systems which were manually based. Another benefit that they would have actual input from the citizens. Research time to answer citizen questions will be answered with much less research time and in a more timely manner. Also the asset management piece would allow them to define where they could see where they were spending their money and where they were spending their time. It would allow them to level their effort of work and allow them to work smarter. The Hansen Project was just a piece of the project to improve citizen and customer service. The University of Arkansas will be helping them make this become a reality. They have asked Dr. Dan Gaster and Allen Elistran from the University to present their role in this project so that they could understand how broad it was and how important it was to the community.

Dr. Gaster stated they had been asked to address and improve the culture of customer and citizen service with the City of Fayetteville. He was the Chairman of the Management Department of the Sam Walton College of Businesses. Mr. Elistran was also in the Management Department. They have both been doing research for several years on customer service and culture. They were pleased to help the city out. They have learned that technology itself rarely provides an adequate solution to any kind of management problems. It had to implemented into a context that supports that implementation. What they were proposing to do was to start a two phase program. The first phase would be to do a comprehensive survey of city employees. In this survey they will be using a standardized organization culture questionnaire. The perceptions, attitudes and belief of the employees regarding the level of service that organization promotes and supports is highly coordinated with customer service response from external customers from their organization. If they could change the culture of any organization to support the use of this technology. The culture change would involve promoting a culture within the organization that supports the whole idea of customer service. The survey would provide them some base line data from which they could address or assess the level of the culture within the city, among the city employees and their perceptions about customer service. They could then compare this data to data from other organizations. They could pinpoint potential problem areas within the climate of the city within management processes and various departments of the city that might provide road blocks to their technology project. Secondly, they would be able to pinpoint some training and prevention programs they might want to undertake. This data would then allow them to evaluate the success of the implementation over time.

Mr. Elistran stated this was a cutting edge project that they were undertaking and that they were looking forward to working with them.

Mr. Webber stated Mr. Leflar from the Accounting Department at the University would be working with them to allow some of his senior level students to actually participate on this project. They would be making a presentation to their class tomorrow at two-thirty. They would be participating as a team member on this project. It would give those senior level students some real world experience that will be resume building for them. It will give the city resources that they do not have available to us at city hall.

Alderman Davis asked if there were other cities using Hansen technology.

Mr. Webber stated the city of Tulsa, their project was a mature project. The city of Oklahoma has just started in their implementation.

Alderman Santos moved to approve the resolution. Alderman Reynolds seconded. Upon roll call the motion passed unanimously.

RESOLUTION 7-02 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

CIVIL SERVICE: An ordinance granting authority to the Fayetteville Civil Service Commission to appoint and remove the Police Chief and Fire Chief, and for other purposes.

Mr. Williams read the ordinance for the first time.

Alderman Trumbo stated he had brought this up last year. He had talked with Mayor Vanhoose of Springdale and Police Chief Mike Blocker, and Fire Chief Hines of Springdale to ask them their views on being under civil service. In this case there was a very political situation dealing with a mayor's authority and dispersing it with five commissioners with the same responsibility. They have had people on the Civil Service Commission that has been there for a long time. They had a lot of background. Mayor Vanhoose had written a letter stating both systems had pros and cons. He believed the best system would be something in-between. Their present system worked well. He believed it did because they have employed two outstanding chiefs.

Mayor Coody stated he believed that they had a system in-between. They had a committee put together to hire a Fire Chief. He thought the process that they had put together was the best of both worlds. He read letters from the Fire Union and Police Union both in support of the current system.

Alderman Trumbo stated it was not so much the hiring as it was the firing.

Mayor Coody stated he did not discount the opinions from the fire and the FOP. He asked if he was about to fire Chief Watson and if this was an problem.

Alderman Trumbo stated both Chief Watson and Chief Jackson had felt that they deserved the protection of the Civil Service.

Alderman Jordan stated coming from a union background, one of the first rules was that they did not put rank and file workers under the same umbrella of protection and expect a fair shake for the blue collar workers. Once the Civil Service Commission made their decision the Fireman or Policeman had no other alternative than to go to a court of law. This way there were checks and balances.

Alderman Davis stated what Trent was concerned about was not the way his administration has handled this, but there was no guarantee what the future administration of the city will do. Will they allow this type of process? They had no way of knowing. He was trying to make sure that in the future they were protected by Civil Service.

Mayor Coody stated he would like to protect people in his position too. It was unfair for him or anyone in this position to have department heads that did not have authority. It was his job to see that the city ran well and smoothly. He had to have authority to make that happen. He was ultimately responsible to make sure the department was running well. If he would not deal with him then he was hamstrung. The voters could throw him out of office because he could not control the Fire or Police Department. In order to deal well with the department they had to have the authority to make hard decisions. If he did not have the authority, then he had liability and responsibility, but no authority to fix it. What manager wanted staff that they could not control or discipline or correct and expect to get the job done.

Alderman Davis stated it gave the mayor the ability to use political power and ask a chief to do a special favor. If that person did not come through, it also gave him the ability to fire that person in time and possibly use other reasons. That was a concern.

Mayor Coody stated it may be a concern for people who thought like that. He did not think like that. If a mayor did decide to fire a police or fire chief for political reasons, this council can reinstate that chief. They had the authority to override his decision. If the Civil Service had the authority, they could not do that.

Alderman Trumbo stated he felt the mayor should have ultimate control over the Public Works and Administrative Services. Fire and Police were a totally different world than city administration. The Fire and Police Chief worked themselves up through the ranks in a very structured environment. He did not believe it was the same as city administration. In visiting with Mayor Vanhoose of Springdale, he knew their system worked. They had a great department and both chiefs liked the system and they felt very comfortable with having five people to answer to rather than just one.

Alderman Santos stated that Police and Fire were public servants and should be accountable to public and the only way to do that was if they were accountable to elected officials. To put the fire chief and police chief as co-mayors accountable to an unelected commission removed them from any obligation to serve the public. He did not think it was a good idea to turn over public control of the two largest departments in the city to an unelected body. He asked that they leave the ordinance on the first reading since Randy Zurcher was not present.

Alderman Trumbo stated he would like to vote on this tonight. He did not see any reason to hold this up. Alderman Zurcher was not going to change his mind. He was adamantly opposed to it. He did not believe anything had changed from a year ago.

Mayor Coody stated he would like to vote it up or down now, rather than letting it linger. He did not believe people were going to change their minds and he would like to get it out of the way one way or the other. He did not see any benefit of keeping it alive.

Alderman Trumbo stated in visiting with Chief Blocker of Springdale his final comments were that he believed Chief Watson deserved the Civil Service system. He added Chief Blocker's opinion carried a lot of weight with him.

Mayor Coody stated he agreed, but the only opinion that would carry more weight with him would be the huge percent of their fire and police service folk that felt the other way. He tended to go with his employees rather than Springdale's employees on an issue that affected Fayetteville employees.

Mr. Bill Moeller, an area resident, stated it was bad organizational design to have the workers and the bosses reporting to the same independent body, subject to the control of the same independent body. Secondly, these are key executive positions. These were not rank and file positions. Executives manage their own careers. They accept the higher risk level of hold of an executive position. By virtue of the position they were part of the inter-sanctum and executive committee, which formulates the policy. They formulate and administer policy. These positions must report in good organizational design to the chief executive officer. They knew what they had right now. If they changed it, they were speculating on what they would have. He asked why they would want to substitute something that they did not know about for something they had experience with. He urged them not to pass this change in their organization.

Alderman Trumbo asked Mr. Moeller if they had an outstanding Police Department.

Mr. Moeller stated he would say they had a very good Police Department.

Alderman Trumbo stated they had a very good Police Chief that had been in charge of it for fifteen years.

Mr. Moeller stated from where he sat as a citizen he would say they had a fine Police Chief.

Alderman Trumbo asked why their Police Chief wanted Civil Service protection.

Mr. Moeller replied before he retired he held an executive level position. He was paid as an executive. He realized the advantages of an executive position. He would also like to have had the job security that Chief Watson wanted. It would be great if they could all have that security, but there was a trade off. At some levels they traded off a degree of security for some of the other things they got.

Mr. Domic Swanfield, FOP, stated they would like for him to add two additional members to the Civil Service Commission. They felt that the addition of a female and a minority to the commission would better reflect the community.

Mr. Williams stated the change would have to be made by ordinance.

Mr. Steve Frankenberger, an area resident, stated the last thing on earth they needed to do was to take the politics out of the process. Politics was the tool that they used to implement Democracy. Any time they took the politics out of it they were taking democracy out of it. They elected the Mayor to make those decisions and they expected him to take responsibility for them. He would like to leave this one the first or second reading to give his alderman a chance to be here. He hoped that he would have something to add to the debate.

Mr. Jeff Erf, an area resident, asked how this would make him safer.

Mayor Coody stated he did not believe it would make a lot of difference either way. There may be more responsiveness in the current situation, but he did not know about making it safer.

Mr. Erf stated he tried to find out and understand a little more about the Civil Service Commission. What he ended up getting was a copy of their rules and regulations. State code stated that rules and regulations have the force and effect of law. He noticed a couple of things in the regulations. Article 2, Section 8, "No person shall be appointed chief of either department who is not first certified by the Commission." He asked if that has happened.

Mayor Coody asked Chief Bosh if he had been certified by the Civil Service Commission.

Chief Bosh stated he did not meet with the Civil Service Commission when he was appointed. If so he did not know about it.

Mayor Coody stated they could assume it did not happen.

Mr. Williams stated he had gone through the rules and regulations and suggested to them that there should be some revised rules and regulations. That was one of the rules he had suggested. It no longer followed State Law and State law trumped these rules. He had received a response to him.

Mr. Erf stated he was also curious of the actions that they had done. He had asked to inspect minutes. Apparently, they did not keep minutes, but their regulations stated a stenographer was to be present at each business meeting. He would like to know who was at those meetings, what was the agenda and the attendance record. They were not available. He did not know if they were following their own regulations. According to their regulations that if someone had a complaint against the policeman or fireman it was to be filed with the Commission within the ninety days of the incident. He knew that was not the current procedure. The current procedure was to fill out a complaint form and submit it to the Police Department. It appeared the Civil Service Commission was left out of the loop. It was another example of another regulation. He did not know if they wanted to give them another responsibility.

Mr. Jason Alvarado, FOP, stated in response to question there were approximately one hundred sworn personnel, of that hundred the FOP had seventy to seventy-five percent representation of the entire sworn personnel.

Mr. George Weiss, an area resident, stated the majority of the Fire and Police personnel were against the ordinance. It seemed to him that a vote for this ordinance was a vote against their police and fire fighters.

Alderman Trumbo stated historically with unions, management and rank and file saw things differently.

Alderman Thiel stated it was her understanding that the firemen and policemen were under the protection of the Civil Service Commission at this time. They had this protection, but the people in the Parks Department did not have this protection. They were totally accountable. She respected them, but they were wanting a protection that other city employees did not have, but they did not want their bosses within that same framework. She felt the whole purpose of them being under the Civil Service was because of the importance of their work. This had only been changed a few years ago. The City of Fayetteville had been under Civil Service until four years ago when the State Law changed.

Mayor Coody stated he would suspect it had something to do with being uniformed personnel.

Chief Bosh stated his assumption would be that it was due to the nature of their work. They were critical, necessary services that need that level of protection for their rank and file members. In the event that they have a disaster they were the people that were called to serve in that capacity. They could not be subject to any arbitrary decisions that may be made in the heat of the moment.

Alderman Davis moved to suspend the rules and move to the second reading. Alderman Reynolds seconded the motion. The motion passed by a vote of 6-1. Santos voting nay.

Mr. Williams read the ordinance for the second time.

Mayor Coody asked if anyone on the council had a close personal or financial relationship with the Chief or his family members. To set the record straight so not to embarrass anyone later he was directing his questions to a couple of folks.

Alderman Thiel stated she knew the Police Chief. She was good friends with this wife. Legally the State provides that a conflict of interest was primarily a financial conflict of interest. She had no financial interest with Chief Watson or his wife. She did not know if she knew him any better than several members did. Her relationship was with his wife.

Mayor Coody asked if there were any close financial ties?

Alderman Trumbo stated he was looking at him like he was insinuating something. So why didn't he just say it so he could respond.

Mayor Coody asked if there was ever any kind of investment club that he handled that the Chief was involved in.

Alderman Trumbo stated it had nothing to do with this. The investment club had been closed. He was offended by his insinuations. If the mayor thought he had a conflict he should have called him and he could have explained it to him.

Mayor Coody stated he felt this was a personal assault. He felt this discussion was coming from an article that came out in the Times. The implication was that he was at the verge of firing the chief therefore in order to keep that from happening the council would like to take the authority away from his so that he could not do that. He had no plans on firing the chief. He has told him that and all of them that. That was not in the works. To change the system that they have now, based on rumor or based on the idea of protecting someone that there might be something without anything factual to back them up. It was a bad way to do business. Fifty-five percent of the general fund was Fire and Police and one-third of their employees were Fire and Police. That was an enormous part of their city and he was not about to turn his back on them. They were just now in the process of building some very good moral in the Fire Department. They had a good Police Department and he wanted to keep the good Police Department in place. He thought this whole discussion was inappropriate because it was based on rumor and fear. Those rumors were not well founded. He has had this conversation. It was amazing that some of the people who wanted to see him retire were now the same people who were wanting to give this to the Civil Service. He found this surprising. They have been through this once before and they have proven that they have taken the personal politics out of this and he want to keep it out of it. He thought they should keep doing business as they were. Because they did not have a problem right now. If they did turn this over to the Civil Service, they would be saying to the Fire and Police personnel that there opinion did not matter to them.

Alderman Trumbo stated he did bring this up last year when Chief Jackson asked him to retire. He thought Chiefs were entitled to the same type of protection as the union wanted their protection.

Alderman Davis moved to suspend the rules and move the third and final reading. Alderman Reynolds seconded the motion. Upon roll call the motion carried by a vote of 6-1. Santos voting nay.

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

Mayor Coody asked shall the ordinance pass. The ordinance passed by a vote of 5-2. Santos and Jordan voting nay.

ORDINANCE 4364 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

UNIVERSITY OF ARK: An ordinance waiving the requirements of formal competitive bidding and approving an agreement between the City of Fayetteville, Arkansas and the University of Arkansas to develop a strategic plan to define the physical and economic characteristics of the Arkansas Research & Technology Park; authorizing the mayor to sign said contract; and declaring an emergency.

Mr. Williams read the ordinance for the first time.

Mayor Coody stated they were wanting to work with the University of Arkansas to develop the Genesis site. The University has gotten a large appropriation of six million dollars. They were sinking a lot of staff time into this to develop the master plan for their property and the thirty-two acres that the city owned across the street so that they could keep going with the project. This was going to be good for the State and Fayetteville. Fayetteville was fiftieth in technology enterprises. They had exceptional talent putting this together.

Mr. Stafford, University, stated there was a need for a plan. They had been building on the idea that they have been analyzing for the past six months. They needed to quantify the idea so they could go forward with necessary funding. Working with their congressional delegation to hopefully receive some support from Federal appropriations to make this possible. They needed to quantify the land area that was necessary for this. They were going to be analyzing the entire area with regard to adjacent property and services that were complementary to their park. There would be a full socioeconomic analysis so they would know in detail the impact of this project.

Alderman Davis stated their total cost was $37,500 which was coming out of their Economic Development fund.

Alderman Santos stated he thought this was a very good thing for the city and region.

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

Mr. Williams read the ordinance for the second time.

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

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

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

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

ORDINANCE 4365 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

PARTS EXPEDITER: A resolution authorizing the half time equivalent position of parts expediter in the Fleet Operations Division of the Public Works Department.

Mr. Oestreich, Fleet Operations, stated this was to authorize a part time position that has existed for the past two years. The position had been funded in the past through attrition. This year they were going to have to have the position authorized. They were changing him from his previous position of approximately twelve dollars an hour to eight dollars an hour. This would be a budget savings for them. This individual had over twenty-six years experience with the city. His function was to run parts and do general goffer work.

Alderman Reynolds stated this was not a violation of their hiring freeze, this was a savings to the city.

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

RESOLUTION 8-02 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

Mayor Coody stated he just let his emotions get the better of him. It did not happen often, but his dark side took over. Brenda, I apologize to you. Trent, I apologize to you.

Alderman Trumbo stated he had the utmost respect for his job. It was a hard position. The council was also doing a good job.

Mayor Coody stated he would like to enter into a letter of agreement with Duke Industry. There were only two binding parts to the agreement. The city would agree not to negotiate with anyone else for six months and they would agree to standard business confidentiality.

Alderman Davis stated they needed to make sure that they were very careful with this.

Alderman Trumbo stated he had requested information on the companies and all their background. The Water and Sewer Committee needed to look at this.

Meeting Adjourned at 8:40 p.m.

MINUTES OF A MEETING
OF THE
CITY COUNCIL
DECEMBER 18, 2001

A meeting of the Fayetteville City Council was held on December 18, 2001 at 6:30 p.m. in Room 219 of the City Administration Building located at 113 West Mountain, Fayetteville, Arkansas.

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

AWARD PRESENTATION: Presentation of the GFOA Distinguished Budget Presentation Award. Mr. Steve Davis, Budget Manager, presented the GFOA award.

CONSENT

APPROVAL OF THE MINUTES

SUNBRIDGE AND GREGG: A resolution awarding a contract to Mobley Contractors, Inc. in the amount of $241,627.00 (contingent upon receiving an easement or right-of-way from the Arkansas & Missouri Railroad), approve funding of $30,000 for project contingency and of $3,000 for materials testing for the project entitled "Sunbridge Drive and Gregg Avenue Intersection Improvements" and approval of a budget adjustment.

RESOLUTION 171-01 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

MICROSOFT OFFICE: A resolution approving the purchase of 223 Microsoft Office XP software licenses from Dell Incorporated. The purchases are authorized through the State of Arkansas Contract Award ST-98-0491; and approval of a budget adjustment.

RESOLUTION 172-01 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

US ABLE LIFE: A resolution renewing employee group policies from US Able Life to provide life, AD&D, and LTD coverage and Section. 125 Cafeteria Plan Administration.

RESOLUTION 173-01 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

TROLLEY: A resolution accepting the renewal agreement with Jones Transportation for trolley operations for the period of January 1, 2002, through June 30, 2002. This is in accordance with the provision of Resolution 11-99.

RESOLUTION 174-01 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

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

OLD BUSINESS

ANX 01-4.00: An ordinance approving annexation request ANX 01-4.00 as submitted by Dave Jorgensen of Jorgensen and Associates on behalf of Mark Foster for property owned by Eugene Nottenkamper and Anthony Turchi and located north of Wedington Drive on the east side of 51st Street. The request is to annex into the city approximately 30.99 acres located in the Planning Area. The ordinance was left on the second reading at the December 4, 2001, meeting.

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

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

Alderman Thiel stated this made sense to her because it complemented what was already there. All the infrastructure was already there.

Alderman Jordan stated they were at ninety-four percent sewer capacity. There was going to be approximately one hundred and twenty-three houses in this development. The sewer capacity in 1991 was approximately eighty-six percent. They were averaging over the last ten years about seven hundred eighty-one units per year. They were starting to add a lot of units on this sewer treatment plant and they were creating what he considered urban sprawl. He was concerned about the stress and strain this was going to put on the sewer treatment plant. They were putting more pressure on the infrastructure of this city with their trash and streets and they have yet to bring in impact fees. He would have a difficult time supporting any more expansion until they addressed these issues.

Alderman Davis stated they did not guarantee any sewer hook-ups.

Mr. Tim Conklin, Planning Director, stated they had been requiring developers to sign sewer capacity warning forms. Basically stating that they were in the process of building a new sewage treatment facility and there was no guarantee between now before the plant opened that they would be allowed to hook on. Alderman Young has asked the Public Works division to look at their sewer plant capacity every year and to do an analysis to see if they can continue to grow. On any annexation, the Planning Division has started asking all the different departments and divisions to provide comments to them. They wanted to make sure that their recommendations to the Planning Commission were based on input from everyone within the city. With regard to this annexation, 1982 was the annexation of thirteen hundred acres all the way to Double Springs Road. About twenty years ago a decision had been made by the city to annex land all the way out to Double Springs Road. They had utilities and services which were being provided in this area since 1982. They spent 1.8 million dollars to cost share with the highway department for Wedington Road. They were going to spend $750,000 for Rupple Road for the new Boys and Girls Club. They have done improvement in this area. They were building a new wastewater treatment facility. He had a master street plan. He required right-of-way dedications from individuals. He had a future land use plan which showed commercial nodes. The point he was trying to make was that they had a lot of planning in this area. This was in their planning area. There are planned street connections to tie these neighborhoods together.

Alderman Thiel stated she had a major concern about septic systems and their affect on our ground water. An area like this was going to develop. It would not have as many homes, but it could have quite a few on septic systems. She would rather have them hooked onto the sewer system.

In response to questions, Mr. Greg Boettcher, Public Works Director, stated the capacity of the plant was rated by the State. As growth occurs, they will be monitoring how the plant performs. Their permit stated that they had to meet certain limits to discharge in the receiving streams. They will begin to see that they are having more difficulty meeting limits. If they get to a point where they were at one hundred percent capacity and that they were having trouble meeting limits, at that point the city may need to look at other options as far as controlling connections. But, he also thought that if they were close to the completion of the project the State would work with them to maintain proper treatment and continue with growth. They may need to allocate building permits for a period of time. The public has approved the project and they were moving ahead.

Alderman Young stated seven hundred units was more than the city of Elkins. So, every time they did that they were adding the city of Elkins to the City of Fayetteville. Then, it put into context all of the other things that they were supposed to provide for a city.

Mr. Jeff Erf, an area resident, asked if there was anything that prohibited the developer from putting in an septic system if it were annexed into the city.

Mr. Williams stated there was an ordinance which required them to hook up to the sewer if they were within two hundred and fifty feet.

Mr. Erf stated one of the benefits of the new system was that it would help water quality and they would avoid septic systems. He thought they should require all new annexation to be hooked up to the wastewater system.

Mayor Coody asked shall the ordinance pass. Upon roll call the ordinance passed by a vote of 6-2-0, Zurcher and Jordan voting nay.

ORDINANCE 4355 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

RZN 01-22.00: An ordinance approving rezoning request RZN 01-22.00 as submitted by Dave Jorgensen of Jorgensen and Associates on behalf of Mark Foster for property owned by Eugene Nottenkamper and Anthoney Turchi and located north of Wedington Drive on the east side of 51st

Street. The property is zoned A-1, Agricultural, and contains approximately 30.99 acres. The request is to rezone to R-1, Low Density Residential. The ordinance was left on the second reading at the December 4, 2001, meeting.

Alderman Davis 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.

In response to questions, Mr. Conklin stated they were growing in Northwest Arkansas. They had a planning area boundary. This was in their planning area boundary. The purpose of that boundary was to plan for future growth and development. They were currently providing services in this area. As a planner and the Planning Commission recommended that it would be better to develop this and urbanize this for a city, Urban Development. They were trying to create a city that was efficient. They had many ordinances that managed their growth and development. They led the State of Arkansas with their ordinances to manage growth and development.

Alderman Zurcher stated they did not want a city every where. He thought they were looking at this as regional to the determent of Fayetteville. He did not consider this an urban area. To him this was sprawl and they were losing the natural spaces out there. He thought they should be less dense on the edge of town.

Mayor Coody asked shall the ordinance pass. Upon roll call the ordinance passed by a vote of 6-2-0, Zurcher and Jordan voting nay.

ORDINANCE 4356 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

BUDGET: A resolution adopting the 2002 Operating Budget. The resolution was tabled at the December 4, 2001, meeting.

Alderman Trumbo stated that they were anticipating using about two and half million dollars in reserves this year, about two million for next year.

Mr. Jim Foster, Downtown Dickson Enhancement Project, stated the level of funding they would be receiving would put them out of business. They were the economic development for downtown Fayetteville and they could not survive without a major public commitment to them. He asked them if it was the right time to put the brakes on economic development.

Mr. Bruce Johanson, Bank of Fayetteville, Fayetteville has a strong history where the city has teamed up with public and private sectors to create the culture and community that they enjoy today. For example the Walton Arts Center. DDEP was established as a partnership between the city, businesses, and residential owners within the project area. This program has served their community well and it needed to continue. He requested the city locate the funding needed for this project. They were requesting forty thousand in city funds for the 2002 budget. They have secured 1.95 million dollars in funds that will be available to work the Dickson Street renewal area.

In response to questions, Mr. Johanson stated they had approximately one hundred and eighty people.

Alderman Davis stated if they went to those members and asked for sixty-two dollars, they would have their additional funding. They were running two million dollars in the hole now. They had to be very careful on the money they were spending.

Alderman Thiel asked if they had sought funding from the A&P Commission. She felt it was appropriate for them to fund this.

Ms. Bootsie Ackerman, DDEP, stated they will be applying to the A&P Commission. They normally asked them for funding in April. DDEP should have been included in the Citizens Survey Growth and Development Services. They were currently contracted with the city for design, planning, and economic development. Had they been included, they would have placed fourth position on the priority. Their project was a model public/private partnership. The streetscape improvement on Dickson Street are expected to begin in the spring and they would be able to see progress. Ongoing marketing and public relations were readily apparent in approximately seventy -five million dollars in private investment that has been attracted to the area. Resulting property sales and HMR Tax reflect the growth and development. The city's investment represented about one-third of their budget.

Alderman Davis suggested that they may allocate some additional money when they approve their rollforward money from 2001, but he did not believe they could pass the budget tonight with any additional increase.

Alderman Thiel stated if they increased the funding at all, she would like for them to look at it in the rollover funding.

Mr. Rick Alexander, an area resident, stated this project brought home the bacon. This was a group of interested citizens that have come together three or four years ago with the goal of facilitating and fostering the rehabilitation and renovation of their downtown area. This was the time to put their money where their mouth was. This organization has brought in a million and five dollars of federal money. The city did not bring that money in, the DDEP brought that money in. That money was being matched by the city. They have returned more than any other investment the city has made and they have not even done the improvements yet. They had items for transportation systems that were empty. This project needed their support, they were just at the beginning of what they envisioned for the rehabilitation of their downtown area. Many of the people who have invested in downtown have done so with the knowledge that this project was going forward.

Mr. Steve Davis, an area resident, stated he had a business on Dickson Street. He felt it was important to have a strong and effective DDEPT office working for the businesses and the property owners.

In response to questions, Ms. Ackerman stated the funding they received from the city up front each year was drawn on as needed. The $35,000 in funding they received last year ran the office until about August.

In response to questions, Mr. Steve Davis, Budget Manager, stated staff will prepare the rollforward list, the council will then decide what to do with the money. He added, city divisions did cut a 1.3 million dollars out of operating budgets to make this budget work. Seventy-nine percent of their general budget was personnel service.

Alderman Santos moved to approve the budget. Alderman Trumbo seconded. Upon roll call the motion carried unanimously.

RESOLUTION 175-01 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

SALE OF MUNICIPALLY OWNED PROPERTY: An ordinance amending Chapter 34, Finance and Revenue, of the Code of Fayetteville to establish a formal process for the sale of municipally owned real property. The item was forwarded to the Ordinance Review Committee at the November 20, 2001, meeting.

Mr. Williams read the ordinance.

In response to questions, Mr. Williams stated the South Industrial Park, the Technology Park along 540 and the new one next to the Genesis Project, would be for sale. The purpose for this land was to develop Fayetteville economically. It had a different purpose than general property would be.

Ms. Fran Alexander, an area resident, stated on "C" "two appraisals shall be obtained" it did not say by whom. Whether it was the city or the purchaser.

Mr. Williams stated it would be clear in his mind that it would be the city getting the appraisals.

Ms. Alexander recommended the insertion of, "the city shall obtain". Also on "E", "upon affirmative vote of the city council, the city shall solicit sealed bids" she asked them to think about the highest and best use of land. They always equate the highest bid as the most valuable. If somebody proposed a better land quality use for a parcel, yet was not the highest bidder, she thought it would be nice if the council had the option to consider that proposed use of the land as important as the highest money. Highest and best use of land did not always equate with money. On "H", "the sale of industrial, business, technology park land, the sale of real property to other public entities." This was public land and the public did need to know about it.

Mr. Williams stated land could not be sold without consent of the city council. It would have to come before the council. There would be notices then. Often when there was a sell from government to government, there were often other issues involved.

Ms. Alexander stated her concern was citizen notification. Public notification needed to come forth on land sales, other than just the agenda.

In response to discussion, Mr. Williams stated he could draft a revision with two sections under (h) the first on being "the sale of industrial, business, and technology park land are expressly exempt from provisions of this section." The next one, (h)(b) "that the sale of real property to other public entities are expressly exempt from the provisions of this section, except that they must provide the same notification as required by sale to charities." Which would be one advertisement in the paper and the certified mail and the signs.

Alderman Santos moved to amend the ordinance as recommended. Alderman Zurcher seconded. Upon roll call the motion carried unanimously.

THE ORDINANCE WAS LEFT ON THE FIRST READING AS AMENDED.

NEW BUSINESS

ANX 01-5.00: An ordinance approving annexation request ANX 01-5.00 as submitted by Raymond C. Smith on behalf of Gerald and Irene Griscom and Sylvester and Carol Guist for property located east of Double Springs Road and south of Owl Creek Subdivision. The property is in the Planning Area and contains approximately 13.61 acres. The request is to annex into the city.

Mr. Williams read the ordinance for the first time.

Mr. Charlie Sloan, developer, stated he had done several subdivisions back in the 90's. Most of the development would be residential, single family homes. There would also be town homes. There would be a home owners association that would do all the maintenance, that was what they did at North Heights. They also had some land that they could make a park out of. There was a subdivision to the north and to the west of them. They would like to access Double Springs Road the land to the east.

Alderman Thiel asked if there was any consideration in making this a PUD?

Mr. Sloan replied he did not know enough about a PUD. He did not know yet. There were only going to be four families per acre. They were willing to do what ever it took to make it work.

Alderman Jordan asked how many house they were going to put in?

Mr. Sloan stated they had platted right now, one hundred and twenty-two to twenty-three total lots. That counted the eighteen duplex lots. Because it was such a big project they would not be building all lots now. They were wanting to make the purchase of the land. He wanted to make sure that it zoned correctly and that he could continue on. They would try and build the front of Double Springs first and to do all the improvements along it. They would then work their way in starting close to the creek.

Alderman Davis stated he would like every one to look at some of the developments Mr. Sloan has put in. They were quality. He would like to see that out in this area.

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

Mr. Williams read the ordinance for the second time.

THE ORDINANCE WAS LEFT ON THE SECOND READING.

RZN 01-24.00: An ordinance approving rezoning request RZN 01-24.00 as submitted by Raymond C. Smith on behalf of Conley and Virginia Worley, Gerald and Irene Griscom and Sylvester and Carol Guist for property located east of Double Springs Road and south of Owl Creek Subdivision. The property is zoned A-1, Agricultural and contains approximately 41.90 acres. The request is to rezone to R-1, Low Density Residential.

Mr. Williams read the ordinance for the first time.

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

Mr. Williams read the ordinance for the second time.

THE ORDINANCE WAS LEFT ON THE SECOND READING.

RZN 01-27.00: An ordinance approving rezoning request RZN 01-27.00 as submitted by Raymond C. Smith on behalf of Conley and Virginia Worley, Gerald and Irene Griscom and Sylvester and Carol Guist for property located east of Double Springs Road and south of Owl Creek Subdivision. The property is zoned A-1, Agricultural and contains approximately 8.74 acres. The request is to rezone to RMF-6, Low Density Multi-Family Residential.

Mr. Williams read the ordinance for the first time.

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

Mr. Williams read the ordinance for the second time.

ORDINANCE WAS LEFT ON THE SECOND READING.

RZN 01-26.00: An ordinance approving rezoning request RZN 01-26.00 as submitted by Dave Jorgensen of Jorgensen and Associates on behalf of Tom and Louise Sager and Paul and Bernice Guisinger for property located west of Shiloh Drive and north of Porter Road. The property is zoned A-1, Agricultural and contains approximately 12.08 acres. The request is to rezone to C-2, Thoroughfare Commercial.

Mr. Williams read the ordinance for the first time.

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

Mr. Williams read the ordinance for the second time.

THE ORDINANCE WAS LEFT ON THE SECOND READING.

RZN 01-28.00: An ordinance approving rezoning request RZN 01-28.00 as submitted by Dave Jorgensen of Jorgensen and Associates on behalf of Tom and Louise Sager and Paul and Bernice Guisinger for property located west of Shiloh Drive and north of Porter Road. The property is zoned A-1, Agricultural and contains approximately 11.68 acres. The request is to rezone to R-2, Medium Density Residential.

Mr. Williams read the ordinance for the first time.

Mr. Chris Brackett, Jorgensen and Associates, stated they did not have a concept for this property yet. The owners were looking to sell the property.

Mr. Conklin stated they allowed property owners to petition for rezonings, if it was consistent with their land use plan, staff would make a recommendation. The Planning Commission did recommend approval for this property. This was shown as regional commercial area. The property was also within the Overlay District.

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

Mr. Williams read the ordinance for the second time.

THE ORDINANCE WAS LEFT ON THE SECOND READING.

SENIOR CITIZEN CENTER: A resolution authorizing a change order for activities associated with construction of the Senior Citizen Center.

Mayor Coody stated they had a meeting on Monday with the Senior Citizen folks and they had given them a letter stating that they would pay for the planning and the equipment.

Mr. Williams stated there had been a letter written by Rodney Ryan, President for Council on Aging, which stated, "the Council on Aging will provide the funding for the kitchen design change and the equipment" they will be providing the funding for this add-on.

Alderman Trumbo moved to approve the resolution. Alderman Davis seconded the motion. Upon roll call the motion carried unanimously.

RESOLUTION 176-01 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

MUNICIPAL JUDGE: An ordinance amending Ordinance 3765 to add Municipal Judge to the City Officials listed in Section 1.

Mr. Williams read the ordinance for the first time.

Alderman Davis 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 Zurcher moved to suspend the rules and move to the third and final reading. Alderman Davis 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 motion carried unanimously.

ORDINANCE 4357 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

DOWNTOWN DICKSON ENHANCEMENT PROJECT: A resolution approving an amendment for Downtown Dickson Enhancement Project in the amount of $120,972.03 to address: (1) easement revisions - $9,660.00, (2) construction engineering - $39,552.03, and (3) project construction inspection - $71,760.00 (option to allow use of Engineering Division personnel for full-time inspection. Current contract amount is $530,227.62 to $651,200.15.

Alderman Trumbo moved to approve the resolution. Alderman Davis seconded. Upon roll call the motion carried unanimously.

RESOLUTION 177-01 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

CAT: A resolution approving a contract in the amount of $34,500.00 with Community Access Television for public access television services for 2002.

Alderman Jordan moved to approve the resolution. Alderman Santos seconded.

Mr. Bob Emennegger, CAT, asked if they were discussing a six month contract? He asked if they could add an option to renew at the end of this.

Mr. Williams stated that he did not believe that they could, because there was no money budgeted to fund the option to renew.

Alderman Davis stated they had approved the budget based on the $34,500 for CAT.

Mr. Williams stated they were still in negotiations with Cox. He was hoping that they would receive some money from them to apply to this contract. There was no guarantee.

Mr. John Zimmer, CAT, stated Cox paid $420,000 per year to the city. In return the city only gave CAT one-sixth of that amount. Now they wanted to cut them down to one-twelveth. They were not asking them to give them more money. They were asking them to take less money. Let them have enough to operate on. They could not run the station on $34,500. He did not see why they did not fund the full amount.

Mr. Morty Newmark, an area resident, stated the money used to fund CAT did not come from taxpayer dollars, it came from the money negotiated from Cox Cable. CAT uses up to eight percent of the station. The majority of the money should come to them. One of the things they may want to consider was it in the best interest of the city to be in the television business. Would it not be best to take that money that came from Cox and give it to CAT to serve as the government provider and the community access provider. They could not operate on $34,500 a year. He would like to see them funded by some of the rollover money. They were leasing right of way to Cox and the city needed to get what it was worth.

In response to questions, Mr. Williams stated the contract that they had was for one year and not six months.

Alderman Zurcher moved to amend the contract to six month. Alderman Santos seconded. Upon roll call the motion carried unanimously.

Mr. Williams stated the contract would now begin on the first day of January, 2002 and end on June 30, 2002.

Mr. Jim Bemis, an area resident, stated they should look at it from the stand point of the people that were using the station to participate in their government. It was not just money. They were having mega mergers in the communications industries. They were combining all of the cable companies, the entertainment business, every media is being combined. Who was going to do the local productions? It was going to be done by them.

Upon roll call the motion carried unanimously.

RESOLUTION 178-01 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

ELDERLY TAXI PROGRAM: A resolution approving a contract with the Area Agency on Aging for the Elderly Taxi Program.

Alderman Reynolds stated they needed to do a better job with their transportation. He suggested they review their ordinances after the first of the year.

Alderman Trumbo moved to approve the resolution. Alderman Reynolds seconded the motion.

Mr. Williams stated this was basically the same contract that the city had been adopting for the past several years. It had concerned him because they were waiving their immunity, if the Area on Aging were sued. He had not heard of any suits and it was not very likely that they would be sued. But if they were sued they would have to pay.

Alderman Davis asked Mr. Williams what his opinion was.

Mr. Williams stated that he was concerned. He has asked them to modify the language, but they had not agreed to any modification. He was very conservative when it came to assuming risks. He thought that they needed to fund the program, but he could not recommend that they sign this. He would not make a big objection if they did not. His policy has been they should not waive their immunity. On the other hand he thought it was remote that they would be sued. The other cities were not worried about it. Our city had not been worried about it for several years before he became city attorney.

Mr. Davis explained the way the program worked. The participant did not know where the money was coming from. All they knew was that they received it through the community development office.

Mr. Ted Webber, Administrative Services Director, stated this amount would serve one hundred and thirty-three residents. It was thirty dollars per month. Each coupon was worth two dollars. They received fifteen a month. There were a lot of administrative costs associated with this grant.

Upon roll call the motion failed unanimously.

THE RESOLUTION FAILED.

The meeting adjourned at 10:05 p.m.

FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

DEPARTMENTAL CORRESPONDENCE

TO: Mayor Coody

COPY: Kit Williams, Steve Davis, Jim Beavers, Heather Woodruff

FROM: Greg Boettcher, Public Works Director Greg Boettcher

DATE: February 11, 2002

RE: Engineering Contract Amendment No. 1
McGoodwin, Williams and Yates, Inc.
Wastewater system Improvement Project
West Side Wastewater Plant

Attached please find a copy of the professional fee calculations that have been developed by McGoodwin, Williams and Yates, Inc. (Memorandum dated February 8, 2002). This communication outlines the methodology for the elimination of professional fees on the labor costs for ECO and Hannifin and Associates. The Fayetteville City Council, at its February 5, 2002 meeting, approved this contract amendment provided that the 5% fixed fee estimated at $15,000.00 to $17,000.00, be deducted from the amount requested. I have reviewed the information presented, that computes a fixed fee reduction of $15,495.00, and find said amount to be both in order and in accordance with City Council approval. The resulting value of Contract Amendment No. 1 is $580,296.00, bringing the not-to-exceed total contract value to $1,535,598.00.

A revised contract amendment shall be provided for signature on Monday, February 11,2002.

GB:ks

McGoodwin, Williams and Yates, Inc.
Consulting Engineers
909 Rolling Hills Drive
Fayetteville, Arkansas 72703

Telephone 479/443-3404 FAX 479/443-4340

MEMORANDUM

To: Mr. Greg Boettcher, P. E., Public Works Director
City of Fayetteville, Arkansas

From: James C. Ulmer, P. E., Vice-President

Date: February 8, 2002

Re: Wastewater System Improvement Project
Contract Amendment No. 1
Fayetteville, Arkansas
MWY Project No. Fy-296

Attached is a table showing the labor cost and expense calculations for ECO, Inc. and Hanifin Associates through December 9, 2001, as shown on our original cost figures presented to you as a part of the worksheets accompanying Contract Amendment No. 1. At the bottom of this table, we have calculated our allowable fee for labor for both ECO and Hanifin Associates in order to determine the amount of fee reduction as required by the Council at their meeting of February 5, 2002.

The original fee request for Contract Amendment No. 1 was to increase the fee to $146,000. However, the fee reduction requested by the City Council on February 5 was $15,495, which represents five percent of the ECO and Hanifin costs (over and above the original scope) through December 9, 2001. Therefore, our revised total fee to be reflected in Contract Amendment No. 1 shall be $130,505, as shown on the attached table.

We trust you will find this explanation acceptable for the purposes of establishing the amount of fee in Contract Amendment No. 1.

Attachment

Post-it® Fax Note 7671	Date 8 Feb 02 # of pages ▸ 2
To Greg Boettcher	From Jim Ulmer
Co./Dept.	Co.
Phone #	Phone #
Fax # 575-8257	Fax #

McGoodwin, Williams & Yates
Calculations of Fee Reductions for ECO and Hanifin

Subcontractors - Tasks	ECO Contract Amendment ECO 9-Dec-01 Labor Costs to Date	ECO Contract Amendment ECO 9-Dec-01 Expense Costs to Date	ECO Contract Amendment ECO 9-Dec-01 Total Costs to Date	Hanifin Contract Amendment Hanifin 9-Dec-01 Labor Costs to Date	Hanifin Contract Amendment Hanifin 9-Dec-01 Expense Costs to Date	Hanifin Contract Amendment Hanifin 9-Dec-01 Total Costs to Date
ECO-Gen Env Mgmt	30,372.94	3,065.07	33,438.01			
ECO-404 Permit-Total Project	124,071.72	10,044.11	134,115.83			
ECO-NPDES Storm Water Permit	55.76	0.90	56.66			
ECO-EID	54,652.15	995.24	55,647.39			
ECO-Public Involvement	29,319.62	5,245.97	34,565.59			
ECO-CCA	9,642.80	-	9,642.80			
ECO- RTP Planning	1,315.77	-	1,315.77			
Hanifin				60,474.83	27,950.97	88,425.80
	249,430.76	19,351.29	268,782.05	60,474.83	27,950.97	88,425.80

Fee Calculations

	ECO Labor		Fee @ 5%
$	249,430.76	$	12,471.54
	Hanifin Labor		Fee @ 5%
$	60,474.83	$	3,023.74
Total Fee Reduction		$	15,495.28

Contract Amendment 1

Original Fee Request	$	146,000
Fee Reduction by Council Feb. 5, 2002	$	15,495
Revised Fee	$	130,505

Rev. Tom Brown
P.O.Box 2827
Fayetteville, Arkansas 72702
501 - 582 - 4138
revtombrown @ hotmail.com

February 5, 2002

City Council
City of Fayetteville, Arkansas

Greetings,

Recently I read an article on the new sludge treatment facility. Some questions have come up about this. I haven't been able to find the answers. Perhaps you can help.

1. The articles say that our sewage sludge (also known as people manure) is rich in Phosphorus. Phosphorus is a fertilizer. Fayetteville spreads this fertilizer on land out near the old treatment plant. This land is used to grow hay that the Fayetteville sells to local farmers. That land has become almost saturated with this Phosphorus because more people manure is spread there then the hay plants can absorb. The new figures indicate that Fayetteville's people manure can fertilize up to 15,000 acres every year with Phosphorus alone. Of coarse this sludge also has Nitrogen, Potash and micronutrients that our soils need to be productive and profitable.

2. Fayetteville has applied for a $900,000 grant to fund a new sludge disposal facility. The contractor wants to charge us $600,000 a year to mix our sludge with chicken manure and chemicals and make organic fertilizer from it. The contractors literature says that organic fertilizer made out of this sludge and chicken manure is much more valuable then chemical fertilizer that farmers use when they don't have any people manure or chicken manure to fertilize with.

3. I was a farmer in Washington County from 1987 thru 1994, and remain an active gardener today. I often tried to get chicken manure to fertilize my fields with. I was only able to get one litter truck load. That load cost me $150 in 1990. There was no chicken manure available for me to use at any price other then that one load. The local chicken farmers use almost all the manure they produce on their own land. They didn't want to sell any .

4. I was especially concerned about getting an organic source of Phosphorus - which chicken manure has a lot of. The reason is that I can grow Nitrogen into my soils with clover and alfalfa crops. I can easily provide Potash from wood ash. But Phosphorus is rare and must be imported from out of our state for use as fertilizer. All the soil analyses I had done on my land, and all I know of about Northwest Arkansas, state that our land is lacking in Phosphorus. So a local source of Phosphorus is a valuable resource for our farmers. In fact, a recent article stated that many farmers here only grow chickens because their manure is a free source of fertilizer for their hay fields. These farmers don't make much money on the chickens, but the free fertilizer from chicken manure makes lots of hay for their cows - which provide their real income.

5. So my first question is, if we need a good source of Phosphorus fertilizer for our farms here locally, and our people manure is a good source, why aren't we providing that people manure for our local farmers ???

6. My second question is why do we want to spend $600,000 a year to have a company make "great organic fertilizer" from our people manure if local farmers would use it and pay us for it ???

7. At the Water and Sewer committee meeting last night the engineers said that Northwest Arkansas has too much Phosphorus in the soils. If that is true, why does Framers Coop, American Milling, Walmart, Lowes, Home Depot, and probably another 50 stores here sell thousands of tons of Phosphorus fertilizer every year to our local farmers and gardeners??? Why is the Arkansas State Soil Conservation Service recommending that we apply Phosphorus fertilizers in their reports on our soil tests ???

8. The engineers said that chicken manure is being washed off our fields into the creeks. This manure is a fertilizer that causes problems

in water quality. The articles say that the new facility will help solve that problem. The general question is how ???

a. Manure pollutes when it washes off the fields. Manure that does not wash off does not cause a problem. How do we know that the 50,000 tons of manure taken up by the facility will be any part of the manure that is running off into the creeks ???

b. How do we know that any of the manure taken up by the facility will be from the Illinois, the White river , or Cove Creek drainage ???

c. The farmer will have to buy chemical fertilizer to replace the free manure. How do we know that the chemical fertilizer the farmer uses won't run off into the creeks and cause a problem ???

d. What sources for the chicken manure are planned, and what price will be paid to the farmers who use it now as free fertilizer ???

9. The design for the fertilizer plant shows that 25,000 tons of chicken manure will be burned to produce heat to dry out the remaining 25,000 tons of chicken manure and the people manure mixed with it. The manure has to be dried out to make a fertilizer that can be put into plastic bags for sale at the store. The engineers don't know what the smoke stack at the fertilizer plant will dump into our clean air. Although this fertilizer company already has a plant operating in Virginia, the engineers say that they don't have any information on the specific process used to burn the chicken manure or what the exhaust gases are. This cannot be true. We all know that a manufacturing plant must get permits from the federal EPA to discharge exhaust gases into the clean air. Those permits and the verifications of compliance with those permits are public property. Why does the engineering company say that they can't get this information ??? Why is the Mayor trying to apply for a $900,000 grant to operate this fertilizer plant before we even know what the exhaust gases are ??? Why is the Mayor committing us to spend $600,000 every year for people manure disposal at the fertilizer factory before we even know how the plant works and what pollution we will have to put up with from it. Can we all say "Bakery Feeds" and "Garbage Incinerator" folks ???

Thanks for your consideration of these questions. Please don't spend any more of our money before we have the answers to them. Please remember all the problems that the Incinerator proponents had with having spent city funds improperly on that Incinerator.

Rev. Tom Brown

Beta-Rubicon, Inc.

UNSOLICITED PROPOSAL FOR SERVICES

An Assessment of the Duke Solutions/Harmony Products Biosolids Disposal Project for The City of Fayetteville Arkansas

This Proposal to provide services is offered this 5th day of February, 2002 ("Effective Date") by Beta-Rubicon, Inc., whose address is 21 W. Mountain Street, Suite 123, Fayetteville, Arkansas 72701 USA ("Beta-Rubicon"), and is for the **City of Fayetteville**, having principal offices at One 113 West Mountain Street, Fayetteville, AR 72701 ("Fayetteville") ("Proposal").

1. **Services Proposed and Offered.** Beta-Rubicon hereby offers to perform on behalf of Fayetteville the services in Schedule A in accordance with the general terms and conditions set form in this proposal.

2. **Term of Proposal.** This proposal will be valid as of the Effective Date. If a contract results from acceptance of this proposal, such a contract will end upon completion of the work and delivery of the documents provided for in the description of services and receipt of final payment by Fayetteville to Beta-Rubicon. As provided in the description of services, Fayetteville and Beta-Rubicon may alter, modify, or extend the terms of this proposal so long as such changes are mutually agreed upon and set forth in writing and properly signed by Fayetteville's and Beta-Rubicon's authorized representatives.

   This proposal shall constitute and remain as valid offer to provide services to Fayetteville for a period of 60 days from Effective Date.

3. **Qualifications.** Beta-Rubicon specializes in the assessment of evolving and transforming-technologies (such as information technology), intellectual property (IP), and R&D planning and management. These services are focused on the assessment of opportunities and risks found in new and evolving technology developments. Beta-Rubicon offers a variety of technology consulting services and is a unique resource for independent technology assessment services.

   Technology assessment requires an intimate knowledge of the state-of-the-art in technology, as well as of technology trends, R&D management, intellectual property matters, and management practices. This type of consulting requires a high degree of research and scientific sophistication and well-developed analytical methodologies to provide accurate evaluations of the risks and rewards associated with exploiting advanced technologies and of the acquisition of, merger with, or investment in technology-based enterprises. Beta-Rubicon meets these requirements in addition to gathering extensive data, extracting information, and translating technical details into clear, concise concepts and descriptions.

Individuals and institutional agencies responsible for investments in technology in government agencies, or in technology-oriented enterprises are among the most frequent users of Beta-Rubicon's services. Agencies or companies needing accurate evaluations of the risks and potential rewards of the acquisition and deployment of technology at early planning stages are increasingly significant users.

In addition to having the ability to assemble teams of highly skilled individual professionals, Beta-Rubicon has in place a teaming agreement with KPMG Consulting and close working contacts with a number of specialized consulting firms.

Attached to this Proposal is a list of selected recent project that illustrate Beta-Rubicon qualifications (Attachment 1). Additional information about the company is available on the website at: www.beta-rubicon.com.

4. **Work Plan and Timing.** The plan for the proposed work is explicit in the sequential task list provided in Schedule A.

   A qualified project manager will be assigned to this work for its duration and identified to Fayetteville. Dr. R.R. Goforth will provide project oversight, including issues of contract compliance and work quality. A brief biography of Dr. Goforth is attached (Attachment 2).

   Appreciating the potential criticality of timing for an assessment of the Duke Solutions/Harmony Products project, Beta-Rubicon has the resources and has planned to execute the proposed work in a period of not more than 25 working days from the date of contract execution and the Preliminary Meeting and Transfer of business and technical information to Beta-Rubicon. (See Task 1, Section A.2, Schedule A, "scope of services.")

5. **Fees and Expenses.** The fee for the proposed services would be $19,850.

   A contract retainer of 25% of said fee would be immediately due and payable upon execution of a contract. Subsequent payments would then be made upon completion of the work and delivery of documents provided for in the description of services.

   Expenses for unplanned but pre-approved travel in excess of 50 miles including professional services time, mileage or ticketing, accommodations, and meals are to be reimbursable. Expenses associated with the physical transfer of any materials necessary for the execution of this proposal and international telephones charges are also to be considered reimbursable. Reimbursable expenses will be reimbursed upon completion of the project or invoiced at monthly intervals.

6. **Ownership of Deliverables.** All rights, title, and interest in and to all Deliverables and other data or materials generated or developed by Beta-Rubicon under any contract resulting from acceptance of this Proposal or furnished by Fayetteville to Beta-Rubicon shall be held by Fayetteville, shall be considered works made for hire and such Deliverables and other material shall, upon creation, be owned exclusively by Fayetteville, and Fayetteville shall be entitled to obtain and hold in its own name all intellectual property rights in respect of such Deliverables and other materials in perpetuity. To the extent that any foregoing, under applicable law, may not be considered works made for hire, Beta-Rubicon will assign to

Fayetteville use of such materials, under patent, copyright, trade secret, and trademark law, without the necessity of any further consideration.

7. **Confidentiality and Non-Disclosure.** Beta-Rubicon agrees that trade secret, confidential, or proprietary information as set out in Schedule B that is received by Beta-Rubicon during the pursuit of providing its services in accordance with a contract, which concerns personal, financial, technical, or other affairs of Fayetteville, will be treated by Beta-Rubicon in full confidence and will not be revealed to any other persons, firms, or organizations, except:

   a) information that, at the time of disclosure, is in the public domain or which, after disclosure, becomes part of the public domain by publication or other through no action or fault of Beta-Rubicon; or

   b) information that Beta-Rubicon can show is in its possession at the time of disclosure and was not acquired, directly or indirectly, from Fayetteville; or

   c) information that was received by Beta-Rubicon from a third party having the legal right to transmit that information.

8. **Fayetteville Conveyance and Fulfillment.** Should a contract be made, Beta-Rubicon shall be provided full disclosure of supporting documents and evidence as listed in Schedule C to the extent not precluded by Confidentiality and Non-Disclosure constraints delineated in Paragraph 7 above as are necessary to provide the comprehensive assessment defined in Schedule A.

9. **Non-Competition.** Beta-Rubicon shall not, during the term of any contract resulting from acceptance of this proposal and after its termination for any reason, directly or indirectly, found, work for, consult to, or assist in any way, whether in a paid or unpaid capacity, any individual, partnership, or company, or any business entity which requires the use of confidential information provided by Fayetteville for use related to the Services provided by Beta-Rubicon. These restrictions shall last for a period of three years and shall cover the geographic region of the United States of America.

10. **No Agency.** Beta-Rubicon understands that Beta-Rubicon has no authority, either express or Implied, to act or to represent that Beta-Rubicon is acting on behalf of Fayetteville, except in those instances in which Fayetteville has given Beta-Rubicon consent that specifically covers Beta-Rubicon's acts or representations.

11. **Employment of Others.** Beta-Rubicon may from time to time employ the services of others. All costs to Beta-Rubicon for those services will be paid by Beta-Rubicon, but in no event shall Beta-Rubicon employ others without their proper execution of confidentiality, non-disclosure, and non-competition proposals.

12. **Independent Contractor.** Both Beta-Rubicon and Fayetteville agree that Beta-Rubicon will act as an independent contractor in providing services offered in this Proposal.

13. **Place Where Services Will Be Rendered.** The validity and performance of any contract

resulting from acceptance of this proposal by Fayetteville shall be governed by the Laws of the State of Arkansas.

14. Limitation. In no event shall either party be liable to the other party for any indirect, special, or consequential damages under any contract resulting from acceptance of this proposal.

15. Signature. Beta-Rubicon has provided this proposal as of the Effective Date and it shall remain as a valid offer for a period of 60 days from Effective Date.

President
February 5, 2002

SCHEDULE A

The **scope of the services** offered by Beta-Rubicon is as follows:

A.1 Beta-Rubicon's technology evaluation service is based on acquiring complete and accurate planning and technical information from the City of Fayetteville (Fayetteville) and Duke Solution/Harmony Products (DSH) and putting that information into the context of the state of the art, best practices, and related trends.

A.2 The following list of tasks, tentatively identified here by a sequence number, indicates the nominal order in which they occur. Efficiency and timing constraints make it necessary for certain of the activities to be undertaken concurrently. The sequence shown is a general guideline only.

1. Preliminary meeting and transfer of business and technical information to Beta-Rubicon
2. Review and preliminary analysis of DSH documentation and literature
3. Preliminary verification of the representations made
4. Review of the City's planned use of technology
5. Examination of the depth of DSH's resources and capabilities (in Fayetteville and potentially other venues).
6. Survey of the state of the art in the City's area of concern relative to Total Nutrient Management (TNM).
7. Analysis of Proposal DSH's technology and development plans, schedules, budget
8. Analysis of City's management capabilities to respond to proposed system implementation.
9. Estimation of the likelihood of achieving technical success with due consideration to functional and implementation specifications, budget, and timing issues.
10. Formulation of conclusions and recommendations
11. Generation of report in compliance with requirements for deliverables
12. Presentation of results to the City (in Fayetteville)

A.3 Deliverables shall include but not be limited to:

1. An assessment of DSH project documentation, addressing such questions or issues as follows:
   - Is the DSH project current with and supportive of industry best practices?
   - Congruence with mandatory requirements across State and Federal agencies
   - An assessment of budget estimates for initial and ongoing costs provided
   - A scenario and an implementation schedule based on plan assessment, including resource requirements, hours and total hours, and personnel requirements delineated by skill sets required.
   - A basic summarization of the consolidated plan for critical success factors and that industry best practices security areas are addressed
   - Identification of DSH project positives
   - Identification of DSH project risks
   - An assessment of overall plan for congruence of the proposed DSH project with the City's objectives for TNM.
   - Identification of potential alternative approaches to TNM if any.
   - Recommendations across all areas

A.4 The Deliverables will be an evaluation report having the following general outline:

Title Block
Executive Summary
1. The Proposal / Proposition
2. Feasibility of Technical Plans
3. Capabilities as Related to Proposed Work
4. State of the Art in Proposed and Related Technologies.
5. Implementation Schedule and Resource Requirements
6. Budgetary Matters
7. Identification of Risk Factors
8. Strengths / Weaknesses Identified
9. Likelihood of Achieving Technical Success
10. Likelihood of Achieving Operational Success
11. Recommendations / Conclusions
12. Contacts and Provisions for Follow-up
13. References and Sources

Attachments

A.5 Specifically excluded from Services are: on-site examination of operational issues, generation of original project cost estimates or budgets, examination of legal issues including regulatory compliance, comprehensive verification of the congruence of the planned DSH system with the policies and practices of departments and agencies; and review or assessment of DSH internal matters or contractual relationships related strategies of implementation of the proposed project.

A.6 To a certain extent, the evaluation process must be customized to optimally accommodate the specifics of the City's requirements. Further, as it is likely that the evaluation process will dynamically evolve over the time of the assessment, the assessment documentation outline (report format) should be considered subject to change by mutual agreement.

SCHEDULE B

B.1 *Confidential and Trade Secret Information* includes information including, but not limited to, the following:

B.1.1 research and development work; source code; object code; run-time libraries; system documentation; software-related documentation; system configurations; hardware design; firmware design; construction, layout, and operations of Fayetteville's facilities and equipment; all of these items both for customers/Fayettevilles and for Fayetteville's internal operations;

B.1.2 contents of contracts or proposals for technical research or development; costing and estimation procedures and formulae regarding proposals or other uses; sales, profit-and-loss, profit margin, production costs, overhead, and other bookkeeping and accounting information; all information regarding business development and marketing; names and identities of vendors and suppliers not well known to the trade; costs and contents of proposals and actual contracts with all such vendors and suppliers;

B.1.3 confidential information revealed to Fayetteville by third parties and that Fayetteville is obligated to keep confidential; all copies of this Proposal and any other information that may be considered by Fayetteville as Fayetteville's confidential information under applicable laws.

SCHEDULE C

Fayetteville-Provided Information

C.1 To the extent practicable, Fayetteville shall provide of have provided the following information in printed or electronic form:

1. City of Fayetteville documentation including:

   - Update and Overview of Project Facilities Plan" of July 2001.
   - Such other information as relates to the City's plans for Total Nutrient Management associated with the Waste Water Improvement Project
   - Identification of key technical contacts representing Fayetteville

2. Duke Solutions/Harmony Products (DSH) Documentation including:

   - Technical description and engineering information adequate to verify projected system performance and costs.
   - Brief synopsis of the project goals to utilize and integrate with existing and planned City and regional resources
   - Local and regional infrastructure requirements and improvements necessitated by the proposed DHS project.
   - Brief synopsis of current or planned organization, working relationships, and division of responsibilities between Duke Solutions and Harmony Products.
   - Identification of key technical contacts representing DHS or the individual companies.
   - List of expected major system components that will be used and such technical details of such components as are available
   - Relevant and supporting past assessments and technical analyses of similar DHS projects.
   - Resumes for key and assigned DHS technical personnel
   - Identification of potential contractors and vendors to be used for system components and services.

C.2 Additional information requirements may be identified during the course of the assessment.

C.3 Beta-Rubicon will assist the Fayetteville with identification of specific items that are critical to the success of this evaluation. If, after a reasonable period of time, information provided by Fayetteville is insufficient for a full evaluation, Beta-Rubicon may recommend to Fayetteville that they authorize terminating the evaluation. Such consideration is intended to avoid unnecessary work and expense what would be involved in completing the evaluation with insufficient information to produce meaningful results.

C.4 Given the short duration of the proposed work, no formal interim reports are anticipated.

Attachment 1: Qualifications by Selected Recent Beta-Rubicon Contract Areas

- Advanced Special Application Search Engine as Basis for e-Commerce Development
- Commercial Potential of High Speed Data Transmission Techniques in Avionics and Space-Based Applications*
- Computer Systems Evaluation Strategies and Business Opportunities
- Concurrent Engineering Technologies with CAD/CAE/CAM/PDM
- Control of Crabgrass with a Fungal Pathogen*
- Control of Cyanobacteria with a Bacteria*
- Control of Weeds with a Fungal Pathogen*
- Engineering Design and Prototype for a Novel CNC Milling Machine Configuration
- Food-Grade, Non-Sheening Lubricants*
- Hybrid Vector Protein Production*
- Hydraulic Method for the Compression of Natural Gas
- Initiation of Monomolecular Addition Polymerization*
- Inspection System (automated) for Commodity Food Production Line
- Internet/e-Commerce Project for Heavy and Transportation Equipment and Machinery
- Low Transistor Count and Low-Power High-Speed Full Adder Cell*
- Market Potential and Values of University-Held Patents and Patentable or Licensable Technologies
- Method of Isolating and Propagating Microorganisms and Viruses*
- Methods and Apparatus of Object-Based Video Motion Tracking*
- Motionless Electromagnetic Generator Device*
- Novel, Multi-Stage Turbine Design for Hydroelectric Power Generation*
- On-Line (Internet-Based) Ordering System for Dispersed Franchise Operations*
- On-Line Homework and Testing System*
- Optimization of a Computerized Distributed Voter Registration System
- Proprietary Composition to Reduce Microbiological Contamination of Food Products
- Real-Time, Wireless Industrial Equipment Monitoring
- Remote Spectrographic Sensing of Environmental Contaminants*
- Signal Simulation System Identification and Selection Wireless Communications
- Software Application: Statistical/Demographic System for Individual Attitude Profiling
- Solid-state blue/UV and mid-IR laser applications
- Truck-Mounted Ladder Brace System*
- True Three-Dimensional Display Technology*
- Vehicle for Collecting, Lifting, and Relocating Dispersed Small Loads*
- Virtual Reality System Students' Experimental Learning*
- Wideband Wireless Base-station Engineering Design, Software (WCDMA)

- Includes assessment of commercial potential.

NOTE: Beta-Rubicon is broadly networked and has competent and trusted colleagues that are available to work on a secure consulting basis. This expands the areas in which the company can offer technology assessment and technology due diligence services.

Attachment 2: Brief Biography: Dr. R.R. (Ron) Goforth

Dr. Ron Goforth has been active in management consulting to private sector organizations, governmental agencies, and academic institutions for more than 25 years. He has been most actively involved in consulting in the areas of scientific and engineering R&D management; software engineering/development project management; and organizational development and team building in organizations with technical missions. As founder, president, and CEO of Beta-Rubicon, Dr. Goforth is responsible for strategic planning and enterprise building. He is responsible for ensuring the quality and professional integrity of the company's services as well as for forming and maintaining the company's strategic relationships. Dr. Goforth serves as the primary spokesman for the company in both private and public sector forums for technology-centered enterprise development.

Dr. Goforth served for ten years as the Director of Research and Environmental Affairs for Syncrude Canada, Ltd. Subsequently, he was a tenured Professor of Computer Systems Engineering and adjunct Professor of Electrical Engineering at the University of Arkansas where he founded the Center for Artificial Intelligence and Expert Systems and the Advanced Manufacturing Technology Laboratory (AMTL). He also served as a Senior Research Fellow at the US Navy NHRC in San Diego, California, and was a Fulbright Fellow at the University of the South Pacific (Fiji). He held a royal appointment as Professor of Computer Systems Engineering at the Institute of Industrial Technology, Suranaree University of Technology in Thailand.

Dr. Goforth has served on the Board of Directors for several technology-based start-up companies and was a Principal during the startup of Vector, Inc., a company developing, manufacturing, and selling PC-based, open-architecture CNC controllers. He has provided technology assessments, R&D management services, project planning, and oversight services for a variety of national and international companies, public sector agencies, and universities including: PetroCanada, Ltd.; Arkansas Science and Technology Authority (ASTA); Motorola, Inc.; Cities Service; Energy Techniques, Inc.; US Food and Drug Administration; College of Engineering, University of Arkansas; Tec, Ltd., Vancouver, Canada; US Information Agency (USIA); United Nations Environmental Program (UNEP), Paris.

Dr. Goforth holds a Doctor of Philosophy degree from the University of Alberta in Edmonton, Canada, and a Master of Science and a B.S. degree from the University of Arkansas.

CONSERVING WILSON SPRINGS

Fayetteville's Aquatic Treasure

A PROPOSAL FOR A COOPERATIVE PARTNERSHIP BETWEEN THE NATURE CONSERVANCY'S ARKANSAS FIELD OFFICE AND THE CITY OF FAYETTEVILLE

Submitted by:

The Nature Conservancy
Arkansas Field Office
601 N. University Ave.
Little Rock, AR 72205
(501) 614-5076

Feb. 5, 2002

Introduction

Arkansas is blessed with superlative aquatic resources. More than 70 globally critically imperiled animals live in the rivers, streams, lakes, and aquifers that 2 million Arkansans use for drinking water, fishing, canoeing, and boating. Some of these species, in fact, are found nowhere else in the world. Like us, many of these unique species need clean water to survive. Certain upland land use changes can result in water quality degradation, leading to pressures on our aquatic ecosystems. Residents who live and work in critical watersheds with significant aquatic resources have the opportunity to ensure future generations will derive the full benefits of this wonderful resource. This reality is a significant responsibility for all Arkansans.

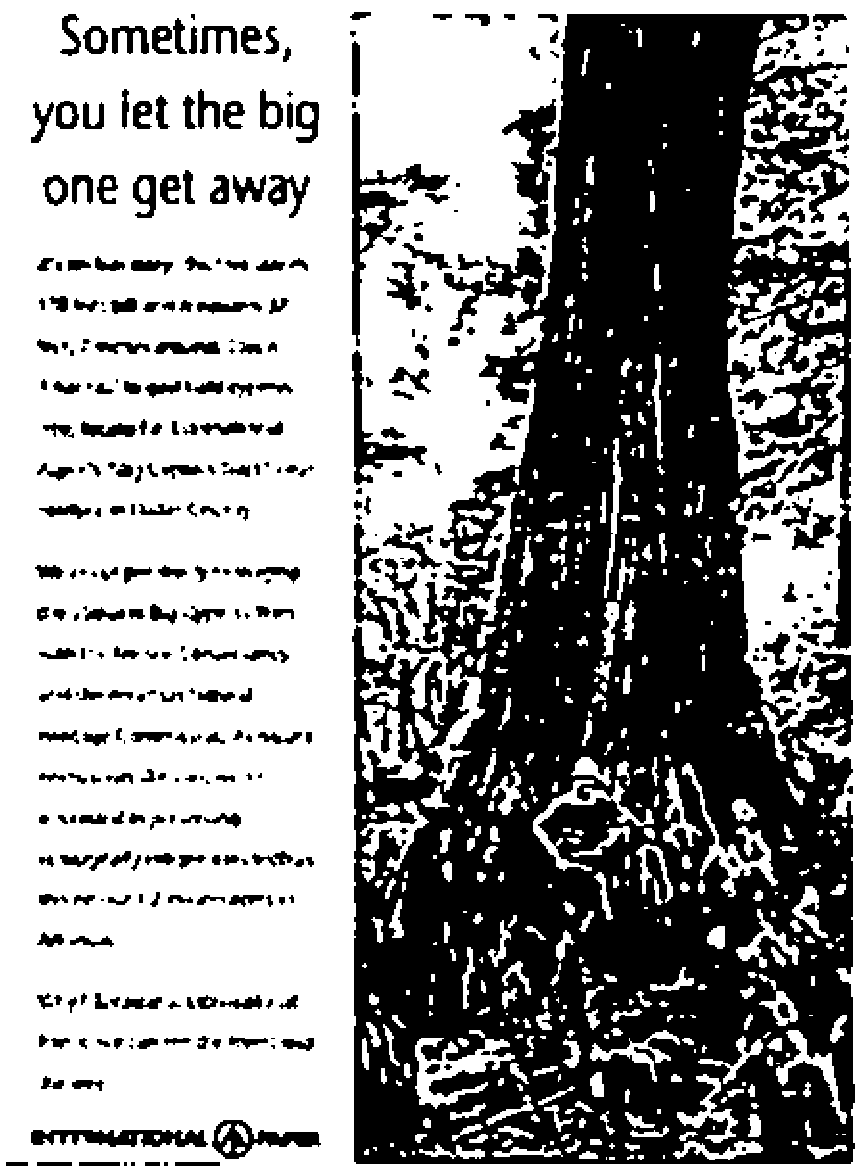
The Nature Conservancy

The Nature Conservancy is an international, private, non-profit membership organization committed to the conservation of natural diversity. It emerged in 1951 from a professional association of ecologists seeking to turn their knowledge of nature into positive action for conservation. The mission of The Nature Conservancy is to preserve the plants, animals and natural communities that represent the diversity of life on Earth by protecting the lands and waters they need to survive. TNC forges partnerships with landowners, corporations, municipalities, and governments. Sound science, tangible results and a non-confrontational approach are the hallmarks of the Conservancy's work.

To date, The Nature Conservancy's Arkansas Field Office and its 5,000 members have helped conserve over 230,000 acres of land in Arkansas. Internationally, the Conservancy – over 1 million members strong – has been responsible for the conservation of more than 11 million acres in the U.S. and Canada. It has also helped like-minded partner organizations to protect 80 million acres in Latin America, the Caribbean, and the Pacific Region.

The Nature Conservancy is working to conserve the amazing aquatic diversity of Arkansas. The premise is simple. The Conservancy believes the conservation of our natural heritage can be best accomplished within an atmosphere of economic prosperity, by residents and conservationists working together under a shared vision, towards specific objectives, and with measurable progress. Ensuring conservation of aquatic species in privately held watersheds requires an approach different from traditional means. It requires building upon the successful land conservation and management practices the Conservancy has used for 50 years, while providing watershed residents with the information, tools, and financial support to implement water quality and habitat conservation activities on their lands to benefit their aquatic resources. It also means that partnerships with cities, businesses and industries within the watershed of these critical aquatic resources are an absolute necessity to accomplishing this goal.

The Arkansas Field office of The Nature Conservancy has successfully worked with a variety of corporations and municipalities to conserve ecologically unique and sensitive places throughout Arkansas. For example, a cooperative management agreement between the Arkansas Field Office and International Paper (IP), known as the Unique Areas Agreement, has led to the conservation of more than 3500 acres of sensitive lands within IP ownership across southern Arkansas.



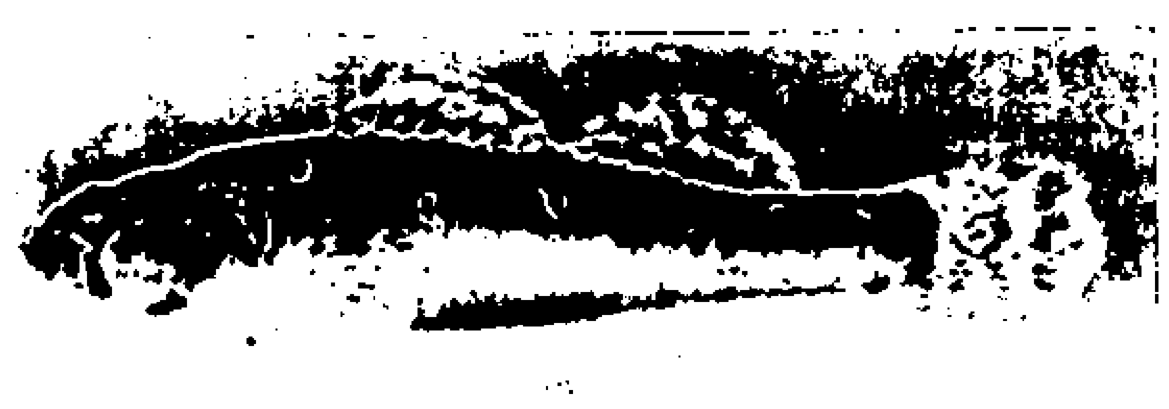
A print ad used by IP in 1999

The Unique Areas Agreement is an informal agreement that describes the unique nature of each site and outlines the management necessary to conserve the ecological integrity there. Implementation of the management and restoration of each site has been carried out by both TNC and IP, depending on the expertise required or the interest of the local IP forester. In some cases, TNC managed the site almost solely, and others IP staff took the lead. The program helped conserve a host of Conservancy target species and plant communities, and has led to the generation of excellent public relations for this timber company. In fact, the program has been used numerous times in local IP print advertisements. The excellent public responses to these ads and TNC press releases have led to similar agreements with the Weyerhaeuser Corporation and Alcoa.

Background

Springs are unique aquatic habitats that provide very constant habitat conditions for aquatic plant and animal species. In fact, many species have evolved under these conditions and have become dependent on this unique, stable habitat to survive. Unfortunately, this dependence on stable water conditions often means that these species are extremely susceptible to changes in habitat quality, and are therefore at risk of decline or even extinction.

Researchers have identified a suite of organisms that are specifically associated with Ozark springs, including insects, crayfish, and fish. One such fish, the Arkansas darter, *Etheostoma cragini*, is found in the springs of the Ozark Ecoregion. This small fish has a maximum size of about 2 inches and is almost always found in association with aquatic vegetation such as watercress (*Nasturtium officialale*) in areas of gravel, sand, or silt substrate. Their diet includes snails and insects that inhabit spring runs.


Etheostoma cragini, Arkansas darter. *B. H. Bauer*

In Arkansas, 5 populations of Arkansas darter were known in 1985, all in headwater tributaries of the Illinois River in the northwest corner of the state. Currently, the existence of only 3 of those populations has been confirmed. The American Fisheries Society has assigned a status of "vulnerable" to the Arkansas darter because of it dependence on spring-fed, vegetated headwaters and creeks that are plagued with environmental problems. The U.S. Fish and Wildlife Service has reported that the Arkansas darter is in jeopardy across its range due to decline in groundwater that replenishes spring-fed habitats. In October, 1999, the Arkansas darter was designated a candidate species for listing under the Endangered Species Act.

One of the places where a strong population of the Arkansas darter is found is located within the city of Fayetteville – Wilson Springs. The Arkansas darter was first discovered there during the planning of the U.S. Highway 71 bypass around Fayetteville in 1979. The former director of the Arkansas Game and Fish Commission, Steve Wilson, found the population prior to construction. Completion of the highway actually resulted in the springhead being covered by the highway; and a culvert system was built to extend the spring flow beneath the highway and offramp to its current outflow.

In the early 1990s, the City of Fayetteville began researching the feasibility of development of a tract of land that includes Wilson Springs and the associated spring run creek. The student chapter of the American Fisheries Society at the University of Arkansas worked with Mr. Richard Shewmaker, the city's Economic Development Coordinator at the time, to investigate the impacts of the proposed development on the darter. Since that time, the AFS student chapter has "adopted" the spring and continued to provide the city with valuable input, as well as monitor the darter population. By 1997, the City had drafted a preliminary plat of a research and technology park, and a fiber optic line was installed to facilitate development of the proposed park.

The feasibility of the proposed development of a research and technology park at the site was called into question in early 2001. Delineation of the wetlands on the property indicated more wetland than originally thought. Concerns were raised not only about the large amount of wetlands impacted by the proposed development, but also about the feasibility of the project as a whole. In early 2002, City of Fayetteville officials and the Chamber of Commerce proposed development of a business and technology park that would conserve the integrity of the wetland and spring system associated with Wilson Springs and promote harmony between environmental and business interests.

Vision
To conserve, in a working, urban landscape, the ecosystem processes that maintain the wetland function and aquatic species, both common and rare, found at the Wilson Springs site.

Proposal
Because of the ecological significance of Wilson Springs, The Nature Conservancy proposes to enter into a cooperative agreement with the City of Fayetteville to conserve this unique place. To achieve the vision described above through a cooperative agreement, we propose:

1. Conservancy and city staff work together to develop an park plat that is sensitive to the ecologically unique Wilson Springs and surrounding wetlands, as well the economic requirements of a business and technology park necessary to make it a successful development. A plan that meets these goals can be used to showcase the fact that conservation and economic development are not diametrically opposed as commonly thought. In fact, they can actually peacefully coincide, complimenting each other in the process. Similar Conservancy projects in the northeastern United States have been successful at attracting business and industry that want to maintain an environmentally friendly image. In fact, these developments are advertised as such. Similarly, the city will

profit from a renewed commitment to the environment that will benefit the residents of the city by providing a healthier environment and additional outdoor recreational opportunities.

An example development plat map is attached for review. This scenario conserves a large portion of the wetlands on the property, as well as those woodlands along Wilson Springs. However, it allows for the development of certain parts of the wetlands that are necessary to make the business and technology park economically feasible. Mitigation for these impacted wetlands can be met through restoration of wetlands in the proposed Mitigation shown in gray on the map. In proposing this scenario, effort has been made to ensure that past improvements on the property are utilized to their fullest capacity to minimize loss of investment. Similarly, this scenario will likely reduce the required levels of future infrastructure needs, such as roads. Phase I (surrounded by red on map) would have a total of 10 developable lots, with a future potential (based on original plan for a research and technology park) of another 26 or more lots (surrounded in orange on map). Therefore, the net loss as compared to the original plan would be only about 8 lots (approx. 12%).

2. The city of Fayetteville donates a conservation easement on the Wilson Spring Conservation and Mitigation Areas to The Nature Conservancy that formalizes the long-term conservation of the site. This component of the project is also important to making the business and technology park a truly "green" development that the city can use to attract businesses. Conservation easements are legal documents that are recorded with the deed and are designed to conserve property for the long term. Easements are extremely flexible and can be tailored specifically to the tract and to the landowners needs and long term goals.

3. The Nature Conservancy will facilitate cooperation between the City of Fayetteville and the U.S. Fish and Wildlife Service to develop a Candidate Conservation Agreement for the Arkansas darter. While federal listing of the Arkansas darter is presently precluded by higher priorities, the U.S. Fish and Wildlife Service has urged the City of Fayetteville to enter into such an agreement to protect the City from costly delays that could arise in the event that the species is listed during development of the business and technology park. The U.S. Fish and Wildlife Service has recommended a two-part agreement that covers both construction of the business and technology park as well as infrastructure for wastewater lines scheduled to pass through the park property.

4. The Nature Conservancy completes an ecological assessment of the areas defined as the Wilson Springs Conservation and Mitigation Areas to document current plant and fish communities.

5. The Nature Conservancy develops a long-term management plan that outlines the restoration and management of the Conservation and Mitigation Areas. Specifically, management would focus on Wilson Springs and the surrounding wetlands with a goal of long term conservation of the plants and plant communities found there. Required mitigation for park development would be described in this plan, as well.

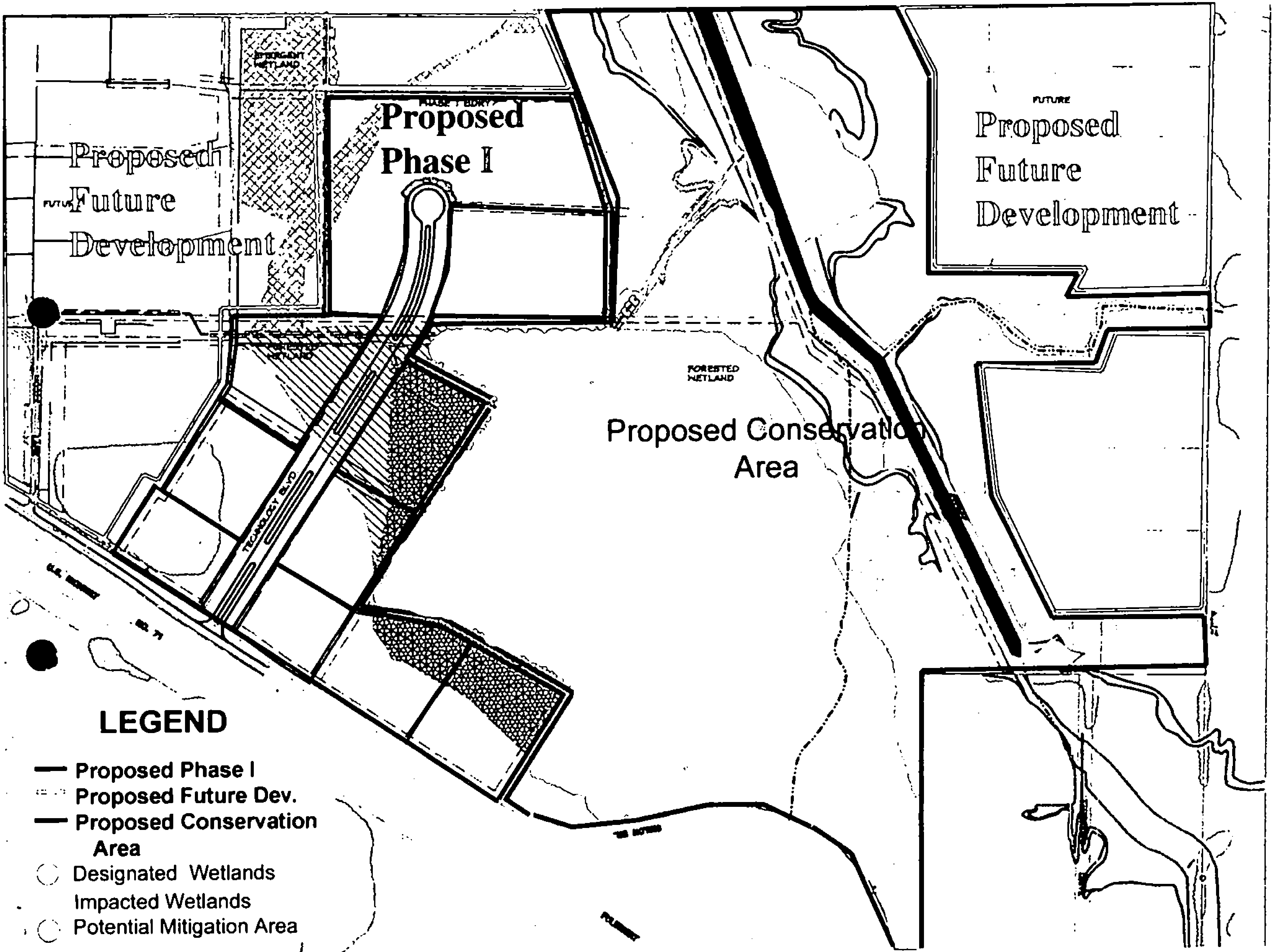
6. The Nature Conservancy, the local chapter of the American Fisheries Society, and the City of Fayetteville jointly implement the ecological management plan. Specifically, the

Conservancy will use its expertise in ecological restoration and monitoring to complete the technical parts of the plan. Interested city employees and residents can work with Conservancy staff through a volunteer program to implement other integral parts of the plan, such as exotic plant removal. Similarly, local groups, including school clubs and boy scouts, will be engaged in order to implement various parts of the management and restoration/mitigation. Volunteer efforts have been key to the success of other Conservancy restoration and management projects across the state.

7. The Nature Conservancy will develop press releases that highlight the agreement and its significance to conservation of Arkansas' unique and rare places. A dedication of the site will also be held – local and statewide media will be invited. In addition, other press releases and media events will be developed as key stages of the restoration and management plan are completed. Articles for the Conservancy's Arkansas newsletter, *Aboard the Ark*, will also cover site activities regularly – more than 5000 members statewide receive this newsletter four times a year. Finally, annual reports will be submitted to the city documenting project activities.

Protection of Arkansas' aquatic resources is an integral component to the overall conservation of the state's precious natural heritage. Fayetteville's ownership and dedication to the environment coupled with The Nature Conservancy's science-based expertise presents a unique opportunity conserve a high-priority, ecologically unique place, setting an example of stewardship for other municipalities to follow. For more information, please contact Mike Fuhr at (501) 614-5076.

The Nature Conservancy®



EMERGENT WETLAND
Proposed Future Development
FUTURE
Proposed Phase I
TECHNOLOGY BLVD
FORESTED WETLAND
Proposed Conservation Area
FUTURE
Proposed Future Development
LEGEND
Proposed Phase I
Proposed Future Dev.
Proposed Conservation Area
Designated Wetlands
Impacted Wetlands
Potential Mitigation Area

FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

KIT WILLIAMS, CITY ATTORNEY
DAVID WHITAKER, ASST. CITY ATTORNEY

LEGAL DEPARTMENT

DEPARTMENTAL CORRESPONDENCE

TO: **Dan Coody**, Mayor
City Council Members

FROM: **Kit Williams**, City Attorney

DATE: **January 16, 2002**

RE: **Mayor's Veto power**

Attached is a copy of A.C.A. §14-43-504 spelling out the mayor's power to veto any ordinance, resolution, or order adopted by the City Council.

If the Mayor vetoes an ordinance, the City Council can pass it over his veto with a two-thirds vote of all the aldermen (which would require six affirmative votes).

good government of the city and for the due exercise of its corporate powers, and which shall have been provided by ordinance, as to whose appointment or election provision is not made in this subtitle and not provided by any general law of the state in reference to cities of the first class.

History. Acts 1875, No. 1, § 62, p. 1; C. & M. Dig., § 7744; Pope's Dig., § 9940; A.S.A. 1947, § 19-1011.

CASE NOTES

Committees.

A committee of a city council having jurisdiction over the city parks has no legislative powers, as the legislative powers are conferred upon the council sitting as such. Satterfield v. Fewell, 202 Ark. 67, 149 S.W.2d 949 (1941).

14-43-503. Imposition of costs on misdemeanor convictions.

(a) The governing body of any municipality in this state in all counties which have a population of two hundred thousand (200,000) or more inhabitants, according to the most recent federal decennial census, is authorized to adopt ordinances to impose costs upon each conviction of a misdemeanor or other crime in the municipal court of the municipality.

(b)(1) The governing body may impose specific costs to be used exclusively for police officers' salaries.

(2) All costs so imposed and specifically enacted for such a special "policemen's salary fund" shall be credited to this fund of the municipality and shall be used solely and exclusively for payments of police officers' salaries, and for no other purpose.

History. Acts 1977, No. 564, § 1; A.S.A. 1947, § 19-1011.1.

14-43-504. Powers and duties of mayor generally.

(a) The mayor of the city shall be its chief executive officer and conservator of its peace. It shall be his special duty to cause the ordinances and regulations of the city to be faithfully and constantly obeyed.

(b) The mayor shall:

(1) Supervise the conduct of all the officers of the city, examine the grounds of all reasonable complaints made against them, and cause all their violations of duty or other neglect to be properly punished or reported to the proper tribunal for correction;

(2) Have and exercise the power conferred on sheriffs, within the city limits, to suppress disorder and keep the peace; and

(3) Perform such other duties compatible with the nature of his office as the city council may from time to time require.

(c) [Repealed].

(d) The mayor shall, at the second regular meeting of the council in each year, and at such other times as he shall deem expedient, report to the council the municipal affairs of the city and recommend such measures to it as to him may seem advisable.

(e) The mayor of any city of the first class shall, in addition to the powers and duties already pertaining to that office, be clothed with, and exercise and perform, the following:

(1) A mayor shall have the power to veto, within five (5) days, Sundays excepted, after the action of the city council thereon, any ordinance, resolution, or order adopted or made by the council, or any part thereof, which in his judgment is contrary to the public interests.

(2)(A) In case of a veto, before the next regular meeting of the council, the mayor shall file in the office of the city clerk, to be laid before that meeting, a written statement of his reasons for so doing.

(B) No such ordinance, resolution, or order, or part thereof, vetoed by the mayor shall have any force or validity unless, after the written statement is laid before it, the council shall, by a vote of two-thirds (⅔) of all the aldermen elected thereto, pass it over the veto.

History. Acts 1875, No. 1, § 53, p. 1; 1885, No. 67, § 2, p. 92; 1893, No. 42, §§ 1, 2, p. 64; 1913, No. 226, § 1; C. & M. Dig., §§ 7697-7701; Pope's Dig., §§ 9840-9844; Acts 1979, No. 153, §§ 1, 2; A.S.A. 1947, §§ 19-1013, 19-1014; Acts 1991, No. 786, § 14; 1995, No. 534, § 2; 1995, No. 914, § 2.

Publisher's Notes. Acts 1991, No. 786, § 37, provided: "The enactment and adoption of this Act shall not repeal, expressly or impliedly, the acts passed at the regular session of the 78th General Assembly. All such acts shall have full effect and, so far as those acts intentionally vary from or conflict with any provision contained in this Act, those acts shall have the effect of subsequent acts and as amending or repealing the appropriate parts of the Arkansas Code of 1987."

Amendments. The 1995 amendment by Nos. 523 and 914 deleted (e)(2) and (3); and redesignated former (e)(1)(B)(i) and (ii) as present (e)(2)(A) and (B), respectively.

CASE NOTES

Analysis

Construction.
Chiefs of police.
Ordinances, resolutions, or orders.
Salaries.

Construction.

Prior to the enactment of § 14-42-110 in 1995, subdivision (e)(2) of this section and former § 14-43-505 created a property interest for a police chief in the position. Sykes v. City of Gentry, 114 F.3d 829 (8th Cir. 1997).

Chiefs of Police.

A chief of police in a city of first class, appointed under an ordinance fixing his term at one year, who surrendered office at the end of the year without protest, was estopped to claim that his term was two years under this section, and therefore he could not recover salary for the second year. City of West Helena v. Patrick, 185 Ark. 71, 46 S.W.2d 36 (1932).

The mayor of a city had the power to appoint the chief of police prior to 1933, when this power was limited only to cities not operating under the municipal Civil Service Act. Connor v. Ricks, 212 Ark. 833, 208 S.W.2d 10 (1948).

Subdivision (e)(2) of this section creates a property interest in the chief of police position for any city of the first class by providing for a term of employment, from the date of appointment to the following mayoral election, and by providing for removal only for cause. Pearson v. City of Paris, 839 F. Supp. 645 (W.D. Ark. 1993).

STAFF REVIEW FORM

X AGENDA REQUEST
___ CONTRACT REVIEW
X GRANT REVIEW

Executive Ramp Project; develop, design, construct.

For the Fayetteville City Council meeting of February 5, 2002

FROM:

Ray M. Boudreaux	Airport	Aviation & Economic Development
Name	Division	Department

ACTION REQUIRED: Review and approve project and authorize Mayor to sign grant agreements for up to $200,000 plus a 10% contingency. Upon grant approval contracts will be submitted to City Council for approval.

COST TO CITY:

$ 50,000.00	$ -0-	Executive Ramp Development Project
Cost of this Request	Category/Project Budget	Category/Project Name
5550.3960.5314.00	$ -0-	Capital
Account Number	Funds used to date	Program Name
	$ -0-	Airport
Project Number	Remaining Balance	Fund

BUDGET REVIEW: No budget implications at this time.

___ Budgeted Item ___ Budget Adjustment Attached

[signature]	1/28/02		[signature]
Budget Manager	Date	Administrative Services Dir.	Date

CONTRACT/GRANT/LEASE REVIEW:

Marsha Farthing	1/28/02	Nancy Smith	1/28/02	
Accounting Manager	Date	Internal Auditor	Date	**GRANTING AGENCY**
[signature]	1/28/02			
City Attorney	Date	ADA Coordinator	Date	
[signature]	1/28/02			
Purchasing Officer	Date	Grants Coordinator	Date	

STAFF RECOMMENDATION: Approval

Division Head	Date	Cross Reference
[signature]	Jan 28, 2002	
Department Director	Date	New Item: Yes No
[signature]	1/28/02	Prev. Ord/Res#:
Administrative Services Director	Date	Orig Cont. Date:
Dan Coody	1/28/02	Orig Cont #:
Mayor	Date	

FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS
DAN COODY, MAYOR

4500 School Ave., Suite F
Fayetteville, AR 72701
501.718.7642

AVIATION AND ECONOMIC DEVELOPMENT
RAY M. BOUDREAUX, DIRECTOR

TO:	Dan Coody, Mayor City Council Members
THRU:	Staff Review Committee
FROM:	Ray M. Boudreaux, Director
DATE:	January 21, 2002
SUBJECT:	Executive Ramp Development Project

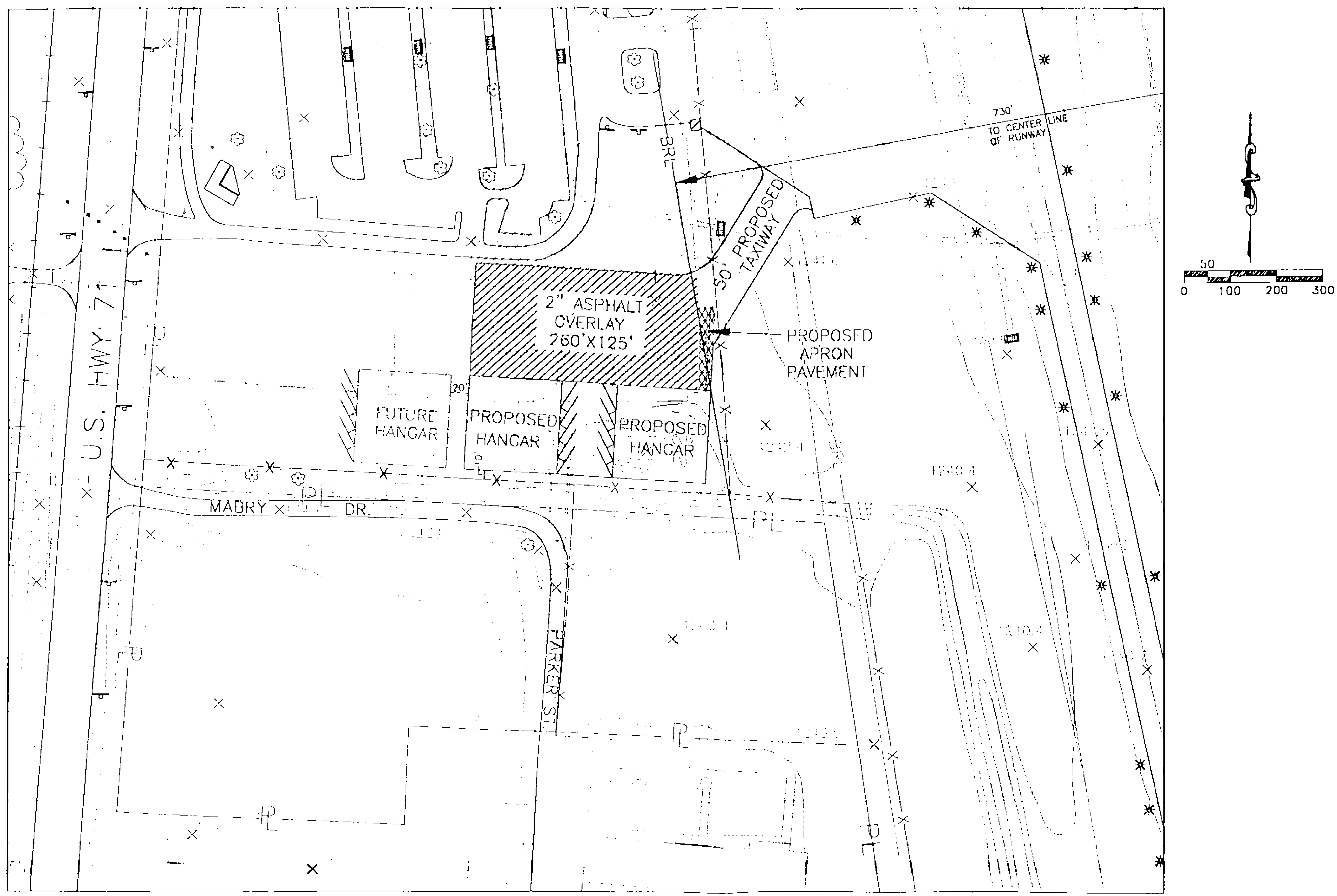
Background: The airport staff has been approached by two individuals with proposals to construct hangars at the Fayetteville Municipal Airport. Both of the customers indicate that they need to be in construction this summer. We have developed a site plan south of the former terminal building and will construct taxiways to service the area and overlay the current parking lot to use as an aircraft parking ramp. McClelland Engineering has made preliminary design with some preliminary budget numbers. This is the only site that could be developed quickly, at very little cost to the City, and meeting all of the criteria presented by the customers.

Purpose: The one asset that the Fayetteville Municipal Airport lacks is hangar space. All of the large hangars are full and all but three T hangars are full. The one asset that the Fayetteville Municipal Airport has in abundance is auto parking. The parking area south of the former Terminal can be easily converted to an executive aircraft parking ramp with easy access from the highway and access to the runways. The purpose of this project is to convert that overflow parking lot into an executive aircraft parking ramp and hangar area. This is the initial phase of the project. Subsequent phases will be to reroute the entry road into the main parking lots and to eliminate many of the barriers in the lots that make parking difficult for visitors to our airport.

Budget Considerations: Funds are available in the Professional Services line item for this project. Total project costs are estimated at $200,000. State grants will be requested. It is anticipated that the total cost to the City will not exceed $50,000.00.

Requested Action: Staff recommends the City Council approve the project, and authorize the Mayor to sign contracts for the engineering and construction services up to $200,000.00 plus 10% contingency.

Attachments: Preliminary ramp layout
Proposed engineering agreement
Proposed grant application
Project Cost Estimate
Impact analysis



CORPORATE HANGAR COMPLEX

FAYETTEVILLE MUNICIPLE AIRPORT

FAYETTEVILE, ARKANSAS

McClelland Consulting Engineers Incorporated

Designed to Serve

Fayetteville 1580 N. College

Little Rock 900 W. Markham

DRAWN BY	APPROVED
C.L.F.	R.W.I.
SCALE 1"=100'	DATE JAN. 2002
JOB NO. FY02210A	FIELD BOOK X.X.X.
SHEET NO. A-2	REV.

REVISIONS

NO.	DATE	CHKD.	APPVD.	DESCRIPTION

©2001

TASK ORDER NO. 10
CORPORATE HANGAR COMPLEX

STATE OF ARKANSAS

COUNTY OF WASHINGTON

This Task Order is written pursuant to the basic agreement entitled CITY OF FAYETTEVILLE, AGREEMENT FOR ENGINEERING SERVICES, executed on March 7, 2000. The referenced basic agreement pertains to proposed improvements to Drake Field, Fayetteville□s Municipal Airport. This Task Order entered into and executed on the date indicated below the signature block, by and between the City of Fayetteville (OWNER) and McClelland Consulting Engineers (ENGINEER) sets forth the project description, project schedule, and engineering fees related to the Corporate Hangar Complex Apron and Taxiway improvements, Drake Field.

SECTION I - PROJECT DESCRIPTION

The project is to consist of: performing the surveying and preliminary engineering for initial phase of the Corporate Hangar Complex; providing preliminary cost estimates; and performing the engineering services associated with detailed design and construction of the initial phase of development.

SECTION II - PROJECT SCHEDULE

From the time the OWNER issues the Notice To Proceed (NTP), the ENGINEER will endeavor to execute the project within the following time periods:

Task	Completion After NTP
A. Surveying:	10 calendar days
B. Preliminary Engineering & Cost Estimates:	25 calendar days
C. Submittal of detailed Design,	55 calendar days
D. Advertise for bids:	85 calendar days

SECTION III - SCOPE OF SERVICES

The ENGINEER shall, generally, provide those services listed in the basic agreement which are applicable to this specific Task Order. Specifically, the project is likely to include:

A. Surveying for the initial Phase of the Corporate Hangar Complex.

B. Performing preliminary engineering for the initial Phase of the Corporate Hangar Complex; formulating preliminary construction cost estimates, and meeting with the City to discuss the project.

C. Performing the detailed design of the initial Phase of the Corporate Hangar Complex.

D. Advertising for competitive bids and recommending the award of a construction contract.

E. Construction Administration, Inspection and prepare "Record Drawings" for the completion of construction based upon the Contractor's mark-ups.

F. Construction staking of a baseline.

G. Construction Materials Testing.

SECTION IV - FEES AND PAYMENTS

The following fees are to be paid to the Engineer as compensation for his services:

A. Surveying:	a lump sum of $ 1,500.
B. Preliminary Engineering; Cost Estimates, and Meetings	a lump sum of $ 5,000.
C. Detailed Plans & Specs for:	a lump sum of $ 5,000.
D. Bidding Service:	a lump sum of $ 1,000.
E. Construction Administration & Inspection:	hourly rates, estimated to be
Contr. Admin	$ 550.
Observation	$ 5840.
Record Drawings	$ 310.
F. Construction Baseline Staking:	a lump sum of $ 400.
G. Construction materials testing:	hourly rates & unit prices, estimated to be $1,750.

Appendix A presents hourly rates for personnel anticipated to be assigned to this project by the ENGINEER.

Appendix B presents the basis of payments to the ENGINEER.

SECTON V - BASIC AGREEMENT IN EFFECT:

Except as amended specifically herein, the basic AGREEMENT FOR ENGINEERING SERVICES shall remain in full force as originally approved and executed.

IN WITNESS WHEREOF, the parties hereto have caused this AGREEMENT to be duly executed as of the date and year first herein written.

FOR THE CITY OF FAYETTEVILLE:

By: ______________________________ Attest: ______________________________
Mayor

Date: ______________________________

FOR McCLELLAND CONSULTING ENGINEERS, INC.:

By: John C. Quinn Attest: R. Wayne Jones
President Vice President

Date: 1/28/02

APPENDIX A

Hourly Rates for Personnel
Drake Field, Fayetteville Municipal Airport

CATEGORY	BILLABLE HOURLY RATE RANGE
Project Director	$98 to $112
Principal Engineer	$81 to $98
Engineer III	$65 to $81
Engineer II	$49 to $65
Engineer I	$41 to $49
Registered Surveyor	$41 to $49
Computer Technician	$46 to $55
Engineering Technician	$46 to $57
Survey Crew (2 man)	$55 to $68
Clerical Support	$22 to $38
CADD Technician III	$44 to $55
CADD Technician II	$32 to $44
CADD Technician I	$22 to $32
Soils Lab Supervisor	$38 to $44
Soils Technician II	$27 to $33
Soils Technician I	$22 to $27

APPENDIX "B"

BASIS FOR PAYMENTS TO THE ENGINEER

TASK ORDER NO. 10
CORPORATE HANGAR COMPLEX
DRAKE FIELD, FAYETTEVILLE MUNICIPAL AIRPORT

LINE NO.	SCOPE I.D.	CLASSIFICATION > / Hourly Billing Rate > / TASK DESCRIPTION	PROJECT DIRECTOR	PRINCIPAL MANAGER	ENGINEER III	Comp/Engr TECH.	CADD TECH. III	CADD TECH. II	CADD TECH. I	LICENSED SURVEYOR	SURVEY CREW	CLERK TYPIST	INSPECTOR (ENGR. TECH.)	LAB Supervisor	SOILS TECH. II	SOILS TECH. I	MILEAGE	SUB.-CONS. FEE	DIRECT EXPENSE	EXTENDED TOTAL
			$110.00	$95.00	$80.00	$55.00	$50.00	$40.00	$30.00	$50.00	$70.00	$30.00	$55.00	$40.00	$30.00	$25.00	$0.35			
1	A	SURVEYING		1		10				3	10						35			$1,507.35
3	B	PRELIMINARY ENGINEERING	1	4	8			10	30			1					32	$250		$2,731.20
4		Formulate Construction Plan	0.5	4		4						2								$715.00
5		Formulate Construction Cost Estimates			4							1								$350.00
6		Meeting with City to Discuss Implementation		1	1							1					18			$180.60
7	C	DETAILED DESIGN	1	4	28	8	3	10	30			12					18	$200		$5,025.60
9	D	BIDDING SERVICES FOR PROJECT	1	2	8							2					18			$1,005.60
11	E	CONSTRUCTION ADMINISTRATION & INSPECTION																		$0.00
12		Contract Administration	1	1	4															$525.00
13		Const. Observation		1	2							2	98				500			$5,880.00
14		Record Drawings			1				4				2							$310.0[illegible]
15	F	CONSTRUCTION STAKING			0.5		1			1	3		0.5				15		$15	$397.[illegible]
16	G	CONSTRUCTION MATERIALS TESTING		1	2							8		4	30	8	150			$1,747.5[illegible]
		Subtotals	4.5	18	41	22	3	20	64	3	10	20	100	4	30	8	813	$450	$0	$20,365.90

FAYETTEVILLE

AIRPORT DEPARTMENT
THE CITY OF FAYETTEVILLE, ARKANSAS

January 25, 2002

Mr. John Knight, Director
Arkansas Department of Aeronautics
One Airport Drive, 3rd Floor
Little Rock, Arkansas 72202

RE: **GRANT APPLICATION (2), Apron Renovation; Taxiway & Apron Expansion**

Dear Mr. Knight;

Enclosed please find two (2) copies of a proposal for Arkansas Department of Aeronautics grant funding. The proposal combines two SAAG grant categories for separate portions of the project.

Under the SAAG 90/10% grant classification, we will perform renovation to an unused asphalt parking area. Under a lease arrangement with the airport, two privately financed 100' x 100' corporate type hangars will be built adjacent to the refurbished aircraft parking ramp. It is anticipated that the two initial hangars will stimulate other new corporate aircraft activity and hangar construction at Drake Field.

Also included in the project under the SAAG 75/25% grant classification is construction of a small portion of additional ramp, and extension of taxiway to the existing terminal ramp. This will provide access to the runway from the new hangars. A drawing of the proposed project is attached for your information.

Fayetteville Municipal Airport requests funding in the amount of $74,088, or 90% of a total project cost of $82,320 for Apron Renovation. Also requested is $92,512, or 75% of a total project cost of $123,350, for Taxiway & Apron Expansion.

Fayetteville Municipal Airport respectfully requests your consideration and approval of these two grant applications. Please contact me if you desire further information, or have any question concerning this applications.

Sincerely,

Ray M. Boudreaux, Director
Aviation & Economic Development

RB:jn
Enclosures:\2\
Grant Application, 2 copies

4500 SOUTH SCHOOL AVENUE, SUITE F • AIRPORT TERMINAL BUILDING • FAYETTEVILLE, AR 72701
PHONE 501-718-7640 Ext. 5 • FAX 501-718-7646

ARKANSAS DEPARTMENT OF AERONAUTICS

APPLICATION FOR STATE AIRPORT AID

The City/~~County~~ of Fayetteville, herein called "Sponsor", hereby makes application to the Arkansas Department of Aeronautics for State funds pursuant to Act 733 of 1977, for the purpose of aiding in financing a project for the development of a municipal airport located in the City of Fayetteville, Arkansas, Washington County.

Date of Request: January 25, 2002

Name of Airport: Fayetteville Municipal Airport / Drake Field (FYV)

Name and address of City/County Commission sponsoring request:

City of Fayetteville	Person to contact about project:
113 West Mountain St.	Ray M. Boudreaux, Director
Fayetteville, AR 72701	4500 S School Ave, Suite F
Phone/Fax Number:	Phone/Fax Number: 501-718-7642 501-718-7646 fax

Name and address of Engineering Firm (If Applicable):

McClelland Consulting Engineers, Inc.	Contact Person: Wayne Jones, P.E.
PO Box 1229	
Fayetteville, AR 72702-1229	Phone/Fax Number: 501-443-2377

Describe the work to be accomplished: Apron Renovation. 2" Asphalt overlay of existing parking area pavement South of the main terminal building in order to re-develop the area for use as aircraft parking ramp.

State and Local Project Costs:
Please indicate: ____ 50-50% Match
____ 75-25% Match
XX 90-10% Match

Federal AIP Projects:

N / A

Total Cost of Project	$ 82,320	Total Cost of Project	
Local Share/Funds	8,232	Federal Share (90%)	
Local Share/In-Kind		Local Share (5%)	
State Share	74,088	State Share	

State Airport Aid Application
Page Two

Provide the information listed below as it applies to your project:

FUNDS:

Source of Funds State Funding: Arkansas Department of Areronautics

Local Funding: Fayetteville Municipal Funds, Airport Div

Source of In-Kind Services N/A

Estimate starting date of project: April 2002

Estimate completion date of project: June 2002

Project will be for: New Airport ______ Existing Airport XX

Is land to be leased or purchased? NO

Description of land and cost per acre: ______

Provide the Federal AIP Grant Number (AIP Projects Only)

______

State Representatives for your area:

State Senator David Malone

State Representative Bill Pritchard - District 8

State Airport Aid Application
Page Three

The Sponsor agrees to furnish the Arkansas Department of Aeronautics a copy of the legal instrument affecting use of the property for an airport. In application for a new landing site or expansion of existing facility, the FAA Form 7480.1, Notice of Landing Area Proposal, must be approved by FAA before review for grant can be made by the state.

No land purchased with State Grant Funds may be sold or disposed of without State Commission approval. All requests for sale or disposal of property will be considered on an individual case basis.

No airport accepting State Grant funding may issue an Exclusive Rights Lease.

All applications for navigational aids (such as NDB or ILS) must have FAA site approval before a state grant can be approved.

All Grant applications involving Federal Airport Improvement Program (AIP) funding must be accompanied by the approved FAA application.

If this project is approved by the Arkansas Department of Aeronautics, and is accepted by the sponsor, it is agreed that all developments and construction shall meet standard FAA construction practices as outlined in the specifications of this agreement. Runways, Taxiways, Parking Ramps, etc., shall have a base and a thickness that will accommodate the weight of aircraft expected to operate at this airport.

<u>All grant applicants (City and/or County) are totally responsible for compliance with all Federal, State, County and City Laws, Statutes, Ordinances, Rules, Regulations, and Executive Orders concerning contracts and purchases for which this grant is approved and issued. All grant applicants must submit with their applications a completed Contract and Grant Disclosure and Certification Form. (Form F-1-Pages 1&2).</u>

It is understood and agreed that should the sponsor fail to start this project within three (3) months of the Arkansas Department of Aeronautics' date of acceptance, that this grant is null and void.

It is also agreed that this project, except FAA funded projects, shall be completed within one year from the date of acceptance of this grant by the Arkansas Department of Aeronautics. Applications for extension will be entertained if circumstances beyond the sponsor's control occur.

Funds will be disbursed according to Department procedures and final inspection of completed project. (See Instruction Page).

IN WITNESS WHEREOF, the sponsor has caused this Application for State Airport Aid to be duly executed in its name, this 25th day of January, 20 02 .

City of Fayetteville
Name of Sponsor

Authorized Signature
Ray M. Boudreaux, Director
Title

PROJECT COST ESTIMATE
CORPORATE HANGAR COMPLEX
DRAKE FIELD
FAYETTEVILLE MUNICIPAL AIRPORT
28-Jan-2002

APRON RENOVATION

Estimated Construction Cost	$71,120.00
Contingency (5%)	$3,600.00
Subtotal	$74,720.00
Engineering Design	$4,000.00
Bidding Phase	$400.00
Contr. Admin & Observation	$2,500.00
Construction Material Testing	$700.00
Estimated Apron Cost	**$82,320.00**

TAXIWAY & APRON EXPANSION

Estimated Construction Cost	$105,700.00
Contingency (5%)	$5,300.00
Subtotal	$111,000.00
Engineering Design	$6,500.00
Bidding Phase	$600.00
Contr. Admin & Observation	$4,200.00
Construction Material Testing	$1,050.00
Estimated Taxiway & Apron Exp. Cost	**$123,350.00**
TOTAL ESTIMATED PROJECT COST	**$205,670.00**

APRON RENOVATION
CORPORATE HANGAR COMPLEX
DRAKE FIELD
FAYETTEVILLE MUNICIPAL AIRPORT
28-Jan-2002

Item	Quantity	Unit	Unit Price	Extended
Remove Trees & Relocate	8	EA	$ 600.00	$ 4,800.00
Excavate Tree Wells	250	CY	$ 10.00	$ 2,500.00
Select Borrow (24")	250	CY	$ 18.00	$ 4,500.00
Topsoil Replacement	50	CY	$ 10.00	$ 500.00
Stabilization Fabric	180	SY	$ 1.30	$ 234.00
Crushed Stone Base	100	TN	$ 18.00	$ 1,800.00
Asphalt Leveling (2" to 3"))	435	TN	$ 52.00	$ 22,620.00
Asphalt Surface Course (2")	320	TN	$ 52.00	$ 16,640.00
Tack Coat	450	GA	$ 1.50	$ 675.00
Storm Drainage Pipe (12")	250	LF	$ 25.00	$ 6,250.00
Grate Inlets	2	EA	$ 2,600.00	$ 5,200.00
Remove Curb and Gutter	1	LS	$ 3,500.00	$ 3,500.00
Remove Light Pole	2	EA	$ 700.00	$ 1,400.00
Seeding	1	LS	$ 500.00	$ 500.00
	Subtotal Construction Cost			**$ 71,119.00**

TAXIWAY & APRON EXPANSION
CORPORATE HANGAR COMPLEX
DRAKE FIELD
FAYETTEVILLE MUNICIPAL AIRPORT
28-Jan-2002

Item	Quantity	Unit	Unit Price	Extended
Excavation	1100	CY	$ 10.00	$11,000.00
Select Borrow (24")	750	CY	$ 18.00	$13,500.00
Topsoil Replacement	150	CY	$ 15.00	$2,250.00
Stabilization Fabric	1100	SY	$ 1.30	$1,430.00
Crushed Stone Base (8")	480	TN	$ 18.00	$8,640.00
Prime Coat	250	GA	$ 2.40	$600.00
Asphalt Surface Course (4")	240	TN	$ 52.00	$12,480.00
Storm Drainage Pipe (18")	200	LF	$ 30.00	$6,000.00
Grate Inlets	1	EA	$ 2,600.00	$2,600.00
Junction Box	1	EA	$ 2,600.00	$2,600.00
Remove Light Pole	1	EA	$ 700.00	$700.00
Remove Light Pole & Cable	1	EA	$ 700.00	$700.00
Encase Force Main	120	LF	$ 30.00	$3,600.00
Sanitary Sewer Pump Station (House Grinder Pump)	1	LS	$ 25,000.00	$25,000.00
Force Main (2")	250	LF	$ 14.00	$3,500.00
Water Line (2-1/2")	500	LF	$ 15.00	$7,500.00
Double Water Meter Setting	1	EA	$ 600.00	$600.00
Blow-off Assembly	1	EA	$ 1,000.00	$1,000.00
Seeding	1	LS	$ 2,000.00	$2,000.00
	Subtotal Construction Cost			**$105,700.00**

IMPACT ANALYSIS
FAYETTEVILLE MUNICIPAL AIRPORT
EXECUTIVE RAMP AIRCRAFT HANGAR AND PARKING AREA

SUMMARY: For the Fayetteville Municipal Airport to continue its growth into the future, hangar facilities must be constructed to accommodate general aviation aircraft both privately and professionally owned and operated. Previously, T Hangar construction has stayed up with the market. The T area has 73 units and as of today only 5 empty. T Hangars are suitable for small aircraft including light twin engine aircraft. The executive ramp is needed to provide hangars for the larger business aircraft, mostly turbo prop, and for corporations that have more than one aircraft. It is anticipated that most of the hangars will be constructed just under 10,000 square feet and capable of housing larger King Air, Falcon and Gulfstream aircraft.

INVESTMENT: Preliminary cost estimates by McClelland Engineering, Wayne Jones, indicate that the project will cost approximately $200,000 total. This amount would include pavement overlay, drainage improvements, fencing relocation and a new taxiway to connect the area to the air side. We will apply for State funding through the Aeronautics Department and anticipate that the maximum Airport fund expense to be $50,000.00.

RETURN: The airport has received proposals to build two 10,000 SF hangars. The clients will lease the ground and construct the hangars. We have not yet negotiated the ground lease but would anticipate an annual lease rate of more than $1,000 from each tenant. The real return is the fuel sales and activity that larger professional operations bring to the airport. The aircraft that would locate in these hangars include a King Air 320 and a Falcon10. These aircraft carry more than 500 and 800 gallons of jet A respectively. If they were to fly once a week and consume 50% of their capacity it would mean sales of 650 gallons per week as a result of them locating on the airport. At a margin of $.40 per gallon, it means a net to the airport fund of more than $13,000 per year. This is a very conservative number. The return on our $50,000 investment would conservatively be $15,000 per year which translates to a 30% return on investment. Collateral benefits include new employees for the tenants, activity at the airport and the opportunity to further market the benefits of Fayetteville Municipal Airport. This development will likely spur additional hangar construction by others.

STAFF REVIEW FORM

X AGENDA REQUEST
CONTRACT REVIEW
X GRANT REVIEW

For the Fayetteville City Council meeting of February 5, 2002

FROM:

Name	Division	Department
Richard L. Watson	Police	Police

ACTION REQUIRED: City Council approve the 2001 Juvenile Accountability Incentive Block Grant Program Application and attached budget adjustment. This grant is in the amount of $ 34,440.00 plus a ten percent match requirement of $3,827.00 for a total of $38,267.00. The proposed use of these grant funds is for software and equipment.

COST TO CITY:

$38,267.00	$4,677,629.00	Patrol and Warrant
Cost of this Request	Category/Project Budget	Category/Project Name
---	$218,424.00	Patrol & Warrant
Account Number	Funds Used To Date	Program Name
	$4,459,204.00	General
Project Number	Remaining Balance	Fund

BUDGET REVIEW: ____ Budgeted Item X Budget Adjustment Attached

Budget Manager

Administrative Services Director

CONTRACT/GRANT/LEASE REVIEW:

GRANTING AGENCY:

Marsha Farthing
Accounting Manager 1/29/02 Date

Internal Auditor Date

City Attorney 1/29/02 Date

ADA Coordinator Date

Purchasing Officer 1/29/02 Date

Grants Coordinator Date

STAFF RECOMMENDATION:
Council approve Juvenile Accountability Incentive Block Grant application for Mayor Coody's signature and attached budget adjustment in the amount of $3,827.00.

Division Head Date

Richard L. Watson
Department Director 1-29-02 Date

Administrative Services Director 1/29/02 Date

Dan Coody
Mayor 1/29/02 Date

Cross Reference

New Item: **Yes No**

Prev Ord/Res #:

Orig Contract Date:

STAFF REVIEW FORM

Description Juvenile Accountabiltiy Incentive Block Grant Meeting Date

Comments: Reference Comments:

Budget Manager

Accounting Manager

City Attorney

Purchasing Manager

Internal Auditor

ADA Coordinator

Grants Coordinator

City of Fayetteville, Arkansas
Budget Adjustment Form

Budget Year	Department: Police Division: Patrol Program: Patrol & Warrant	Date Requested	Adjustment #
2002		01/29/2002	

Project or Item Requested:

Matching funds for the Juvenile Accountability Block Grant

Project or Item Deleted:

None

Justification of this Increase:

These funds will allow the city to receive a grant in the amount of $34,470.00 to use in Juvenile crime prevention.

Justification of this Decrease:

Increase Expense (Decrease Revenue)

Account Name	Amount	Account Number				Project Number
Software and supplies	19,267	1010	2940	5209	00	
Minor Equipment	19,000	1010	2940	5890	00	

Decrease Expense (Increase Revenue)

Account Name	Amount	Account Number				Project Number
Federal Grant	-34,400	1010000	1	4309	00	
Overtime	3,827	1010	2940	5104	00	

Approval Signatures

Requested By — Date

Budget Manager — Date

Department Director — 1-29-02 Date

Admin. Services Director — 1/29/02 Date

Mayor — 1/29/02 Date

Budget Office Use Only

Type: A B C D E

Date of Approval

Posted to General Ledger

Posted to Project Accounting

Entered in Category Log

Blue Copy: Budget & Research / Yellow Copy: Requester

FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

POLICE DEPARTMENT

Memorandum

TO: Mayor Dan Coody and Members of the City Council

FROM: Richard L. Watson, Chief of Police R. Watson

DATE: January 28, 2002

SUBJECT: Juvenile Accountability Incentive Block Grant

The attached grant application will provide equipment and materials for a Juvenile Crime Prevention Officer. The Juvenile Crime Prevention Officer will utilize the equipment and materials to achieve the goal set forth in this project. This officer will work with the School Resource Officers and Crime Prevention Sergeant.

The goal of this project is to "Develop, implement, expand, and strengthen programs designed to identify and prevent juvenile crime. The objectives set to work toward this goal are:

1. Develop and implement a comprehensive **Truancy Prevention Program** that pools school, court, social services, and law enforcement resources to prevent juvenile delinquency by reducing and eliminating school truancy.

2. Develop and implement a police department and community **Response Plan for Missing, Exploited, or Abducted Children Cases**.

3. Develop and implement strategic and tactical planning and public education and awareness on **Preventing Juvenile DUI**.

4. Develop and implement a police department operational plan to access, investigate, document, track, and **Prevent Juvenile Gangs** and activity associated with juvenile crimes.

FAYETTEVILLE POLICE DEPARTMENT
P.O. BOX 1988
FAYETTEVILLE, ARKANSAS 72702-1988

(DELIVERIES) POLICE: 100-A WEST ROCK STREET 72701
JAIL: 140-A WEST ROCK STREET 72701
PHONE: 501-587-3555 FAX: 501-587-3522

PROGRAM ABSTRACT

Truancy Program

The Juvenile Crime Prevention Officer will work together with the Fayetteville School District to implement a comprehensive truancy program designed to identify, locate and return all truant adolescents to their respective schools. The Juvenile Crime Prevention Officer will utilize existing social services (Juvenile Court, Department of Human Services, etc…) and equipment to track truant children and work with the prosecuting attorney on cases involving criminal charges against parents. The Juvenile Crime Prevention Officer will be responsible for utilizing the equipment and materials needed to effectively track truant children.

Equipment and Material Needs

Truancy Tracking Software Program	$11,000.00

Enforcing the Underage DUI

The Juvenile Crime Prevention Officer will develop strategies to enforce DUI laws and other alcohol related offenses committed by adolescents. The Juvenile Crime Prevention Officer will develop an alcohol prevention education curriculum, parent and business alcohol education programs, and enforcement strategies directed at reducing underage DUI. The Juvenile Crime Prevention Officer will be responsible for maintaining and distributing all education materials relating to DUI education and enforcement. The Juvenile Crime Prevention Officer will utilize and maintain all of the equipment related to DUI education and enforcement.

Equipment and Material Needs

Parent Educational Materials	$1,500.00
Business Educational Materials	$1,500.00
Portable Breath Testers X 3	$1,707.00

Investigating Potential Child Abduction Cases

The Juvenile Crime Prevention Officer will develop, implement, expand, and strengthen department operational policies and procedures for investigating missing and abducted children cases. This will also include crime prevention awareness programs on personal safety considerations for children. The Juvenile Crime Prevention Officer will be responsible for all equipment and materials used in the prevention of child abduction. The Juvenile Crime Prevention Officer will distribute all education materials relating to child abduction prevention.

Sentry I.D. Equipment	$14,000.00
Materials	$2,060.00
Department Training Materials	$1,500.00
Community Education Materials	$1,000.00

Youth Gang Identification and Prevention

The Juvenile Crime Prevention Officer will develop, implement, expand, and strengthen departmental operations to access, investigate, observe, document, and prevent youth gang activity and related juvenile crime. This will include an early identification and tracking system for juveniles involved in delinquent behavior and criminal activity associated with gang activity. The Juvenile Crime Prevention Officer will be responsible for all equipment and materials needed for identifying, investigating, observing and documenting youth gang members. The Juvenile Crime Prevention Officer will be responsible for distributing all gang prevention materials.

Digital Video Camera	$ 1,000.00
Computer, Software and Printer	$ 3,000.00

Proposed Budget for Juvenile Crime Prevention Officer Equipment and Materials;

TOTAL $38,267.00

2001 Juvenile Accountability Incentive Block Grant Program Application

1. Applicant: City of Fayetteville
2. Mailing Address: 113 W. Mountain
   Fayetteville, AR 72701
3. Phone Number: 501-575-8330 FAX Number: 501-575-8257
4. Project CFDA# 16.523
5. Federal Congressional District(s) served by this project:
   a. Third b. ____
   c. ____ d. ____
6. Judicial District(s) served: Fourth
7. Federal Employer Identification #: 71-6018462
8. Counties served by this project: Washington
9. Program Purpose Areas:
   1. ☐ Construction of juvenile detention or correctional facilities, including training of personnel.
   2. ☐ Accountability-based sanctions for juvenile offenders.
   3. ☐ Hiring of juvenile judges, probation officers, and defenders and funding pretrial services for juveniles.
   4. ☐ Hiring of prosecutors, so that more cases involving juveniles can be prosecuted and backlogs reduced.
   5. ☐ Funding of prosecutor-led youth drug, gang, and violence programs.
   6. ☐ Technology, equipment, and training programs to assist prosecutors in identifying and expediting the prosecution of violent juvenile offenders.
   7. ☐ Probation programs for juvenile offenders.
   8. ☐ Gun courts for the adjudication and prosecution of juvenile firearm offenders.
   9. ☐ Drug courts for juvenile offenders with substance abuse problems.
   10. ☐ Information sharing systems to help identify, control, supervise, and treat juveniles who repeatedly commit serious delinquent or criminal acts.
   11. ■ Accountability-based programs for law enforcement referrals or that are designed to protect students and school personnel from drug, gang, and youth violence.
   12. ☐ Controlled substance testing (including interventions) for juveniles in the juvenile justice system.
10. Project Director: Frank Johnson Phone #: 501 587-3584
11. Mailing Address: P.O. Box 1988
    Fayetteville, AR 72702
12. Financial Officer: Judy Cohea Phone #: 501-587-3510
13. Project Site: Fayetteville, AR
14. County (ies) or City (ies) Served: Washington
15. Project Duration: Maximum 24 months ____
    Expected Start Date ____
    Expected Number of Persons to benefit from Project ____
16. Type of Implementation Agency
    A. Level of Government or Entity:
    - ☐ County
    - ■ Local
    - ☐ Indian tribe performing law enforcement functions
    - ☐ Other: ____
17. B. Function of Implementing Agency:
    - ■ Law Enforcement
    - ☐ Court
    - ☐ Prosecution
    - ☐ Detention
    - ☐ Probation
    - ☐ Social Service
    - ☐ Schools
    - ☐ Other: ____
18. **Amount Awarded $** $34,440.00

19. I certify to the best of my knowledge and belief, that the data in this application is true and correct. The document has been duly authorized by the governing body of the applicant and the applicant will comply with the general and special conditions outlined in the application if approved for funding.

____
***Signature of Authorized Official**

Dan Coody
Typed name of Authorized Official

____
Date Signed

Mayor
Title of Authorized Official

**The Authorized Official must have legal authority to represent a local unit of government.*

FOR DYS USE ONLY

Actual Start Date:
Total Amount Approved:
Subgrant #:
Subgrant Year: ☐ First Year ☐ Second Year ☐ Third Year ☐ Other:
Pass Through: ☐ Yes ☐ No

JAIBG WAIVER REQUEST FORM

City of Fayetteville
Name of County/City/Town

Frank Johnson
Name of Project Director

P.O. Box 1988
Mailing Address

Fayetteville	AR	72702
City/Town	State	Zip Code

501-587-3584	501-587-3522
Telephone Number	FAX Number

$34,440.00
Amount of Funds Received

For DYS Use Only

WAIVER

Local units of government must provide an assurance that, other than funds set aside for administration, not less than 45 percent is allocated for program purpose areas 3-9, and not less than 35 percent is allocated for program purpose areas 1, 2 and 10. This allocation is required ***unless*** the local unit of government certifies, in the space provided below, that the interest of public safety and juvenile crime control would be better served by expending its funds in a proportion other than the 45 and 35 percent minimums. This certification/waiver should provide information concerning the availability of alternative funding sources, existing structures, and the reasons for the alternative use. ***However, with or without this waiver, all funds must be expended for programs within the 12 authorized program purpose areas.*** (*Please use no more than the space available on this page for your explanation*)

*Signature of Authorized Official

Date

*The Authorized Official must have legal authority to represent a local unit of government.

JAIBG ASSURANCES FORM

City of Fayetteville
Name of County/City/Town

Frank Johnson
Name of Project Director

P.O. Box 1988
Mailing Address

City/Town	State	Zip Code
Fayetteville	AR	72702

501-587-3584
Telephone Number

501-587-3522
FAX Number

$34,440.00
Amount of Funds Received

For DYS Use Only

ASSURANCES

Unless a waiver is requested and granted, local units of government receiving funds from States must provide an assurance that, other than funds set aside for administration, not less than 45 percent is allocated for program purpose areas 3-9, and not less than 35 percent is allocated for program purpose areas 1, 2 and 10. However, a local unit of government can request a waiver to spend its funds in a proportion other than the 45 and 35 percent minimums. In addition, local units of government are required to establish a Juvenile Crime Enforcement Coalition which is responsible for developing a coordinated enforcement plan for reducing juvenile crime. This plan is to be based on an analysis of the local government's juvenile justice needs. Please be advised that if your community currently has a Policy Prevention Policy Board it can serve as your Juvenile Crime Enforcement Coalition.

- It is assured that not less than 45% will be allocated for program purpose areas 3-9; or waiver requested.
- It is assured that not less than 35% will be allocated for program purpose areas 1,2 and 10; or waiver requested.
- It is assured that a Juvenile Crime Enforcement Coalition has been established; and
- It is assured that a Coordinated Enforcement Plan will be developed. This plan is based on an analysis of juvenile justice system needs. The analysis determines the most effective uses of funds, within the twelve JAIBG program purpose areas, to achieve the greatest impact on reducing juvenile delinquency, improving the juvenile justice system, and increasing accountability for juvenile offenders. **The deadline for the submission of this plan is Friday, February 8 2002**. Please note that funds can not be utilized until this plan is developed.

By signing this form you are assuring that the above mentioned requirements will be satisfied.

*Signature of Authorized Official

Date

***The Authorized Official must have legal authority to represent a local unit of government.**

JAIBG CASH MATCH REQUIREMENT FORM

Cash Match

A local unit of government may allocate up to 10 percent of the total program cost for administrative costs related to the JAIBG programs. All funds used for administrative costs are subject to the Cash Match requirement. The local government recipient of the JAIBG award must contribute (in the form of a Cash Match) 10 percent of the total program cost (other than costs of construction of permanent correctional facilities, which require a 50 percent match). The total program cost is made up of the Federal award amount and the Cash Match. If only the Federal amount is known, the calculation of the match requirements is as follows:

1. Convert the Federal award amount percentage to a fraction (example, 90 percent = 9/10).
2. Invert the fraction from 9/10 to 10/9.
3. Multiply the Federal award amount by the numerator (example, 10,000 x 10 = $100,000).
4. Divide the result by the denominator to determine the total program cost (example, $100,000/9 = $11,111.11).
5. Subtract the amount of the Federal award from the total program cost to determine the Cash Match (example, $11,111.11 -- $10,000 = $1,111).

Allowable Sources of Cash Match are:

1. City and County Appropriations
2. Housing and Community Development Act
3. Equitable Sharing Program, a Federal asset forfeiture distribution program to state and local officials
4. Appalachian Regional Development Act
5. Private Funds

By signing this form you are confirming you have read the above mentioned stipulation and have included the required Cash Match is included in your budget.

*Signature of Authorized Official Date

***The Authorized Official must represent a local unit of government; e.g., a mayor or county judge.**

RESOLUTION NO. ______

A RESOLUTION TO APPROVE A PROPOSAL FOR SOLIDS SUPPLY AGREEMENT WITH DUKE SOLUTIONS, INC. AND HARMONY PRODUCTS, INC.

WHEREAS, the City of Fayetteville along with our sister cities of Springdale, Siloam Springs and Bentonville desire to work toward the development of a gasification and fertilizer facility to convert our wastewater solids into fertilizer; and

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

Section 1. That the City Council of the City of Fayetteville, Arkansas hereby agrees to the Summary of Proposed Terms and Conditions attached as Exhibit A and authorizes Mayor Coody to sign this document.

PASSED and **APPROVED** this the _____ day of February, 2002.

APPROVED:

DRAFT

By: ______________________
DAN COODY, Mayor

ATTEST:

By: ______________________
Heather Woodruff, City Clerk

PROPOSAL FOR WASTEWATER SOLIDS SUPPLY AGREEMENT BETWEEN HARMONY PRODUCTS, INC., DUKESOLUTIONS, INC. AND THE CITIES OF FAYETTEVILLE, SPRINGDALE, BENTONVILLE AND SILOAM SPRINGS, ARKANSAS

SUMMARY OF PROPOSED TERMS AND CONDITIONS ("Term Sheet")

This Term Sheet is intended to summarize the principal terms of a proposed Agreement among DukeSolutions, Inc. ("DukeSolutions"), Harmony Products, Inc. ("Harmony"), and the City of Fayetteville, Arkansas (the "City") (collectively, the "Parties") regarding the development of a gasification and fertilizer facility to which the City with one or more of the Cities of Fayetteville, Springdale, Rogers, Bentonville and Siloam Springs, Arkansas (the "Cities") would supply wastewater solids ("Solids") to a fertilizer plant.

The Parties wish to commence negotiating definitive written agreements with each of the Cities providing for the Project (a "Definitive Agreement"). Based on the information currently known to Harmony and DukeSolutions, each Definitive Agreement will include the following terms:

1. Parties: DukeSolutions, Harmony and the City.

2. Services: DukeSolutions and Harmony, acting by or through a special purpose entity, Harmony Northwest Arkansas LLC, (the "Project Company") would design, build, own, and lease to Harmony ("Operator") to operate, and maintain a gasification and fertilizer plant ("Plant") at one site located in appropriate proximity to the Cities' wastewater treatment facilities ("Facilities"). The City would provide wastewater solids to the Plant as outlined below.

3. Solids: Solids shall mean the nonhazardous, waste activated, wastewater treatment sludge derived at the Facilities, excluding grit, screenings and grease. The Solids have a content of 13% to 17% dry matter and will have lab analyses as provided previously to Harmony, attached hereto as Attachment 1.

4. Fee: Each City will pay an initial charge of $34.00 per wet ton ("Fee") of Solids delivered to the "operator" for disposing of the Solids escalated at the Consumer Price Index for the Northwest Arkansas area published by the Bureau of Labor Statistics for delivery of a combined amount of 4.000 wet

tons per month of Solids to the Plant ("Target Minimum Quantity"). The Fee for amounts delivered by the Cities in excess of a rate of 4,000 wet tons per month will be $28 per wet ton, escalated as provided above. In addition, the Cities will receive the benefit of any governmental grants supporting the construction or operation of the Plant.

5. Quantity: The City will provide a minimum quantity of 1,500 wet tons of Solids per month to the Plant (the "Minimum Quantity"). If the Cities in the aggregate deliver more than the Targeted Minimum Quantities to the Plant, the Fee for amounts of Solids over cumulative TYTD of 4,000 per month and less than 10,000 per month (the "Incremental Quantity") shall be $28 per wet ton escalated as provided above. In that event, the reduced $28 Fee will be applied proportionately to the Incremental Quantity to each City based on the greater of the City's Minimum Quantities or actual delivered wet tons of Solids. In the event the Cities wish to provide to the Operator cumulative TYTD in excess of 10,000 Tons per month, the Cities and Operator will negotiate in good faith an appropriate Fee for such additional amount.

6. Term: The initial term of the "Definitive Agreement" would be for a period of years to be agreed by the parties. The initial term shall be followed by two consecutive and successive five (5) year options to renew by each City. These options to renew shall be automatic unless any City exercises its right not to renew at least three months prior to the expiration of the term of the "Definitive Agreement" or any renewal period.

7. Commercial Operation: Upon execution of the Definitive Agreement, and selection of a mutually agreeable site having all necessary local land use permits, DukeSolutions and Harmony will have 18 months to design, permit, finance and have the Plant mechanically complete. DukeSolutions and Harmony will be obligated to receive the solids beginning on the earlier of commercial operation of the plant or 18 months from the execution of the Definitive Agreement.

8. Primary Fuel: The Operator intends to produce fertilizer by using poultry litter as the primary fuel for the Plant. The Project Company will collect or have collected such

poultry litter from area growers and transport the litter to the Operator's Plant.

9. Exclusivity: The City agrees not to pursue or participate in development of any other energy, waste-to-energy or fertilizer projects with respect to Solids for the period that is greater of (i) one hundred eighty (180) days after execution of this Term Sheet or (ii) during the time while the Parties are actively developing or operating the project contemplated by this Term Sheet, including any subsequent project development activities under an agreement, letter of intent or Definitive Agreement.

10. Nondisclosure of files which would give advantage to competitors:

Subject to the requirements of the Arkansas Freedom of Information Act, the Cities agree to keep confidential any private files designated by the parties which, if disclosed, would give advantage to competitors of DukeSolutions, Inc., or Harmony Products, Inc. pursuant to A.C.A. §25-19-105 (b)(9)(A).

THIS TERM SHEET IS INTENDED AS AN OUTLINE ONLY AND DOES NOT PURPORT TO SUMMARIZE ALL OF THE CONDITIONS, COVENANTS, REPRESENTATIONS, WARRANTIES AND OTHER PROVISIONS THAT WOULD BE CONTAINED IN MORE DEFINITIVE LEGAL DOCUMENTATION OR THE AGREEMENTS(S) CONTEMPLATED HEREBY, EXCEPT PARAGRAPHS 9 AND 10, WHICH ARE INTENDED TO BE BINDING ON THE PARTIES. THIS TERM SHEET IS NOT INTENDED TO CREATE ANY LEGALLY BINDING OBLIGATIONS ON THE PART OF DUKESOLUTIONS, HARMONY, THE CITIES OR THE PROJECT COMPANY, AND IT IS EXPRESSLY UNDERSTOOD AND AGREED THAT THIS TERM SHEET DOES NOT CONSTITUTE AN OFFER OR ACCEPTANCE BY EITHER PARTY TO EXECUTE ANY DEFINITIVE AGREEMENT RELATING TO THE SERVICE.

HARMONY PRODUCTS, INC.
2005 Old Greenbrier Road
Suite 101
Chesapeake, VA 23320

Signature: ______________________
Thomas W. McCandlish, Chairman

Date: ____________________

CITY OF FAYETTEVILLE, ARKANSAS
113 W. Mountain Street
Suite 313
Fayetteville, AR 72701

Signature: ______________________
Dan Coody, Mayor

Date: ____________________

STAFF REVIEW FORM

__X__ AGENDA REQUEST
_____ CONTRACT REVIEW
_____ GRANT REVIEW

FOR: COUNCIL MEETING OF February 5, 2002 **MAYOR'S APPROVAL** __________

FROM:
Mayor's Office

Name	Division	Department

ACTION REQUIRED: A Resolution To Authorize The Mayor To Execute A Contract For ~~Sale~~ Purchase Of Real Property To Purchase A Block Of Land From Washington Regional Medicorp For The New City Library Site In The Amount Of $268,000.00

COST TO CITY:

Cost of this Request	Category/Project Budget	Category/Project Name
Account Number	Funds Used to Date	Program Name
Project Number	Remaining Balance	Fund

BUDGET REVIEW: _____ Budgeted Item _____ Budget Adjustment Attached

Budget Coordinator — Administrative Services Director

CONTRACT/GRANT/LEASE REVIEW: **GRANTING AGENCY:** __________

Accounting Manager	Date	Internal Auditor	Date
City Attorney	Date 1/29/02	ADA Coordinator	Date
Purchasing Officer	Date		

STAFF RECOMMENDATION:

Division Head	Date
Department Director	Date
Administrative Services Director	Date
Mayor	Date 1/29/02

CROSS REFERENCE

New Item: **Yes** No

Previous Ordinance/Resolution No.: __________

RESOLUTION NO. ______

A RESOLUTION TO AUTHORIZE THE MAYOR TO EXECUTE A CONTRACT FOR SALE OF REAL PROPERTY TO PURCHASE A BLOCK OF LAND FROM WASHINGTON REGIONAL MEDICORP FOR THE NEW CITY LIBRARY SITE IN THE AMOUNT OF $268,000.00

WHEREAS, the City of Fayetteville entered into an Option To Purchase the block of land bounded by School, Rock, West and Mountain Streets in Fayetteville, Arkansas for an amount not to exceed $268,000.00 with Washington Regional Medicorp on September 29, 1999; and

WHEREAS, the City of Fayetteville needs to exercise its option and purchase this land as the site of the new city library.

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

Section 1. That the City Council of the City of Fayetteville, Arkansas hereby authorizes the Mayor to execute the Contract For Sale of Real Property (attached as Exhibit A) to buy this real property from Washington Regional Medicorp for a total sales price of $268,000.00.

PASSED and **APPROVED** this the _____ day of February, 2002.

APPROVED:

By: ___________________________
DAN COODY, Mayor

ATTEST:

By: ___________________________
Heather Woodruff, City Clerk

CONTRACT FOR SALE OF REAL PROPERTY

THIS AGREEMENT is entered into at the City of Fayetteville, Washington County, Arkansas on ____, 200 , by and between Washington Regional MediCorp., an Arkansas Nonprofit Corporation, hereinafter "Seller", and The City of Fayetteville, Arkansas, a municipal corporation, hereinafter "Buyer".

1. *Sale.* Seller shall sell and convey to Buyer, and Buyer shall purchase and pay for, that real property more particularly described as follows:

> All of Block Thirty-Four (34) in the Original Town (now City) of Fayetteville, Arkansas as per plat of record in the Office of the Circuit Clerk and Ex-Officio Recorder of Washington County, Arkansas, located in the Northwest Quarter (NW¼) of the Southeast Quarter (SE¼) of Section Sixteen (16) West, being more particularly described as follows: Beginning at the Northeast corner of said Block 34 and running South 02° 37' 27" West – 324.49 feet to the Southeast corner of said Block 34; thence North 87° 19' 06" West – 326.31 feet to the Southwest corner of said Block 34; thence North 02° 37' 27" East – 324.33 feet to the Northwest corner of said Block 34; thence South 87° 20' 48" East – 326.31 feet to the Northeast corner of said Block 34 to the Point of Beginning, containing 2.43 acres, more or less, and subject to any easements and/or rights of way of record applicable to such lands.

The above-described premises, hereinafter "Property", shall include the land and all buildings, fixtures, improvements, rights, privileges, and easements appertaining thereto.

2. *Purchase Price.* The total purchase price for the Property is Two Hundred Sixty Eight Thousand Dollars ($268,000.00) and shall be paid in cash to the Seller by Buyer at the time and place for closing as set forth herein. Said price and purchase have heretofore been agreed upon and established by Seller and Buyer pursuant to a certain *Option to Purchase* Agreement dated September 29, 1999, which agreement was approved by Buyer through passage of Resolution No. 127-99 of The City of Fayetteville dated October 5, 1999, the terms, covenants and conditions of which are expressly incorporated herein and made a part hereof.

3. *Contingent Earnest Money Deposit.* The Buyer has heretofore tendered earnest money in the amount of One Thousand Dollars ($1,000.00) to Seller, which amount shall be applied to the Purchase Price set forth in paragraph 2 above. In the event Seller fails to fulfill any of its obligations herein, that earnest money shall be promptly refunded to

Buyer. In the event Buyer fails to fulfill any of its obligations herein, Seller may retain that earnest money as liquidated damages and may pursue any legal or equitable remedies available at law.

4. *Closing.* The Closing of this transaction shall occur within 28 days after acceptance of this offer by Seller at the offices of The City of Fayetteville, 113 W. Mountain Street, Fayetteville, Arkansas. In the event the scheduled date of Closing shall fall on a weekend or holiday, the Closing shall be held on the next following business day. Buyer shall be responsible for all costs associated with Closing on the Property except for those specifically assigned to Seller as set forth in paragraph 7 herein.

5. *Deed.* The Seller shall convey the Property to Buyer by quitclaim deed. Buyer shall have the right to inspect and conduct a survey of the Property, the cost and expense of which shall be borne solely by Buyer, at any time prior to Closing.

6. *"As Is" Condition.* Seller shall deliver possession of the Property to Buyer in its "as is" condition as of the date of Closing, excepting reasonable wear and tear.

7. *Taxes.* The Seller shall pay all taxes or special assessments due or owing on or before Closing. Insurance, general taxes, ad valorem taxes, and special assessments shall be prorated as of the date of Closing.

8. *Title Insurance.* Seller agrees to procure title insurance in an amount equal to the purchase price of the Property from a suitable title insurance company selected by Buyer, the cost of which title insurance shall be paid to Seller by Buyer at Closing.

9. *Casualty.* Seller shall bear and assume all risk of loss or damage to the Property by fire or other casualty up to the date of Closing. Buyer shall bear and assume all risk of loss or damage to the Property by fire or other casualty from and after the date of Closing and Buyer shall procure its own insurance policies to be effective from and after the date title to the Property is transferred to Buyer.

10. *Governing Law.* This Agreement shall be construed in accordance with and governed by the laws of the State of Arkansas.

11. *Time of Essence.* Time is of the essence of this Agreement.

12. *Entire Agreement.* All prior understandings and agreements between the parties, excepting that *Option to Purchase Agreement* dated September 19, 1999 as incorporated herein and described in paragraph two hereinabove, are merged in this contract, which constitutes the entire agreement of the parties. This contract is entered into after full investigation made by Seller and Buyer, and neither party relies upon any statement or

representation made by anyone unless contained herein.

IN WITNESS WHEREOF, the parties hereunto set their hands this ___ day of , 200 .

SELLER:

WASHINGTON REGIONAL MEDICORP.,
An Arkansas Nonprofit Corporation

BY: Mike McLean
TITLE: Vice President Medicorp

ATTEST:

BY: Janet Absher
Janet Absher, Assistant Secretary

BUYER:

THE CITY OF FAYETTEVILLE, ARKANSAS
A Municipal Corporation

BY:
Dan Coody, Mayor

ATTEST:

BY:
Heather Woodruff, City Clerk

ACKNOWLEDGMENT

STATE OF ARKANSAS)
) ss.
COUNTY OF WASHINGTON)

BE IT REMEMBERED, that on this date, before the undersigned, a duly commissioned and acting Notary Public within and for the said County and State, personally appeared Mike McLean and Janet Absher, to me well known as the persons who executed the foregoing document, and who stated and acknowledged that they are the Vice President and Assistant Secretary of Washington Regional Medicorp, an Arkansas nonprofit corporation, and are duly authorized to execute the foregoing instrument for and in the name and behalf of said Washington Regional Medicorp, and further stated and acknowledged that they had so signed, executed and delivered said instrument for the consideration, uses and purposes therein mentioned and set forth.

WITNESS my hand and seal on this 18th day of December, 2001.

My Commission Expires: NANCY J. MITCHELL Washington County My Commission Expires August 21, 2010

Nancy J. Mitchell
Notary Public

ACKNOWLEDGMENT

STATE OF ARKANSAS)
) ss.
COUNTY OF WASHINGTON)

BE IT REMEMBERED, that on this date, before the undersigned, a duly commissioned and acting Notary Public within and for the said County and State, personally appeared Dan Coody and Heather Woodruff, to me well known as the persons who executed the foregoing document, and who stated and acknowledged that they are the Mayor and City Clerk of the City of Fayetteville, Arkansas, a municipal corporation, and are duly authorized in their respective capacities to execute the foregoing instrument for and in the name and behalf of said municipal corporation, and further stated and acknowledged that they had so signed, executed and delivered said instrument for the consideration, uses and purposes therein mentioned and set forth.

WITNESS my hand and seal on this 13th day of December, 2001.

My Commission Expires:
05-01-2010

EDWARD D. CONNELL Washington County My Commission Expires May 1, 2010

Edward D. Connell
Notary Public

EXHIBIT "A"
OPTION AGREEMENT 1-11

RESOLUTION NO. 127-99

MICROFILMED

A RESOLUTION AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTE THE OPTION TO PURCHASE AGREEMENT IN AN AMOUNT NOT TO EXCEED $268,000 BETWEEN THE CITY OF FAYETTEVILLE AND WASHINGTON REGIONAL MEDICORP, FOR PROPERTY BOUND BY SCHOOL, ROCK, WEST AND MOUNTAIN STREETS WHICH IS THE PROPOSED SITE FOR THE NEW PUBLIC LIBRARY.

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

Section 1. That the City Council hereby authorizes the Mayor and City Clerk to execute the option to purchase agreement, in an amount not to exceed $268,000, between the City of Fayetteville and Washington Regional Medicorp, for property bound by School, Rock, West and Mountain Streets which is the proposed site for the new public library. A copy of the agreement is attached hereto marked Exhibit "A" and made a part hereof.

PASSED AND APPROVED this 5th day of October, 1999.

APPROVED:

By: Fred Hanna
Fred Hanna, Mayor

ATTEST:

By: [signature] - Deputy
Heather Woodruff, City Clerk

EXHIBIT A

OPTION TO PURCHASE

KNOW ALL MEN BY THESE PRESENTS:

That for and in consideration of the sum of One Thousand Dollars, ($1000), paid by the City of Fayetteville, Arkansas, a municipal corporation, hereinafter called Grantee, the receipt of which is hereby acknowledged, Washington Regional MediCorp, hereinafter called Grantor, does hereby give and grant unto the Grantee, and unto its heirs and assigns, the right, privilege and option to purchase at anytime on or before the expiration date, in the manner, for the price and on the terms hereinafter set forth, the following described property in Washington County, Arkansas:

See Exhibit "A" attached hereto and made a part hereof.

1. **Exercise of Option.** If the Grantee elects to exercise this option, written notice shall be given on or before October 5, 2002. In the event that notice exercising the option is not given on or before the expiration date provided herein, this option shall at once cease and terminate and the Grantee shall have no further rights hereunder.

2. **Purchase Price.** The purchase price of the above-described property is $ 268,000. At the time of closing, to be determined by agreement of the parties upon exercise of this option, the sum of $ 267,000. shall be paid in cash (which with the $ 1000.00 paid for this option represents the total agreed payment.

3. **Use.** Seller agrees to sell the subject property for the use of a library only. Therefore, if prior to exercise of this option it is determined that this site will not be used for a library, this option shall terminate. Further, if after closing, but prior to beginning construction, it is determined that the property will not be used for a library, the property shall revert to Seller and the purchase price shall be refunded to Buyer.

4. **Offer and Acceptance.** Upon exercise of this option, the parties shall enter into an offer and acceptance contract reflecting the terms set forth herein. Further, the offer and acceptance shall set forth additional terms as agreed to by both parties (i.e, closing date, prorate taxes, merchantable title, title insurance, misc., etc.).

5. **General.** Time is of the essence of this agreement, and if the Grantee shall not have exercised this option to purchase within the time and in the manner herein stated, all of the Grantee's rights hereunder shall at once cease and determine.

IN WITNESS WHEREOF, we have hereunto set our hands and seals this 29th day of September, 1999.

WASHINGTON REGIONAL MEDICORP.
GRANTOR

By: Patrick D. Flynn
Title: CEO

EXHIBIT "A"
OPTION AGREEMENT 3-11

ATTEST:

By: Janet Absher
Title: Assistant Secretary

ACKNOWLEDGMENT

STATE OF ARKANSAS)
)ss:
COUNTY OF WASHINGTON)

BE IT REMEMBERED, that on this day came before the undersigned, a Notary Public within and for the County aforesaid, duly commissioned and acting, Washington Regional MediCorp., by Patrick Flynn, and Janet Absher, to me well know to be the Grantor in the foregoing Option to Purchase, and stated that they had executed the same for the consideration and purposes therein mentioned an set forth.

WITNESS my hand and seal as such Notary Public this 29th day of September, 1999.

Sandra Beal
Notary Public

My Commission Expires:
June 1, 2005

CITY OF FAYETTEVILLE, ARKANSAS
GRANTEE

By: Fred Hanna
Fred Hanna, Mayor

ATTEST:

By: Theresa L. Johnson - Deputy
Heather Woodruff, City Clerk

ACKNOWLEDGMENT

STATE OF ARKANSAS)
)ss:
COUNTY OF WASHINGTON)

BE IT REMEMBERED, that on this day came before the undersigned, a Notary Public within and for the County aforesaid, duly commission and acting, the City of Fayetteville, by Fred Hanna, Mayor, and ~~Heather Woodruff, City Clerk~~, to me well known to be the Grantee in the foregoing Option to Purchase, and stated that they had executed the same for the consideration and purposes therein mentioned and set forth.
Theresa Johnson, Deputy City Clerk

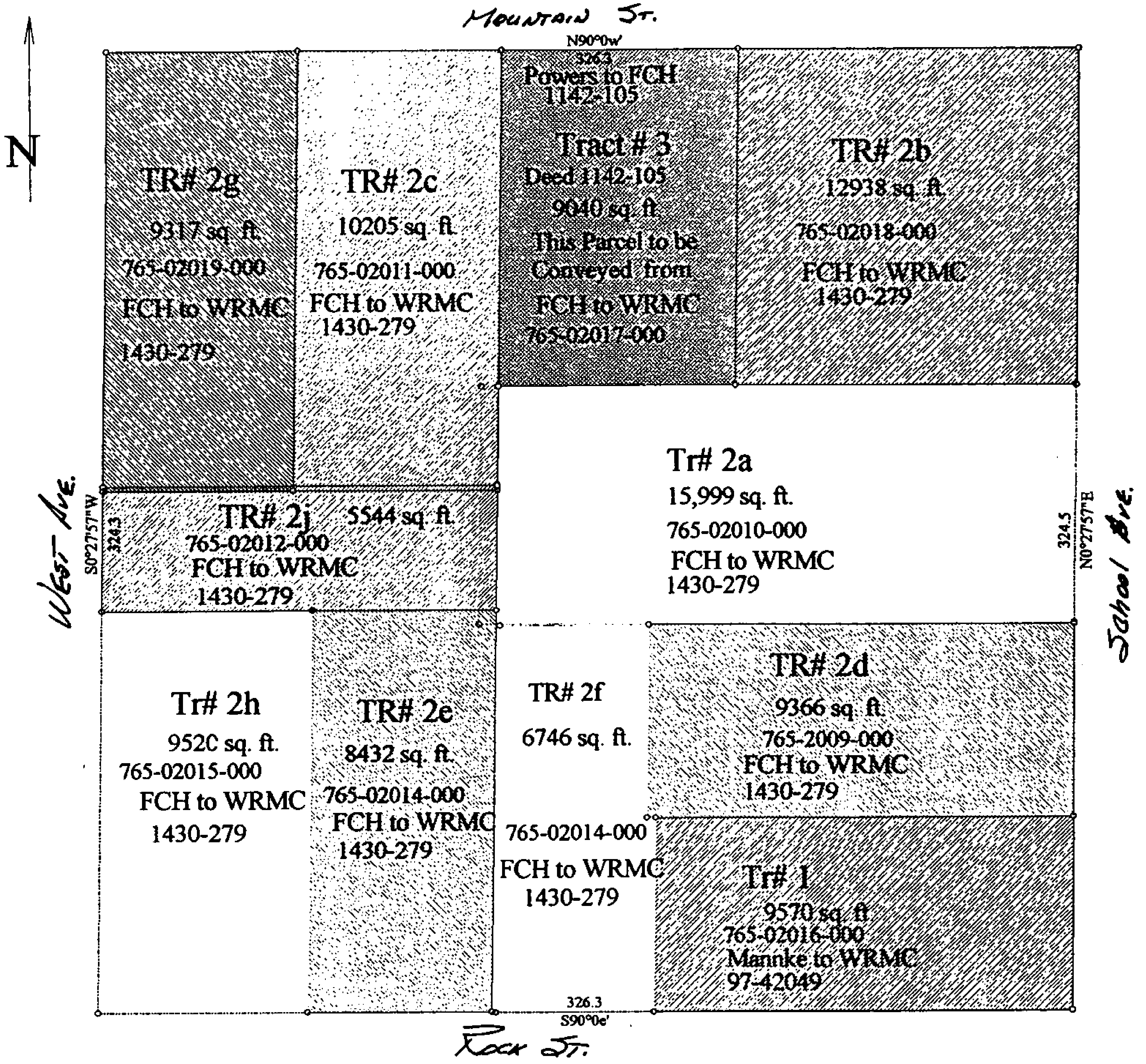
WITNESS my hand and seal as such Notary Public this 7 day of Oct, 1999.

LANA BROYLES NOTARY PUBLIC WASHINGTON COUNTY, ARKANSAS

Lana Broyles
Notary Public

My Commission Expires:
4-1-08

EXHIBIT "A"
OPTION AGREEMENT 4-1



Title: Parcels that Comprise Blk 34 : Survey distances	Date: 10-15-2001
Scale: 1 inch = 50 feet	File: Blk36-a.des

BILL OF ASSURANCE
FOR THE CITY OF FAYETTEVILLE, ARKANSAS

In order to attempt to obtain approval of a request for a rezoning reclassification, the owner, developer, or buyer of this property, (hereinafter "Petitioner") **George A. Bethell**, hereby voluntarily offers this Bill of Assurance and enters into this binding agreement and contract with the City of Fayetteville, Arkansas regarding the following property: Joyce & Crossover (NE Corner) Tax Parcel # 765-13242-001 Part of SW 1/2 of the NW 1/4 of the NW 1/4 of Section 30 Township 17 N, Range 29 West, Fayetteville, Washington County, Arkansas. 1.94 acres more or less.

The Petitioner expressly grants to the City of Fayetteville the right to enforce any and all of the terms of this Bill of Assurance in the Chancery/Circuit Court of Washington County, Arkansas and agrees that if Petitioner or Petitioner's heirs, assigns, or successors violate any term of this Bill of Assurance, substantial irreparable damage justifying injunctive relief has been done to the citizens and City of Fayetteville, Arkansas. The petitioner acknowledges that the Fayetteville Planning Commission and the Fayetteville City Council will reasonable rely upon all of the terms and conditions within this Bill of Assurance in considering whether to approve Petitioner's rezoning request.

Petitioner hereby voluntarily offers assurances that Petitioner and Petitioner's property shall be restricted as follows **IF** Petitioner's rezoning is approved by the Fayetteville City Council.

1. The use of Petitioner's property shall be limited to: Liquor Store, Bank or uses permitted in the C-1 Neighborhood Commercial Zoning District per City of Fayetteville Uniform Development Code effective February5, 2002.

2. Specific activities will not be allowed upon Petitioner's property include: Used Car Lots

Petitioner specifically agrees that all such restrictions and terms shall run with the land and bind all future owners unless and until specifically released by Resolution of the Fayetteville City Council. This Bill of Assurance shall be filed for record in the Washington County Circuit Clerk's Office after Petitioner's rezoning is effective and shall be noted on any Final Plat of Large Scale Development which includes some or all of Petitioner's property.

IN WITNESS WHEREOF and in agreement with all the terms and conditions stated above, I, George A. Bethell, as owner, developer or buyer (Petitioner) voluntarily offer all such assurances and sign my name below.

January 24, 2002 Date	GEORGE A. BETHELL George A. Bethell
144 N. Wyman Rd Address	
Fayetteville AR 72703 City, State & Zip code	George Bethell Signature

NOTARY OATH

STATE OF ARKANSAS)
COUNTY OF WASHINGTON)

And now on this the 24 day of January, 2002, appeared before me George A. Bethell and after being placed upon his oath swore or affirmed that he agreed with the terms of the above Bill of Assurance and signed his name above.

Craig Fulton Hull
NOTARY PUBLIC

My Commission Expires:

OFFICIAL SEAL
CRAIG FULTON HULL
NOTARY . ARKANSAS
WASHINGTON COUNTY
COMMISSION EXP. 10-27-03

BILL OF ASSURANCE
FOR THE CITY OF FAYETTEVILLE, ARKANSAS

In order to attempt to obtain approval of a request for a rezoning reclassification, the owner, developer, or buyer of this property, (hereinafter "Petitioner") George A. Bethell, hereby voluntarily offers this Bill of Assurance and enters into this binding agreement and contract with the City of Fayetteville, Arkansas regarding the following property: Joyce & Crossover (NE Corner) Tax Parcel # 765-13242-001 Part of SW 1/2 of the NW 1/4 of the NW 1/4 of Section 30 Township 17 N, Range 29 West, Fayetteville, Washington County, Arkansas, 1.94 acres more or less.

The Petitioner expressly grants to the City of Fayetteville the right to enforce any and all of the terms of this Bill of Assurance in the Chancery/Circuit Court of Washington County, Arkansas and agrees that if Petitioner or Petitioner's heirs, assigns, or successors violate any term of this Bill of Assurance, substantial irreparable damage justifying injunctive relief has been done to the citizens and City of Fayetteville, Arkansas. The petitioner acknowledges that the Fayetteville Planning Commission and the Fayetteville City Council will reasonable rely upon all of the terms and conditions within this Bill of Assurance in considering whether to approve Petitioner's rezoning request.

Petitioner hereby voluntarily offers assurances that Petitioner and Petitioner's property shall be restricted as follows **IF** Petitioner's rezoning is approved by the Fayetteville City Council.

1. The use of Petitioner's property shall be limited to: Liquor Store, Bank or uses permitted in the C-1 Neighborhood Commercial Zoning District per City of Fayetteville Uniform Development Code effective February5, 2002,
2. Specific activities will not be allowed upon Petitioner's property include: Used Car Lots

Petitioner specifically agrees that all such restrictions and terms shall run with the land and bind all future owners unless and until specifically released by Resolution of the Fayetteville City Council. This Bill of Assurance shall be filed for record in the Washington County Circuit Clerk's Office after Petitioner's rezoning is effective and shall be noted on any Final Plat of Large Scale Development which includes some or all of Petitioner's property.

Jan-21-02 02:51P NICKLE-HILL GROUP, INC. 501 571 1111 P.02

IN WITNESS WHEREOF and in agreement with all the terms and conditions stated above, I, George A. Bethell, as owner, developer or buyer (Petitioner) voluntarily offer all such assurances and sign my name below.

January 24, 2002
Date

GEORGE A. BETHELL
George A. Bethell

144 N. Wyman Rd
Address

Fayetteville AR 72703
City, State & Zip code

George Bethell
Signature

NOTARY OATH

STATE OF ARKANSAS)
COUNTY OF WASHINGTON)

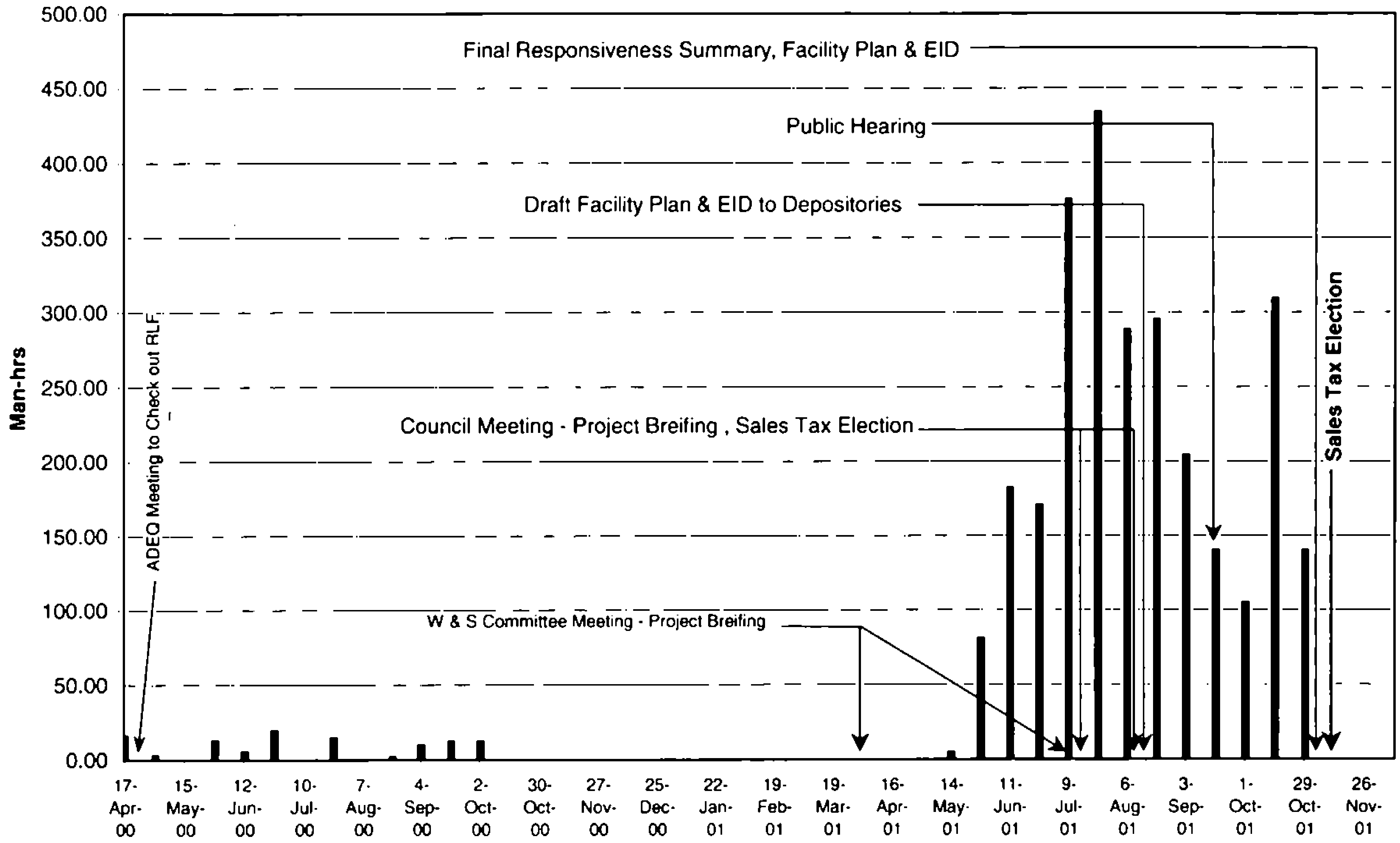
And now on this the 24 day of January, 2002, appeared before me George A. Bethell and after being placed upon his oath swore or affirmed that he agreed with the terms of the above Bill of Assurance and signed his name above.

Craig Fulton Hull
NOTARY PUBLIC

My Commission Expires:

OFFICIAL SEAL
~~CRAIG FULTON HULL~~
NOTARY . ARKANSAS
WASHINGTON COUNTY
COMMISSION EXP. 10-27-03

Attachment G
MWY Facility Planning Man-hrs by Pay Period



ORDINANCE NO. _____

AN ORDINANCE AMENDING TITLE XV: UNIFIED DEVELOPMENT ORDINANCE, OF THE CODE OF FAYETTEVILLE, TO PROVIDE AMENDMENTS TO VARIOUS PROVISIONS CONCERNING THE FLOOD DAMAGE PREVENTION CODE.

WHEREAS, the flood hazard areas of the City of Fayetteville are subject to periodic inundation which results in loss of life and property, health and safety hazards, disruption of commerce and governmental services, and extraordinary public expenditures for flood protection and relief, all of which adversely affect the public health, safety and general welfare, and;

WHEREAS, these flood losses are created by the cumulative effect of obstructions in floodplains which cause an increase in flood heights and velocities, and by the occupancy of flood hazard areas by uses vulnerable to floods and hazardous to other lands because they are inadequately elevated, flood-proofed or otherwise protected from flood damage, and;

WHEREAS, the General Assembly of the State of Arkansas has, under A.C.A. §14-268-101 et seq. as amended, delegated the responsibility to local governmental units to adopt regulations designed to minimize flood losses.

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

Section 1. That Chapter 151: Definitions, Unified Development Ordinance, Code of Fayetteville is hereby amended by inserting Exhibit "A" attached hereto and made a part hereof.

Section 2. That Section 155.06(D)(1), Unified Development Ordinance, Code of Fayetteville is hereby repealed, and the following is inserted in its stead:

§155.05 APPEALS FROM STAFF INTERPRETATION/ACTIONS.

D. Appeals To the Planning Commission.

1. Floodplain Administrator. Any person aggrieved may appeal the decision of the Floodplain Administrator, provided that the Planning Commission shall hear and decide an appeal only when it is alleged there is an error in any requirement, decision, or determination made by the Floodplain Administrator in the enforcement or administration of this chapter.

Section 3. That Section 156.03(C), Unified Development Ordinance, Code of Fayetteville is hereby Amended by inserting the following:

§156.03 DEVELOPMENT.

C. Consideration By The Planning Commission.

6. Flood Damage Prevention Code. The Planning Commission shall hear and decide requests for variances from the requirements of this ordinance. Any person or persons aggrieved by the decision of the Planning Commission regarding a variance request may appeal such a decision in the courts of competent jurisdiction.

a. In passing upon such applications, the Planning Commission shall consider all technical evaluations, all relevant factors, and standards specified in other sections of this ordinance.

b. Variances may be issued for the reconstruction, rehabilitation or restoration of structures listed in the National Register of Historic Places, without regard to the procedures identified in the remainder of this ordinance. Variances may only be issued for such repair or rehabilitation if strict enforcement of the ordinance would preclude the structure's continued designation as a historic structure, and the variance is the minimum necessary to preserve the historic character and design of the structure.

c. Generally, variances may be issued for new construction and substantial improvements to be erected on a lot ½ acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, providing items (1) through (11) of §168.03(A) have been fully considered. As the lot size increases beyond ½ acre, the technical justification required for issuing the variance increases.

d. Variances shall not be issued within any designated floodway if any increase in flood levels during the base flood discharge would result.

e. Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.

f. Floodplain variances shall only be issued if:

i. there are exceptional or extraordinary circumstances or conditions applicable to the property involved or to the intended use of the property, which do not apply generally to other property in the same flood zone;

ii. a determination that failure to grant the variance would result in exceptional hardship to the applicant; and,

iii. a determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public, or conflict with the other provisions of the Code of Fayetteville.

g. Variances may be issued for new construction and substantial improvements and for other development necessary for the conduct of a functionally dependent use provided that the provisions of §168.03(A) are satisfied and that the structure or other development is protected by methods that minimize flood damages during the base flood and create no additional threats to public safety.

h. Upon consideration of the factors in this Section and the purposes of this ordinance, the Planning Commission may impose conditions to the granting of floodplain variances as it deems necessary to further the purposes of this ordinance.

i. Any applicant to whom a variance is granted shall be given written notice that the structure will be permitted to be built with a lowest floor elevation below the regulatory flood elevation surcharge and that the cost of flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation. A copy of the notice shall be recorded by the Floodplain Administrator in the office of the Washington County Clerk and shall be recorded in a manner so that it appears in the chain of title of the affected parcel of land.

Section 4. That Chapter 168: Flood Damage Prevention Code, Unified Development Ordinance, Code of Fayetteville is hereby repealed, and Exhibit "B" with Appendix attached hereto and made a part hereof, is inserted in its stead.

PASSED and **APPROVED** this ______ day of ____________, 2001.

APPROVED:

By: ______________________
DAN COODY, Mayor

ATTEST:

By: ______________________
HEATHER WOODRUFF, City Clerk

EXHIBIT "A"

To be inserted at Chapter 151: Definitions, Unified Development Ordinance:

Appeal. (Flood Damage Prevention) A request for a review of the Floodplain Administrator's interpretation of any provision of this Chapter.

Area of shallow flooding. (Flood Damage Prevention) A designated AO, AH, or CP Zone on the Flood Insurance Rate Map (FIRM). The base flood depths range from 1 to 3 feet; a clearly defined channel does not exist; the path of flooding is unpredictable and indeterminate; and velocity flow may be evident.

Area of flood-related erosion hazard. (Flood Damage Prevention)The area subject to severe flood-related erosion losses. The area is designated as Zone E on the Flood Insurance Rate Map.

Area of special flood hazard. (Flood Damage Prevention) See "Special flood hazard area."

Base flood. (Flood Damage Prevention) The flood having a 1% chance of being equaled or exceeded in any given year (also called the "100-year flood").

Base Flood Elevation (BFE). (Flood Damage Prevention) The height of the base flood, usually in feet, in relation to the National Geodetic Vertical Datum of 1929 or other datum as specified.

Basement. (Flood Damage Prevention) Any area of a building having its floor sub-grade (below ground level) on all sides.

Elevated building. (Flood Damage Prevention) A non-basement building (I) built, in the case of a building in Zones A1-30, AE, A, A99, AO, AH, B, C, X, and D, to have the top of the floor elevated above the ground level by means of pilings, columns (posts and piers), or shear walls parallel to the flow of the water and (ii) adequately anchored so as not to impair the structural integrity of the building during a flood of up to the magnitude of the base flood. In the case of Zones A1-30, AE, A, A99, AO, AH, B, C, X, D, "elevated building" also includes a building elevated by means of fill or solid foundation perimeter walls with openings sufficient to facilitate the unimpeded movement of flood waters.

Development. (Flood Damage Prevention) Any man-made change in improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations or storage of equipment or materials.

Existing construction. (Flood Damage Prevention) For the purposes of determining rates, structures for which the "start of construction" commenced before the effective date of the FIRM (September 18, 1991). "Existing construction" may also be referred to as "existing structures."

EXHIBIT "A"

Existing manufactured home park or subdivision. (Flood Damage Prevention) A manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed before the effective date of the floodplain management regulations adopted by a community.

Expansion to an existing manufactured home park or subdivision. (Flood Damage Prevention) The preparation of additional sites by the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads)

Federal Emergency Management Agency (FEMA). (Flood Damage Prevention) The independent federal agency that, in addition to carrying out other activities, oversees the administration of the National Flood Insurance Program.

Federal Insurance Administration (FIA). (Flood Damage Prevention) The component of FEMA directly responsible for administering the National Flood Insurance Program.

Flood or flooding. (Flood Damage Prevention) A general and temporary condition of partial or complete inundation of normally dry land areas from the overflow of flood waters, or the unusual and rapid accumulation or run-off of surface water from any source.

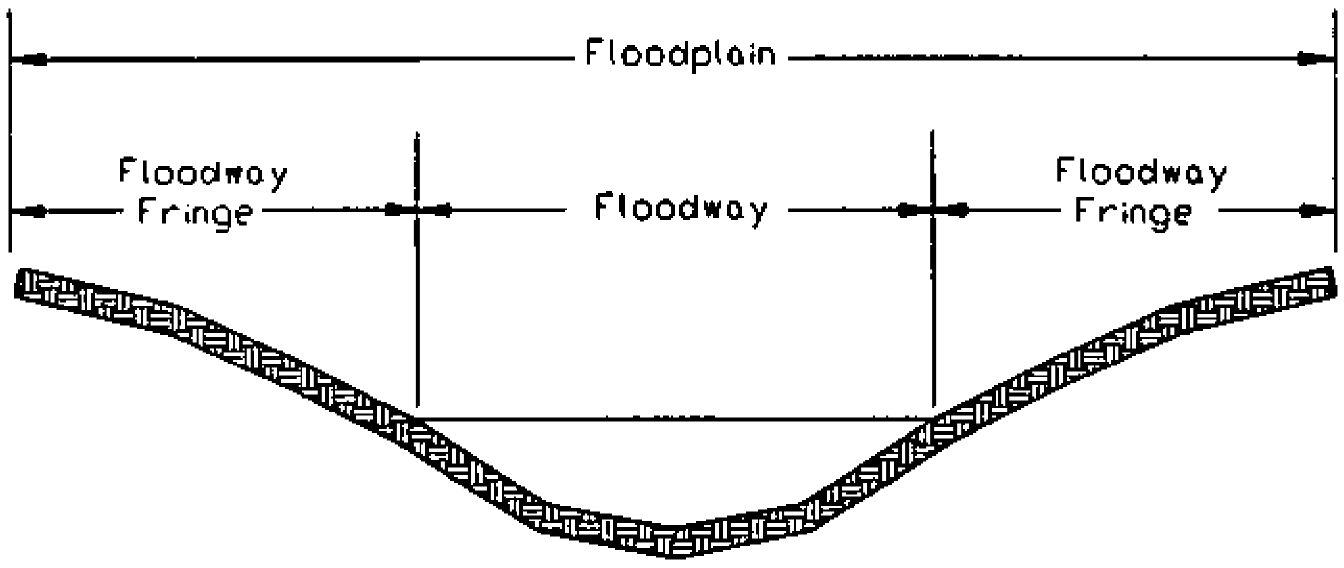
Flood boundary and floodway map. (Flood Damage Prevention) The official map on which the Federal Insurance Administration has delineated both the areas of flood hazard and the floodway.

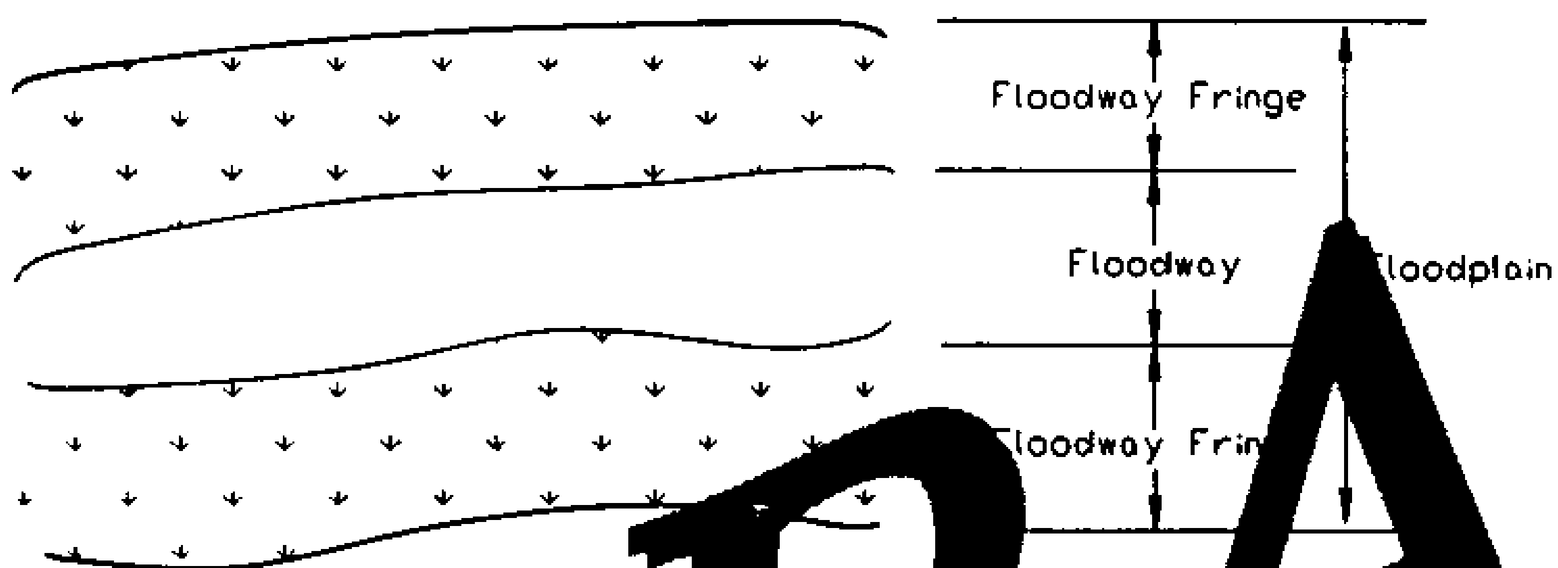
Flood Insurance Rate Map (FIRM). (Flood Damage Prevention) The official map on which the Federal Emergency Management Agency or Federal Insurance Administration has delineated both the areas of special flood hazards and the Floodway.

Flood Insurance Study. (Flood Damage Prevention) The official report provided by the Federal Insurance Administration that includes flood profiles, the FIRM, the Flood Boundary and Floodway Map, and the water surface elevation of the Base flood.

EXHIBIT "A"

Floodplain or flood-prone area. (Flood Damage Prevention) Areas that are subject to, or are exposed to, flooding and flood damage.





Floodplain management. (Flood Damage Prevention) The operation of an overall program of corrective and preventive measures for reducing flood damage, including but not limited to, emergency preparedness plans, flood control works and floodplain management regulations.

Floodplain management regulations. (Flood Damage Prevention) Development code, building codes, health regulations, special purpose ordinances (i.e., grading ordinance and erosion control ordinance) and other applications of police power. The term describes such state or local regulations in any combination thereof, which provide standards for the purpose of flood damage prevention and reduction.

Flood-proofing. (Flood Damage Prevention) Any combination of structural and nonstructural additions, changes or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures and their contents.

Floodway (Regulatory floodway). (Flood Damage Prevention) The channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than 1 foot. Also referred to as "Regulatory floodway."

Functionally dependent use. (Flood Damage Prevention) A use which cannot perform its intended purpose unless it is located or carried out in close proximity to water.

Highest adjacent grade. (Flood Damage Prevention) The highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.

Historic Structure. (Flood Damage Prevention) Any structure that is:

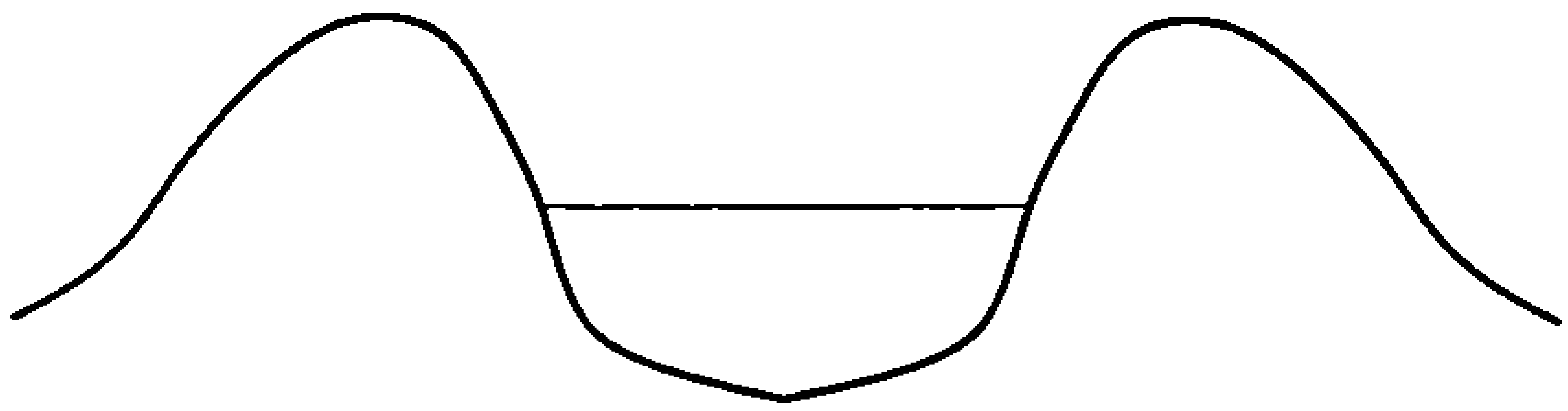
A. Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;

B. Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district; or

C. Individually listed on a state inventory of historic places which has been approved by the Secretary of the Interior.

Lowest floor. (Flood Damage Prevention) The lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure usable solely for parking of vehicles, building access or storage in an area other than a basement area is not considered a building's lowest floor, provided that such an enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of this chapter.

Levee. (Flood Damage Prevention) A man-made structure, usually an earthen embankment, designed and constructed in accordance with sound engineering practices to contain, control, or divert the flow of water so as to provide protection from temporary flooding.



Levee

EXHIBIT "A"

Levee system. (Flood Damage Prevention) A flood protection system which consists of a levee, or levees, and associated structures, such as closure and drainage devices, which are constructed and operated in accordance with sound engineering practices.

Manufactured home. (Flood Damage Prevention) A factory-built, single-family structure that meets the National Manufactured Home Construction and Safety Standards Act (42 U.S.C. Sec. 5401), commonly known as the HUD (U.S. Housing and Urban Development) code. For floodplain management purposes the term also includes park trailers, travel trailers, and other similar vehicles placed on a site for greater than 180 consecutive days. For insurance purposes the term "manufactured home" does not include park trailers, travel trailers, and other similar vehicles.

Manufactured home park or subdivision. (Flood Damage Prevention) A parcel (or contiguous parcels) of land divided into 2 or more manufactured home lots for sale or rent.

Mean sea level. (Flood Damage Prevention) For purposes of the National Flood Insurance Program, the National Geodetic Vertical Datum (NGVD) of 1929 or other datum, to which base flood elevations shown on a community's Flood Insurance Rate Map are referenced.

New construction. (Flood Damage Prevention) For floodplain management purposes, structures for which the "start of construction" commenced on or after the effective date of this development code.

One hundred year flood. (Flood Damage Prevention) A flood which has a 1% annual probability of being equaled or exceeded. It is identical to the "base flood," which will be the term used throughout this chapter.

Regulatory floodway. (Flood Damage Prevention) see "Floodway."

Remedy a violation. (Flood Damage Prevention) To bring the structure or other development into compliance with State or local floodplain management regulations, or, if this is not possible, to reduce the impacts of its noncompliance. Ways that impacts may be reduced include protecting the structure or other affected development from flood damages, implementing the enforcement provisions of this Development Code or otherwise deterring future similar violations, or reducing Federal financial exposure with regard to the structure or other development.

EXHIBIT "A"

Riverine. (Flood Damage Prevention) Relating to, formed by, or resembling a river (including tributaries), stream, brook, etc.

Special flood hazard area (SFHA). (Flood Damage Prevention) An area having special flood or flood-related erosion hazards, and shown on an FHBM or FIRM as Zone A, AO, A1-30, AE, A99, CO, C1-V30, VE, or V.

Start of construction. (Flood Damage Prevention) The date the building permit is issued for either new construction or substantial improvement, provided the actual start of construction, repair, reconstruction, replacement, or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, beyond excavation, or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation or the installation of streets and/or walkways, nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure.

Stream. (Flood Damage Prevention) A watercourse having a source and terminus, banks, and channel through which waters flow at least periodically. Streams do not lose their character as a watercourse even though the water may dry up. For the purposes of this ordinance, streams are defined on the Flood Insurance Rate Maps as single lines with no floodplain or floodway defined.

Structure. A combination of materials to form a construction for use, occupancy, or ornamentation whether installed on, above, or below the surface of land or water.

Substantial damage. (Flood Damage Prevention) Damage of any origin sustained by a structure whereby the cost of restoring the structure to its before-damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

Substantial improvement. (Flood Damage Prevention) Any repair, reconstruction, or improvement of a structure, the cost of which equals or exceeds 50% of the market value of the structure either:

A. before the improvement or repair is started; or

B. if the structure has been damaged, and is being restored, before the damage occurred.

For the purposes of this definition "substantial improvement" is considered to occur when the first alteration of any wall, ceiling, floor, or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure. The term does not, however, include either:

A. any project for improvement of a structure to comply with existing state or local health, sanitary, or safety code specifications which are solely necessary to assure safe living conditions; or

B. any alteration of a structure listed on the National Register of Historic Places or a state inventory of Historic Places.

Variance. (Flood Damage Prevention) A grant of relief to a person from the requirements of this ordinance when specific enforcement would result in unnecessary hardship. A variance, therefore, permits construction or development in a manner otherwise prohibited by this ordinance. (For full requirements see Section 60.6 of the National Flood Insurance Program regulations.)

Violation. (Flood Damage Prevention) The failure of a structure or other development to be fully compliant with the community's floodplain management regulations. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required in this chapter is presumed to be in violation until such time as that documentation is provided.

Water surface elevation. (Flood Damage Prevention) The height, in relation to the National Geodetic Vertical Datum (NGVD) of 1929 (or other datum where specified) of floods of various magnitudes and frequencies in the floodplains of coastal or riverine areas.

EXHIBIT "B"
CHAPTER 168:
FLOOD DAMAGE PREVENTION

§168.01 PURPOSE.

A. It is the purpose of this ordinance to promote the public health, safety and general welfare and to minimize public and private losses due to flood conditions in specific areas as designated by the latest adopted Flood Insurance Rate Maps, in addition to the following:

1. To minimize expenditure of public money for costly flood control projects;

2. To minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;

3. To minimize prolonged business interruptions;

4. To minimize damage to public facilities and utilities such as water and gas mains; electric, telephone and sewer lines, streets and bridges located in floodplains;

5. To help maintain a stable tax base by providing for the sound use and development of flood-prone areas in such a manner as to minimize future flood blight areas;

6. To ensure that potential buyers are notified that property is in an area of special flood hazard;

7. To ensure that those who occupy the areas of special flood hazard assume responsibility for their actions; and,

8. To protect human life and health.

B. In order to accomplish its purposes, this ordinance uses the following methods:

1. Restricting or prohibiting uses that are dangerous to health, safety or property due to water or erosion hazards in times of flood or cause excessive increases in flood heights or velocities;

2. Requiring that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction;

3. Controlling the alteration of natural floodplains, stream channels, and natural protective barriers, which are involved in the accommodation of flood waters;

4. Controlling filling, grading, dredging and other development which may increase flood damage;

5. Preventing or regulating the construction of flood barriers which will unnaturally divert flood waters or which may increase flood hazards to other lands.

§168.02 GENERAL PROVISIONS. This chapter shall apply to all areas of special flood hazards and areas of flood-related

EXHIBIT "B"

erosion hazards within the jurisdiction of the city.

A. The areas of special flood hazards and areas of flood-related erosion hazards identified by the Federal Emergency Management Agency or the Federal Insurance Administration in scientific and engineering reports entitled "Flood Insurance Study for the City of Fayetteville, Arkansas," dated September 18, 1991 and July 21, 1999, with accompanying Flood Insurance Rate Map, as may from time to time hereafter be amended, is hereby adopted by reference and made a part hereof as if set out fully herein. Three copies of said map shall be maintained in the office of the City Clerk.

B. The Flood Hazard Study, Phase II, provided by the U.S. Army Corps of Engineers, is hereby adopted by reference and made a part hereof as if set out fully herein. Three copies of said map shall be maintained in the office of the City Clerk.

C. The Flood Hazard Study, Phase IV and Revised Flood Hazard Study, Phase I, provided by the U.S. Army Corps of Engineers, are hereby adopted by reference and made a part hereof as if set out fully herein. Three copies of said studies shall be maintained in the office of the City Clerk.

D. This Flood Insurance Study is the minimum area of applicability of this chapter and may be supplemented by studies for other areas which allow implementation of this chapter and which are recommended to the council by the Floodplain Administrator.

E. No structure or land shall hereafter be constructed, located, extended, converted or altered without full compliance with the terms of this chapter and other applicable regulations. Violations of the provisions of this chapter by failure to comply with any of its requirements (including violations of conditions and safeguards established in connection with conditions) shall constitute a misdemeanor. Nothing herein shall prevent the city from taking such lawful action as is necessary to prevent or remedy any violation.

F. This chapter is not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this chapter and any other code, ordinance, easement, covenant, or deed restriction conflict or overlap, whichever imposes the more restrictive restrictions shall prevail.

G. In the interpretation and application of this chapter, all provisions shall be:

1. Considered as minimum requirements;

2. Liberally construed in favor of the governing body; and

3. Deemed neither to limit nor repeal any other powers granted under state statutes.

H. The degree of flood protection required by this chapter is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger floods can and will occur on rare occasions. Flood heights may be increased by man-made or natural causes.

This chapter does not imply that land outside the areas of special flood hazards, areas of flood-related erosion hazards, or uses permitted within such areas will be free from flooding or flood damages. This chapter shall not create liability on the part of the city, any officer or employee thereof, or the Federal Insurance Administration, for any flood damages that result from reliance on this chapter or any administrative decision lawfully made hereunder.

§168.03 ADMINISTRATION.

A. Floodplain Administrator. A Floodplain Administrator shall be designated by the Mayor and appointed to administer and implement this chapter by granting or denying Floodplain Development Permits in compliance with its provisions. Approval or denial of a Development Permit shall be based on all the provisions of this ordinance and the following relevant factors:

1. The danger to life and property due to flooding or erosion damage;

2. The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;

3. The danger that materials may be swept onto other lands to the injury of others;

4. The compatibility of the proposed use with existing and anticipated development;

5. The safety of access to the property in times of flood for ordinary and emergency vehicles;

6. The costs of providing governmental services during and after flood conditions including maintenance and repair of streets and bridges, and public utilities and facilities such as sewer, gas, electrical and water systems;

7. The expected heights, velocity, duration, rate of rise and sediment transport of the flood waters expected at the site;

8. The necessity to the facility of a waterfront location, where applicable;

9. The availability of alternative locations, not subject to flooding or erosion damage, for the proposed use;

10. The relationship of the proposed use to the General Plan 2010.

11. The duties and responsibilities of the Floodplain Administrator, as related to this chapter, shall include, but not be limited to:

a. Permit Review

i. Review all Floodplain Development Permits to determine that the permit requirements of this chapter have been satisfied;

ii. All other required state and federal permits have been obtained from those Federal, State, or local governmental agencies (including Section 404 of the Federal Water Pollution Control

Act of 1972, 33 U.S.C. 1334) from which prior approval is required;

iii. The site is reasonably safe from flooding;

iv. The proposed development does not adversely affect the carrying capacity of areas where base flood elevations have been determined but the floodway has not been designated on the FIRM. For purposes of this chapter, "adversely affects" means that the cumulative effect of the proposed development when combined with all other existing and anticipated development will not increase the water surface elevation of the base flood more than one foot at any point. However, under the provisions of 44 CFR Chapter 1, Section 65.12, of the National Flood Insurance Program regulations, a community may approve certain development in Zones A1-30, AE, AH, on the community's FIRM which increases the water surface elevation of the base flood by more than one foot provided that the community first applies for a conditional FIRM revision through FEMA.

b. When base flood elevation data has not been provided in compliance with §168.02([illegible]), the Floodplain Administrator shall obtain, review, and reasonably utilize any base flood elevation and floodway data available from a federal, state or other source, in order to administer this section. Any such information shall be submitted to the Council for adoption.

c. Whenever a watercourse is to be altered or relocated, the Floodplain Administrator shall:

i. Notify adjacent communities and the Arkansas Soil and Water Conservation Commission prior to the alteration or relocation of a watercourse, and submit evidence of the notification to the Federal Emergency Management Agency;

ii. Require that the flood carrying capacity of the altered or relocated portion of the watercourse is maintained.

d. Secure and maintain for public inspection and availability the certifications, appeals and variances identified in subsection [illegible] and Chapters 155 and 156 of the Unified Development Ordinance, Code of Fayetteville, respectively.

e. Make interpretations where needed as to the exact location of the boundaries of the areas of special flood hazards or areas of flood-related erosion hazards (for example, where there appears to be a conflict between a mapped boundary and actual field conditions). The person contesting the location of the boundary shall be give a reasonable opportunity to appeal the interpretation as provided in Chapter 155 of the Unified Development Ordinance, Code of Fayetteville.

f. The Floodplain Administrator shall maintain the records of all appeal actions and report any variances to the Federal Insurance Administration upon request.

B. Floodplain Development Permit. A Floodplain Development Permit shall be obtained before obtaining a Building Permit and prior to any construction or development within any area of special flood hazards or area of flood-related erosion hazards established in §168.02(A). An application for a Floodplain Development Permit shall be made on forms furnished by the Floodplain Administrator and may include, but not be limited to: plans in duplicate drawn to scale showing the nature, location, dimensions, and elevation of the area in question; existing or proposed structures, fill, storage of materials, drainage facilities; and the location of same. Specifically, the following information is required:

1. Proposed elevation in relation to mean sea level, of the lowest floor (including basement) of all structures;

2. Proposed elevation in relation to mean sea level to which any structure shall be flood-proofed;

3. All appropriate certifications listed in §168.03(A)(11)(a)(ii); and

4. Description of the extent to which a watercourse will be altered or relocated as a result of proposed development.

§168.04 FLOOD HAZARD REDUCTION. In all areas of special flood hazards the following standards shall apply:

A. Anchoring.

1. All new construction and substantial improvements shall be anchored to prevent flotation, collapse or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy.

2. All manufactured homes shall meet the anchoring standards of §168.04(F).

B. Construction materials and methods.

1. All new construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage.

2. All new construction and substantial improvements shall be constructed using methods and practices that minimize or resist flood damage.

3. All new construction and substantial improvements shall be constructed with electrical, heating, ventilation, plumbing and air conditioning equipment and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.

C. Elevation and flood-proofing.

1. New construction and substantial improvement of structure shall have the lowest floor, including basement, elevated two feet above the base flood elevation specified in feet on the FIRM, or at least 2 feet above the highest adjacent grade if no depth number is specified (*see* **Appendix, Figure 1**). Nonresidential structures shall meet the standards in §168.04(C)(2). Upon the completion of the structure, the elevation of the lowest floor including basement shall be certified by a registered professional engineer to be properly elevated. The certification or verification shall be provided to the Floodplain Administrator.

EXHIBIT "B"

2. Nonresidential construction shall either be elevated in conformance with §168.04(C)(1) or (3) or together with attendant utility and sanitary facilities:

a. Be flood-proofed so that below the base flood level the structure is watertight with walls substantially impermeable to the passage of water;

b. Have structural components capable of resisting hydrostatic and hydrodynamic loads and effects of buoyancy; and

c. Be certified by a registered professional engineer or architect that the standards of this subsection are satisfied. The certification or verification shall be provided to the Floodplain Administrator.

3. Require, for all new construction and substantial improvements, that fully enclosed areas below the lowest floor that area subject to flooding shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of flood waters. Designs for meeting this requirement must either be certified by a registered professional engineer or architect or meet or exceed the following minimum criteria:

a. Either a minimum of 2 openings having a total net area of not less than 1 square inch for every square foot of enclosed area subject to flooding shall be provided. The bottom of all openings shall be no higher than 1 foot above grade. Openings may be equipped with screens, louvers, valves or other coverings or devices provided that they permit the automatic entry and exit of flood waters (*see* **Appendix, Figure 2**); or

b. Be certified to comply with flood-proofing standards approved by the Federal Insurance Administration.

4. Manufactured homes shall also meet the standards in this section.

D. Standards for utilities.

1. All new and replacement water supply and sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the system and discharge from systems into flood waters.

2. On-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding.

E. Standards for Subdivisions. Applications for Preliminary, Final, and/or Concurrent Plat approval shall contain the requirements identified in §§166.01-.04 of the Unified Development Ordinance, Code of Fayetteville, in addition to the following:

1. Identify the special flood hazards areas, including delineation of floodways, and the elevation of the base flood.

2. All Final Plats shall provide the elevation of proposed structure(s) and pads. If the site is filled above the base flood, the final pad elevation shall be verified by a registered professional engineer or surveyor and provided to the Floodplain Administrator.

EXHIBIT "B"

3. All proposals shall be consistent with the need to minimize flood damage.

4. All proposals shall have public utilities and facilities such as sewer, gas, electrical, and water systems located and constructed to minimize flood damage.

5. All proposals shall provide adequate drainage to reduce exposure to flood hazards.

6. To the extent practicable, lot boundaries shall be made to coincide with natural and pre-existing man-made drainage ways within subdivisions to avoid the creation of lots that can be built upon only by altering such drainage ways (*see* **Appendix, Figure 3**).

7. Any lot platted so that a portion of the lot lies in a special flood hazard area shall contain a minimum of 6,000 square feet of buildable area, including setbacks, outside the special flood hazard area, or if it contains less than 6000 square feet of buildable area, it shall be platted to contain a minimum of one acre. Any lot platted so that the entire lot lies in a special flood hazard area shall contain a minimum of one acre (*see* **Appendix, Figure 4**).

8. For subdivisions partially located in special flood hazard areas, minimum lot area requirements may be waived by the Director to allow the platting of lots to be clustered outside the special flood hazard area, the density permitted for the zoning district to be averaged over the entire parcel, provided a permanent conservation easement is granted to the City, a land trust, or the property owners association to ensure that the area of special flood hazard will remain undeveloped.

9. In any area that is located outside a special flood hazard area but where a stream is located, no building or fill may be located within a distance of the stream bank equal to two and one-half the width of the stream measured from top of bank to top of bank or 25 feet on each side, whichever is greater.

10. Base flood elevation data shall be generated for subdivision proposals and other proposed development including the placement of manufactured home parks and subdivisions which are greater than 50 lots or 5 acres, whichever is lesser, if not otherwise pursuant to §168.02(A) or §168.03(A)(1)(b).

11. In all areas designated as a Zone A on the FIRM where a detailed study has not been completed to specify the floodway and base flood elevations, no building or fill shall be located within a distance of two and one half times the width of the stream measured from the top of the bank to the top of bank, or 25 feet on each side whichever is greater.

a. Provided, the applicant may choose if not required by other provisions of this chapter, to provide a detailed hydrologic and hydraulic study which delineates the floodway, 100 year floodplain boundary and base flood elevations. At such time a study is provided and adopted by ordinance, the applicant shall meet all requirements for areas designated with floodway, 100 year floodplain, and base flood elevations.

b. If for some reason the property owner believes the FIRM to be inaccurate, a Letter of Map Amendment may be submitted to FEMA. If the boundaries of the floodplain are amended by FEMA, setbacks will be enforced pursuant to the amendment.

F. Standards for manufactured homes. All new and replacement manufactured homes and additions to manufactured homes shall be constructed in the following manner:

1. Be elevated so that the lowest floor is two feet above the base flood elevation; and

2. All manufactured homes shall be anchored to resist flotation, collapse, or lateral movement by providing over-the-top and frame ties to ground anchors. Specific requirements include:

a. Over-the-top ties be provided at each of the 4 corners of the manufactured homes, with 2 additional ties per side at intermediate locations, with manufactured homes less than 50 feet long requiring 1 additional tie per side;

b. Frame ties be provided at each corner of the home with 5 additional ties per side at intermediate points, with manufactured homes less than 50 feet long requiring 4 additional ties per side;

c. All components of the anchoring system be capable of carrying a force of 4,800 pounds; and

d. Any additions to the manufactured homes be similarly anchored.

G. Floodways. Located within areas of special flood hazard established in section §168.02(A) are areas designated as floodways. Since the floodway is an extremely hazardous area due to the velocity of flood waters which carry debris, potential projectiles, and erosion potential, the following provisions shall apply:

1. Prohibit encroachments, including fill, new construction, substantial improvements, and other development unless certification by a registered professional engineer or architect is provided demonstrating that encroachment shall not result in any increase in flood levels during the occurrence of the base flood discharge.

2. If the provisions of (G)(1) are satisfied, all new construction and substantial improvement shall comply with all other applicable flood hazard reduction provisions of section G.

3. Under the provisions of 44 CFR Chapter 1, Section 65.12, of the National Flood Insurance Regulations, a community may permit encroachments within the adopted regulatory floodway that would result in an increase in base flood elevations, provided that the community first applies for a conditional FIRM and floodway revision through FEMA.

A. Standards for areas of shallow flooding (AO/AH Zones). Located within the areas of special flood hazard established in §168.02(A), are areas designated as shallow flooding. These areas have special flood hazards associated with base flood depths of 1 to 3 feet where a clearly defined channel does not exist and where the path of

EXHIBIT "B"

flooding is unpredictable and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow; therefore, the following provisions apply:

1. All new construction and substantial improvements of residential structures have the lowest floor (including basement) elevated above the highest adjacent grade at least as high as the depth number specified on the FIRM (at least two feet if no depth number is specified).

2. All new construction and substantial improvements of non-residential structures:

a. have the lowest floor (including basement) elevated above the highest adjacent grade at least as high as the depth number specified on the FIRM (at least two feet if no depth number is specified),

b. together with attendant utility and sanitary facilities be designed so that below the base flood level the structure is watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads of effects of buoyancy.

3. A registered professional engineer or architect shall submit a certification to the Floodplain Administrator that the standards of this section, as set forth in §168.03(B), are satisfied.

4. Require adequate drainage paths around structures on slopes to guide flood waters around and away from proposed structures.

DRAFT

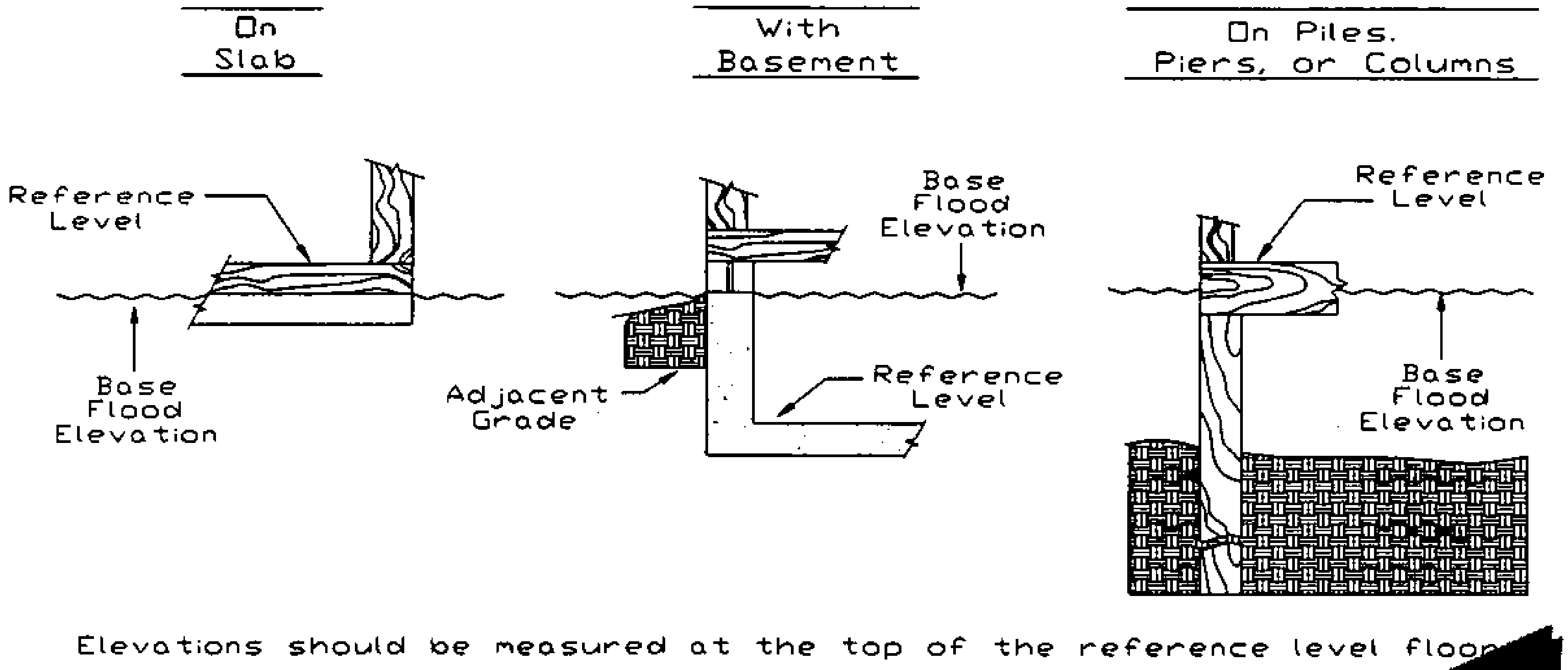


Figure 1

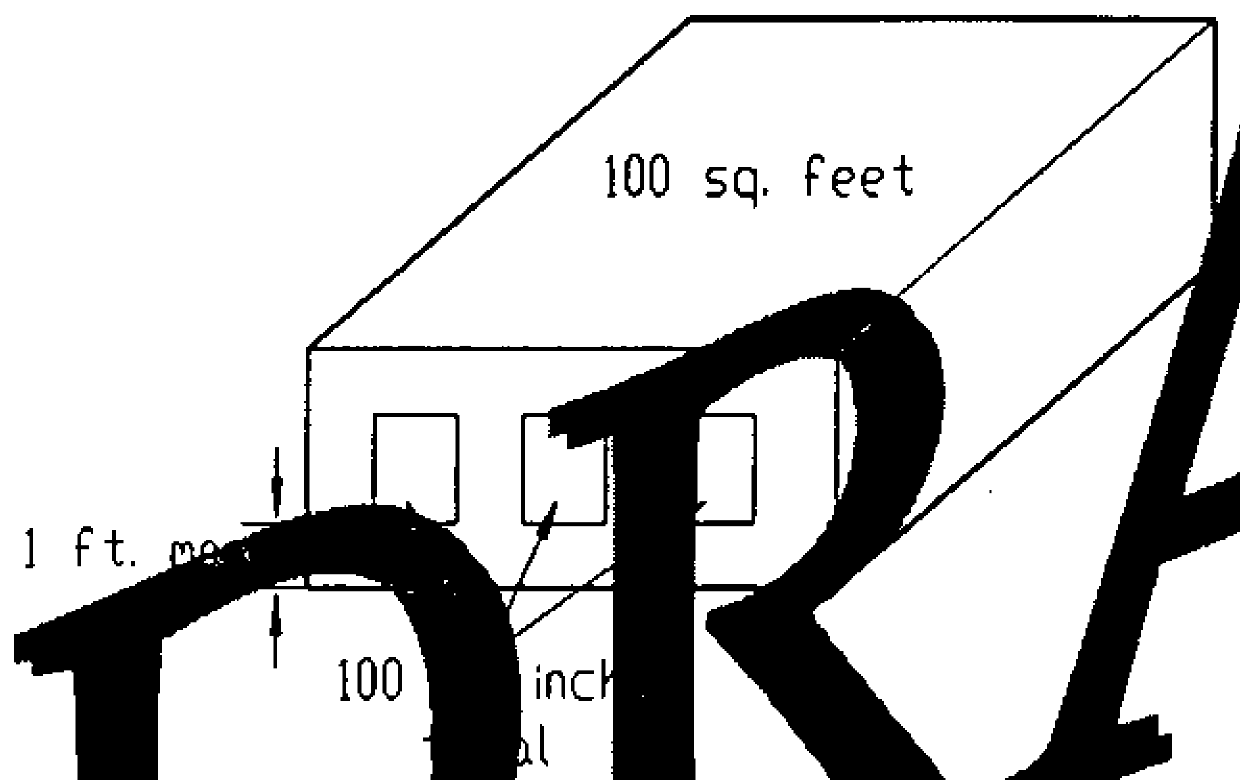


Figure 2

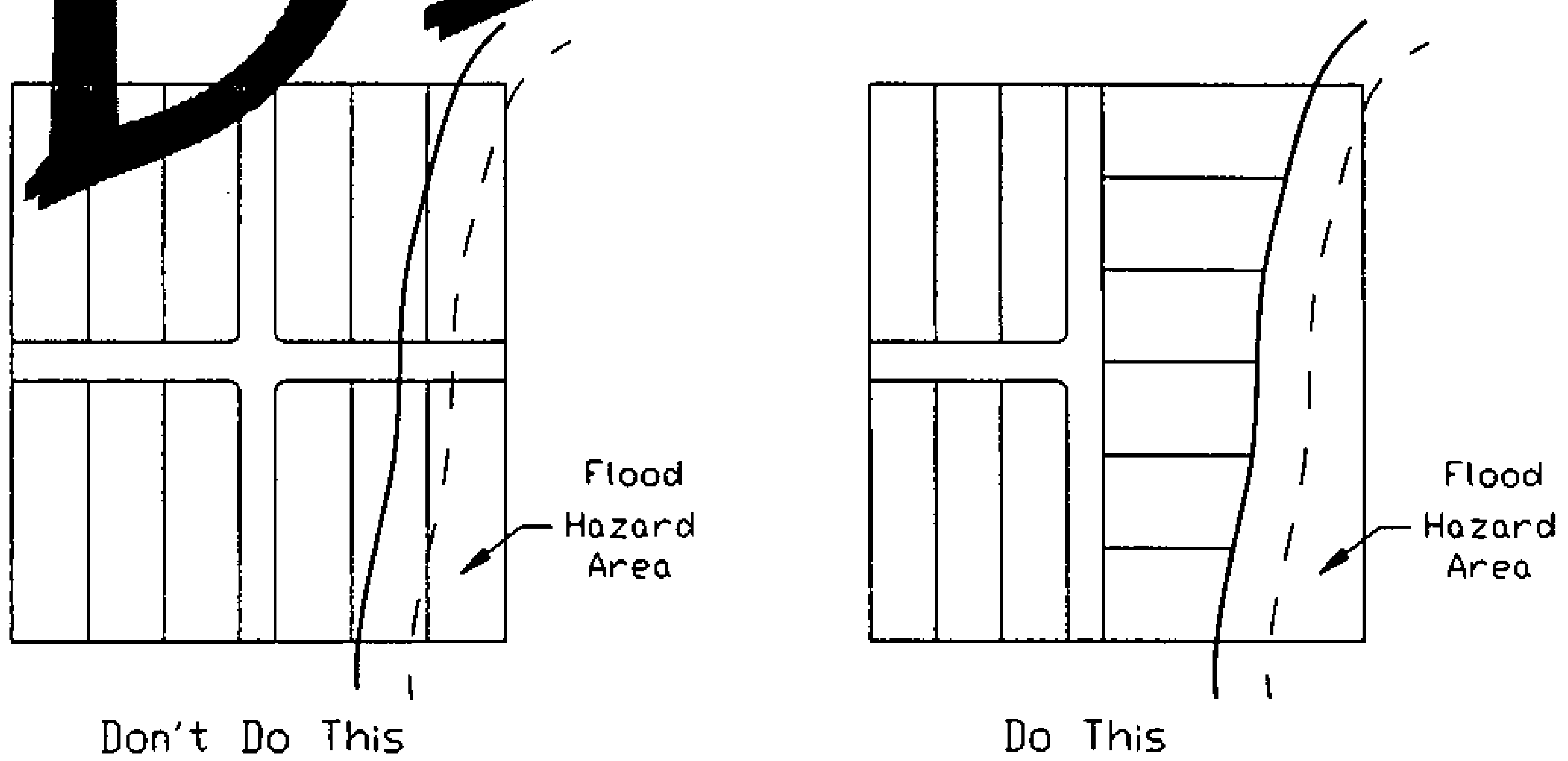


Figure 3

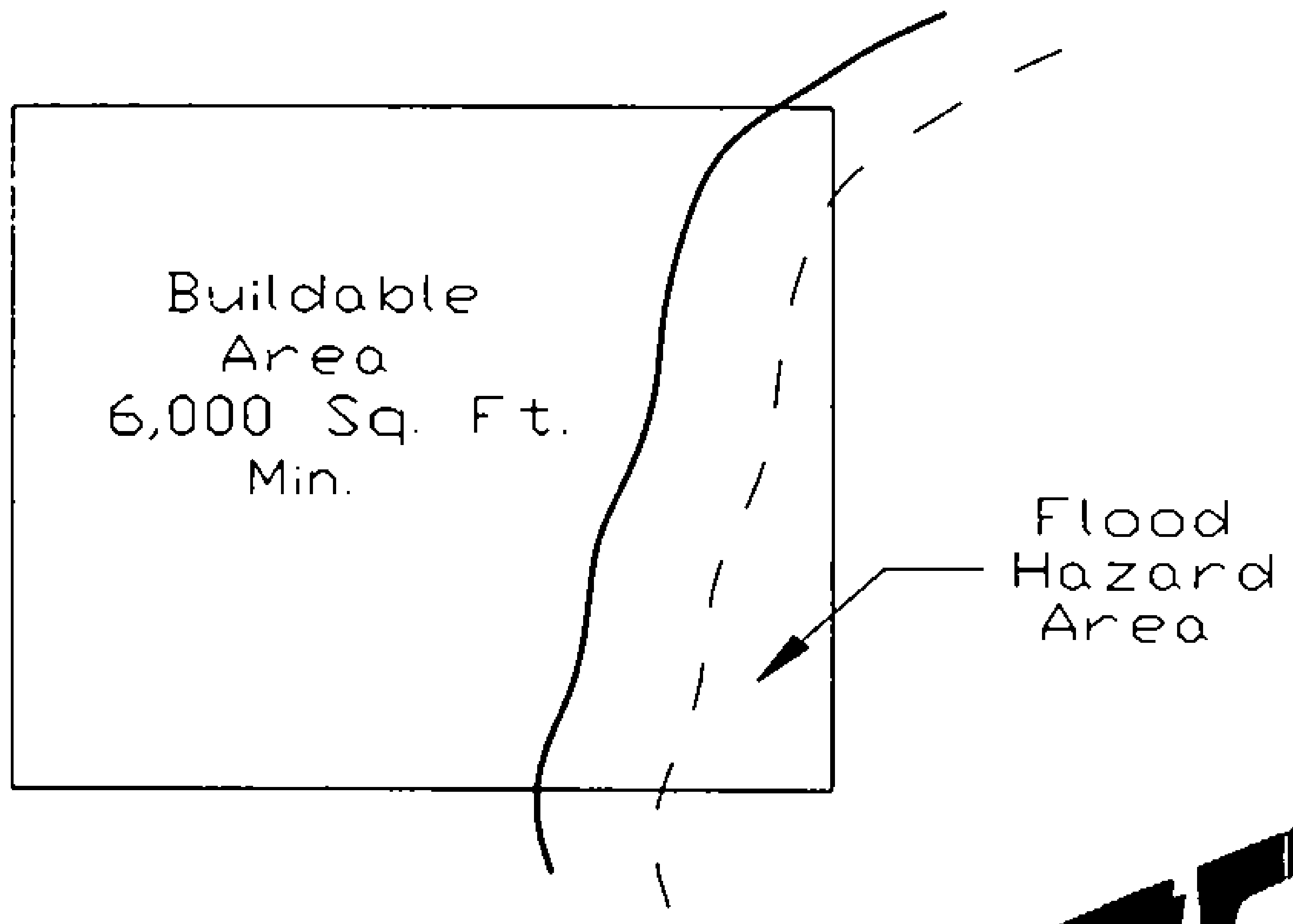


Figure 4

Beta-Rubicon, Inc.

UNSOLICITED PROPOSAL FOR SERVICES

An Assessment of the Duke Solutions/Harmony Products Biosolids Disposal Project for The City of Fayetteville Arkansas

This Proposal to provide services is offered this 5th day of February, 2002 ("Effective Date") by Beta-Rubicon, Inc., whose address is 21 W. Mountain Street, Suite 123, Fayetteville, Arkansas 72701 USA ("Beta-Rubicon"), and is for the **City of Fayetteville**, having principal offices at One 113 West Mountain Street, Fayetteville, AR 72701 ("Fayetteville") ("Proposal").

1. **Services Proposed and Offered.** Beta-Rubicon hereby offers to perform on behalf of Fayetteville the services in Schedule A in accordance with the general terms and conditions set form in this proposal.

2. **Term of Proposal.** This proposal will be valid as of the Effective Date. If a contract results from acceptance of this proposal, such a contract will end upon completion of the work and delivery of the documents provided for in the description of services and receipt of final payment by Fayetteville to Beta-Rubicon. As provided in the description of services, Fayetteville and Beta-Rubicon may alter, modify, or extend the terms of this proposal so long as such changes are mutually agreed upon and set forth in writing and properly signed by Fayetteville's and Beta-Rubicon's authorized representatives.

   This proposal shall constitute and remain as valid offer to provide services to Fayetteville for a period of 60 days from Effective Date.

3. **Qualifications.** Beta-Rubicon specializes in the assessment of evolving and transforming-technologies (such as information technology), intellectual property (IP), and R&D planning and management. These services are focused on the assessment of opportunities and risks found in new and evolving technology developments. Beta-Rubicon offers a variety of technology consulting services and is a unique resource for independent technology assessment services.

   Technology assessment requires an intimate knowledge of the state-of-the-art in technology, as well as of technology trends, R&D management, intellectual property matters, and management practices. This type of consulting requires a high degree of research and scientific sophistication and well-developed analytical methodologies to provide accurate evaluations of the risks and rewards associated with exploiting advanced technologies and of the acquisition of, merger with, or investment in technology-based enterprises. Beta-Rubicon meets these requirements in addition to gathering extensive data, extracting information, and translating technical details into clear, concise concepts and descriptions.

Individuals and institutional agencies responsible for investments in technology in government agencies, or in technology-oriented enterprises are among the most frequent users of Beta-Rubicon's services. Agencies or companies needing accurate evaluations of the risks and potential rewards of the acquisition and deployment of technology at early planning stages are increasingly significant users.

In addition to having the ability to assemble teams of highly skilled individual professionals, Beta-Rubicon has in place a teaming agreement with KPMG Consulting and close working contacts with a number of specialized consulting firms.

Attached to this Proposal is a list of selected recent project that illustrate Beta-Rubicon qualifications (Attachment 1). Additional information about the company is available on the website at: www.beta-rubicon.com.

4. **Work Plan and Timing.** The plan for the proposed work is explicit in the sequential task list provided in Schedule A.

   A qualified project manager will be assigned to this work for its duration and identified to Fayetteville. Dr. R.R. Goforth will provide project oversight, including issues of contract compliance and work quality. A brief biography of Dr. Goforth is attached (Attachment 2).

   Appreciating the potential criticality of timing for an assessment of the Duke Solutions/Harmony Products project, Beta-Rubicon has the resources and has planned to execute the proposed work in a period of not more than 25 working days from the date of contract execution and the Preliminary Meeting and Transfer of business and technical information to Beta-Rubicon. (See Task 1, Section A.2, Schedule A, "scope of services.")

5. **Fees and Expenses.** The fee for the proposed services would be $19,850.

   A contract retainer of 25% of said fee would be immediately due and payable upon execution of a contract. Subsequent payments would then be made upon completion of the work and delivery of documents provided for in the description of services.

   Expenses for unplanned but pre-approved travel in excess of 50 miles including professional services time, mileage or ticketing, accommodations, and meals are to be reimbursable. Expenses associated with the physical transfer of any materials necessary for the execution of this proposal and international telephones charges are also to be considered reimbursable. Reimbursable expenses will be reimbursed upon completion of the project or invoiced at monthly intervals.

6. **Ownership of Deliverables.** All rights, title, and interest in and to all Deliverables and other data or materials generated or developed by Beta-Rubicon under any contract resulting from acceptance of this Proposal or furnished by Fayetteville to Beta-Rubicon shall be held by Fayetteville, shall be considered works made for hire and such Deliverables and other material shall, upon creation, be owned exclusively by Fayetteville, and Fayetteville shall be entitled to obtain and hold in its own name all intellectual property rights in respect of such Deliverables and other materials in perpetuity. To the extent that any foregoing, under applicable law, may not be considered works made for hire, Beta-Rubicon will assign to

Fayetteville use of such materials, under patent, copyright, trade secret, and trademark law, without the necessity of any further consideration.

7. **Confidentiality and Non-Disclosure.** Beta-Rubicon agrees that trade secret, confidential, or proprietary information as set out in Schedule B that is received by Beta-Rubicon during the pursuit of providing its services in accordance with a contract, which concerns personal, financial, technical, or other affairs of Fayetteville, will be treated by Beta-Rubicon in full confidence and will not be revealed to any other persons, firms, or organizations, except:

   a) information that, at the time of disclosure, is in the public domain or which, after disclosure, becomes part of the public domain by publication or other through no action or fault of Beta-Rubicon; or

   b) information that Beta-Rubicon can show is in its possession at the time of disclosure and was not acquired, directly or indirectly, from Fayetteville; or

   c) information that was received by Beta-Rubicon from a third party having the legal right to transmit that information.

8. **Fayetteville Conveyance and Fulfillment.** Should a contract be made, Beta-Rubicon shall be provided full disclosure of supporting documents and evidence as listed in Schedule C to the extent not precluded by Confidentiality and Non-Disclosure constraints delineated in Paragraph 7 above as are necessary to provide the comprehensive assessment defined in Schedule A.

9. **Non-Competition.** Beta-Rubicon shall not, during the term of any contract resulting from acceptance of this proposal and after its termination for any reason, directly or indirectly, found, work for, consult to, or assist in any way, whether in a paid or unpaid capacity, any individual, partnership, or company, or any business entity which requires the use of confidential information provided by Fayetteville for use related to the Services provided by Beta-Rubicon. These restrictions shall last for a period of three years and shall cover the geographic region of the United States of America.

10. **No Agency.** Beta-Rubicon understands that Beta-Rubicon has no authority, either express or Implied, to act or to represent that Beta-Rubicon is acting on behalf of Fayetteville, except in those instances in which Fayetteville has given Beta-Rubicon consent that specifically covers Beta-Rubicon's acts or representations.

11. **Employment of Others.** Beta-Rubicon may from time to time employ the services of others. All costs to Beta-Rubicon for those services will be paid by Beta-Rubicon, but in no event shall Beta-Rubicon employ others without their proper execution of confidentiality, non-disclosure, and non-competition proposals.

12. **Independent Contractor.** Both Beta-Rubicon and Fayetteville agree that Beta-Rubicon will act as an independent contractor in providing services offered in this Proposal.

13. **Place Where Services Will Be Rendered.** The validity and performance of any contract

resulting from acceptance of this proposal by Fayetteville shall be governed by the Laws of the State of Arkansas.

14. **Limitation.** In no event shall either party be liable to the other party for any indirect, special, or consequential damages under any contract resulting from acceptance of this proposal.

15. **Signature.** Beta-Rubicon has provided this proposal as of the Effective Date and it shall remain as a valid offer for a period of 60 days from Effective Date.

R.R. [signature]

President
February 5, 2002

SCHEDULE A

The **scope of the services** offered by Beta-Rubicon is as follows:

A.1 Beta-Rubicon's technology evaluation service is based on acquiring complete and accurate planning and technical information from the City of Fayetteville (Fayetteville) and Duke Solution/Harmony Products (DSH) and putting that information into the context of the state of the art, best practices, and related trends.

A.2 The following list of tasks, tentatively identified here by a sequence number, indicates the nominal order in which they occur. Efficiency and timing constraints make it necessary for certain of the activities to be undertaken concurrently. The sequence shown is a general guideline only.

1. Preliminary meeting and transfer of business and technical information to Beta-Rubicon
2. Review and preliminary analysis of DSH documentation and literature
3. Preliminary verification of the representations made
4. Review of the City's planned use of technology
5. Examination of the depth of DSH's resources and capabilities (in Fayetteville and potentially other venues).
6. Survey of the state of the art in the City's area of concern relative to Total Nutrient Management (TNM).
7. Analysis of Proposal DSH's technology and development plans, schedules, budget
8. Analysis of City's management capabilities to respond to proposed system implementation.
9. Estimation of the likelihood of achieving technical success with due consideration to functional and implementation specifications, budget, and timing issues.
10. Formulation of conclusions and recommendations
11. Generation of report in compliance with requirements for deliverables
12. Presentation of results to the City (in Fayetteville)

A.3 Deliverables shall include but not be limited to:

1. An assessment of DSH project documentation, addressing such questions or issues as follows:
   - Is the DSH project current with and supportive of industry best practices?
   - Congruence with mandatory requirements across State and Federal agencies
   - An assessment of budget estimates for initial and ongoing costs provided
   - A scenario and an implementation schedule based on plan assessment, including resource requirements, hours and total hours, and personnel requirements delineated by skill sets required.
   - A basic summarization of the consolidated plan for critical success factors and that industry best practices security areas are addressed
   - Identification of DSH project positives
   - Identification of DSH project risks
   - An assessment of overall plan for congruence of the proposed DSH project with the City's objectives for TNM.
   - Identification of potential alternative approaches to TNM if any.
   - Recommendations across all areas

A.4 The Deliverables will be an evaluation report having the following general outline:

Title Block
Executive Summary
1. The Proposal / Proposition
2. Feasibility of Technical Plans
3. Capabilities as Related to Proposed Work
4. State of the Art in Proposed and Related Technologies.
5. Implementation Schedule and Resource Requirements
6. Budgetary Matters
7. Identification of Risk Factors
8. Strengths / Weaknesses Identified
9. Likelihood of Achieving Technical Success
10. Likelihood of Achieving Operational Success
11. Recommendations / Conclusions
12. Contacts and Provisions for Follow-up
13. References and Sources

Attachments

A.5 Specifically excluded from Services are: on-site examination of operational issues, generation of original project cost estimates or budgets, examination of legal issues including regulatory compliance, comprehensive verification of the congruence of the planned DSH system with the policies and practices of departments and agencies; and review or assessment of DSH internal matters or contractual relationships related strategies of implementation of the proposed project.

A.6 To a certain extent, the evaluation process must be customized to optimally accommodate the specifics of the City's requirements. Further, as it is likely that the evaluation process will dynamically evolve over the time of the assessment, the assessment documentation outline (report format) should be considered subject to change by mutual agreement.

SCHEDULE B

B.1 *Confidential and Trade Secret Information* includes information including, but not limited to, the following:

B.1.1 research and development work; source code; object code; run-time libraries; system documentation; software-related documentation; system configurations; hardware design; firmware design; construction, layout, and operations of Fayetteville's facilities and equipment; all of these items both for customers/Fayettevilles and for Fayetteville's internal operations;

B.1.2 contents of contracts or proposals for technical research or development; costing and estimation procedures and formulae regarding proposals or other uses; sales, profit-and-loss, profit margin, production costs, overhead, and other bookkeeping and accounting information; all information regarding business development and marketing; names and identities of vendors and suppliers not well known to the trade; costs and contents of proposals and actual contracts with all such vendors and suppliers;

B.1.3 confidential information revealed to Fayetteville by third parties and that Fayetteville is obligated to keep confidential; all copies of this Proposal and any other information that may be considered by Fayetteville as Fayetteville's confidential information under applicable laws.

SCHEDULE C

Fayetteville-Provided Information

C.1 To the extent practicable, Fayetteville shall provide of have provided the following information in printed or electronic form:

1. City of Fayetteville documentation including:

    - Update and Overview of Project Facilities Plan" of July 2001.
    - Such other information as relates to the City's plans for Total Nutrient Management associated with the Waste Water Improvement Project
    - Identification of key technical contacts representing Fayetteville

2. Duke Solutions/Harmony Products (DSH) Documentation including:

    - Technical description and engineering information adequate to verify projected system performance and costs.
    - Brief synopsis of the project goals to utilize and integrate with existing and planned City and regional resources
    - Local and regional infrastructure requirements and improvements necessitated by the proposed DHS project.
    - Brief synopsis of current or planned organization, working relationships, and division of responsibilities between Duke Solutions and Harmony Products.
    - Identification of key technical contacts representing DHS or the individual companies.
    - List of expected major system components that will be used and such technical details of such components as are available
    - Relevant and supporting past assessments and technical analyses of similar DHS projects.
    - Resumes for key and assigned DHS technical personnel
    - Identification of potential contractors and vendors to be used for system components and services.

C.2 Additional information requirements may be identified during the course of the assessment.

C.3 Beta-Rubicon will assist the Fayetteville with identification of specific items that are critical to the success of this evaluation. If, after a reasonable period of time, information provided by Fayetteville is insufficient for a full evaluation, Beta-Rubicon may recommend to Fayetteville that they authorize terminating the evaluation. Such consideration is intended to avoid unnecessary work and expense what would be involved in completing the evaluation with insufficient information to produce meaningful results.

C.4 Given the short duration of the proposed work, no formal interim reports are anticipated.

Attachment 1: Qualifications by Selected Recent Beta-Rubicon Contract Areas

- Advanced Special Application Search Engine as Basis for e-Commerce Development
- Commercial Potential of High Speed Data Transmission Techniques in Avionics and Space-Based Applications*
- Computer Systems Evaluation Strategies and Business Opportunities
- Concurrent Engineering Technologies with CAD/CAE/CAM/PDM
- Control of Crabgrass with a Fungal Pathogen*
- Control of Cyanobacteria with a Bacteria*
- Control of Weeds with a Fungal Pathogen*
- Engineering Design and Prototype for a Novel CNC Milling Machine Configuration
- Food-Grade, Non-Sheening Lubricants*
- Hybrid Vector Protein Production*
- Hydraulic Method for the Compression of Natural Gas
- Initiation of Monomolecular Addition Polymerization*
- Inspection System (automated) for Commodity Food Production Line
- Internet/e-Commerce Project for Heavy and Transportation Equipment and Machinery
- Low Transistor Count and Low-Power High-Speed Full Adder Cell*
- Market Potential and Values of University-Held Patents and Patentable or Licensable Technologies
- Method of Isolating and Propagating Microorganisms and Viruses*
- Methods and Apparatus of Object-Based Video Motion Tracking*
- Motionless Electromagnetic Generator Device*
- Novel, Multi-Stage Turbine Design for Hydroelectric Power Generation*
- On-Line (Internet-Based) Ordering System for Dispersed Franchise Operations*
- On-Line Homework and Testing System*
- Optimization of a Computerized Distributed Voter Registration System
- Proprietary Composition to Reduce Microbiological Contamination of Food Products
- Real-Time, Wireless Industrial Equipment Monitoring
- Remote Spectrographic Sensing of Environmental Contaminants*
- Signal Simulation System Identification and Selection Wireless Communications
- Software Application: Statistical/Demographic System for Individual Attitude Profiling
- Solid-state blue/UV and mid-IR laser applications
- Truck-Mounted Ladder Brace System*
- True Three-Dimensional Display Technology*
- Vehicle for Collecting, Lifting, and Relocating Dispersed Small Loads*
- Virtual Reality System Students' Experimental Learning*
- Wideband Wireless Base-station Engineering Design, Software (WCDMA)

- Includes assessment of commercial potential.

NOTE: Beta-Rubicon is broadly networked and has competent and trusted colleagues that are available to work on a secure consulting basis. This expands the areas in which the company can offer technology assessment and technology due diligence services.

Attachment 2: Brief Biography: Dr. R.R. (Ron) Goforth

Dr. Ron Goforth has been active in management consulting to private sector organizations, governmental agencies, and academic institutions for more than 25 years. He has been most actively involved in consulting in the areas of scientific and engineering R&D management; software engineering/development project management; and organizational development and team building in organizations with technical missions. As founder, president, and CEO of Beta-Rubicon, Dr. Goforth is responsible for strategic planning and enterprise building. He is responsible for ensuring the quality and professional integrity of the company's services as well as for forming and maintaining the company's strategic relationships. Dr. Goforth serves as the primary spokesman for the company in both private and public sector forums for technology-centered enterprise development.

Dr. Goforth served for ten years as the Director of Research and Environmental Affairs for Syncrude Canada, Ltd. Subsequently, he was a tenured Professor of Computer Systems Engineering and adjunct Professor of Electrical Engineering at the University of Arkansas where he founded the Center for Artificial Intelligence and Expert Systems and the Advanced Manufacturing Technology Laboratory (AMTL). He also served as a Senior Research Fellow at the US Navy NHRC in San Diego, California, and was a Fulbright Fellow at the University of the South Pacific (Fiji). He held a royal appointment as Professor of Computer Systems Engineering at the Institute of Industrial Technology, Suranaree University of Technology in Thailand.

Dr. Goforth has served on the Board of Directors for several technology-based start-up companies and was a Principal during the startup of Vector, Inc., a company developing, manufacturing, and selling PC-based, open-architecture CNC controllers. He has provided technology assessments, R&D management services, project planning, and oversight services for a variety of national and international companies, public sector agencies, and universities including: PetroCanada, Ltd.; Arkansas Science and Technology Authority (ASTA); Motorola, Inc.; Cities Service; Energy Techniques, Inc.; US Food and Drug Administration; College of Engineering, University of Arkansas; Tec, Ltd., Vancouver, Canada; US Information Agency (USIA); United Nations Environmental Program (UNEP), Paris.

Dr. Goforth holds a Doctor of Philosophy degree from the University of Alberta in Edmonton, Canada, and a Master of Science and a B.S. degree from the University of Arkansas.

FAYETTEVILLE
THE CITY OF FAYETTEVILLE, ARKANSAS

KIT WILLIAMS, CITY ATTORNEY
DAVID WHITAKER, ASST. CITY ATTORNEY

LEGAL DEPARTMENT

DEPARTMENTAL CORRESPONDENCE

TO: **Dan Coody**, Mayor
City Council Members

FROM: **Kit Williams**, City Attorney

DATE: **February 4, 2002**

RE: **McGoodwin, Williams and Yates/ request for $578,918.24 (Legal considerations when the City receives benefits from a contractor, even if the contract was breached or invalid)**

Please read Greg Boettcher's analysis of the facts on this item as well as the material from McGoodwin, Williams, and Yates, Inc. (hereinafter "McGoodwin") and its subcontractors. This is a very complex and important decision which must be based upon facts.

Please note that the contract entered into between the City and McGoodwin expressly specified in Section XIII Changes :

> "Changes, modifications or amendments in scope, price or fees to this contract shall not be allowed without a formal contract amendment approved by the Mayor and the City Council **in advance** of the change in scope, costs, or fees." (emphasis added).

Resolution 39-00, passed and approved by the City Council on March 21, 2000, and signed by Mayor Hanna and attested to by City Clerk Heather Woodruff stated:

> "Section 1. That the City Council hereby approves an agreement with McGoodwin, Williams and Yates, in the amount of $955,302, for engineering services in connection with the new west side wastewater treatment plan. A copy of the agreement is attached hereto marked Exhibit 'A' and made a part hereof."

Attachment 6 to the Contract with McGoodwin is entitled "Engineering Cost Summary". The last line reads:
"**Total Project Costs $955,302.**" (emphasis in original)

As some of you might remember, the Departmental Correspondence from Don Bunn through Mayor Hanna to the City Council dated February 29, 2000 to present the contract with McGoodwin (and request the resolution to authorize execution of the contract) ended:

> "Therefore, it is the recommendation of the Staff that the Council approve the proposed contract with McGoodwin, Williams and Yates in the not-to-exceed amount of $955,302.00."

This memo showed the breakdown of the proposed "not-to-exceed contract price (of) $955,302.00" as:

1. Salary Expense	$183,635.00
2. Overhead Costs (155%)	284,634.00
3. Fixed Fee, 15%	88,105.00
4. Expenses (includes subcontracts)	398,928.00
5. **Total Cost (Not to Exceed)**	**$955,302.00**

I believe everyone is in agreement that McGoodwin exceeded both the scope of the work and the "not-to-exceed contract price (of) $955,302.00" by $578,918.24 "without formal contract amendment approved by the Mayor and the City Council **in advance** of the change in scope, costs or fees." So what can the City Council do now in response to McGoodwin's after-the-fact request to be paid this additional $578,918.24?

The City Council can legally pay this entire amount just as you chose to pay the other three engineering firms in the Wastewater Improvement Project when they exceeded their "not-to-exceed" contract prices (although by significantly lesser amounts). The City Council would in effect be waiving its right to enforce **Section XIII Changes** and concluding that the value of the work beyond the scope of the contract and all charges beyond the not-to-exceed price were reasonable, necessary, and a fair value for the benefits received by the City.

Although it may be argued that McGoodwin relied upon the Assistant Public Works Director's requests to exceed the scope of work and price constraints, the contract clearly places all such authority **solely with the City Council**. No City employee was authorized to change the contracted terms, scope of work or monetary compensation. It is fundamental law that a city is not bound by unauthorized acts of its employees.

> "We have specifically held that a sovereign is not bound by the unauthorized acts of its employees." City of Russellville v. Hodges, 330 Ark. 716, 957 S.W. 2d 690 (1997).

Even though it is clear the contract was breached (violated) by McGoodwin when it exceeded the scope of work and amount of money specified, the City did receive benefits from at least some of this additional work and must pay for the **value of the benefit received by the City**. Otherwise the City would be unjustly enriched by the work of McGoodwin and/or its subcontractors.

> "We find that the unjust enrichment principle is firmly embedded in Arkansas law in the context of work performed pursuant to illegal contracts made by political subdivisions such as cities and counties." City of Damascus v. Bivens, 291 Ark. 600, 726 S.W. 2d 677, 679 (1987).

The major issue confronting the City Council is determining the **actual value of the benefit conferred upon the City** by McGoodwin when it exceeded its scope of work.

> "When the recovery is based on unjust enrichment, as opposed to damages for loss occasioned by breach of contract, the award is measured by the value of the benefit conferred upon the party unjustly enriched." City of Damascus, supra.

The Supreme Court has held that "(t)he contract price is some evidence of the value of the benefit conferred." Id. This means the City Council can look to the fee structure set up within the contract as some measure of the appropriate cost of additional engineering work done by McGoodwin and its subcontractors.

It is clear that when deciding the proper value of a benefit conferred upon a city under an unjust enrichment theory, the benefit is "**based upon the value to the city and not the value to the (contractors)**" McCuiston v. City of Siloam Springs, 594 S.W. 2d 233, 235 (1980). (emphasis added).

Sometimes the Courts equate the theory of unjust enrichment as a contract not agreed to by the parties, but created by the law.

"His claim must be grounded solely on a contract created by the law in consideration of services shown to have benefited the city, and for which it ought, therefore in justice, to pay." Spearman v. City of Texarkana, 58 Ark. 348, 24 S.W. 883 (1894).

"The contractor, Claughton, is not necessarily entitled to receive the full contract price of $2,204 but is only entitled to receive the **fair value of his work and the labor and materials furnished**." Lykes v. City of Texarkana, 265 S.W. 2d 539, 541 (1954). (emphasis added).

The Bottom Line

Although McGoodwin breached the contract by not getting advance permission from the City Council to exceed the scope of work and dollar limitation of the contract, the City remains liable to at least pay the **fair value of the benefits conferred upon the City.**

The City Council can even pay the full amount requested if you are satisfied that the City has received benefits equal to the amount requested.

RESOLUTION N0. ______

A RESOLUTION RATIFYING THE RESOLUTION OF THE FAYETTEVILLE PUBLIC FACILITIES BOARD APPROVING REFUNDING REVENUE BONDS (BUTTERFIELD TRAIL VILLAGE PROJECT), SERIES 2002 IN A PRINCIPAL AMOUNT OF NOT TO EXCEED $25,000,000; AND DECLARING AN EMERGENCY

WHEREAS, The Fayetteville Public Facilities Board (the "Board"), is a public body politic and corporate with the power of perpetual succession created by Ordinance Number 2485, as amended (the "Ordinance") of the Board of Directors of the City of Fayetteville, Arkansas (the "City") under the constitution and laws of the State of Arkansas (the "State"), including the Public Facilities Board Act as codified at Arkansas Code annotated §14-137-101 et seq. (1987 & Supp. 1995), as amended (the "Act"); and

WHEREAS, the Board is authorized by the Act and the Ordinance to issue and sell its revenue bonds and to use the proceeds thereof for the purpose of financing housing and health care facilities in the City to secure payment of such revenue bonds as therein provided (including bond insurance or letters of credit) and to issue refunding bonds, all in accordance with the provisions of the Act and the Ordinance; and

WHEREAS, the Board has determined that the economic interest and public purpose of the Board are served by issuing its Adjustable Rate Demand Refunding Revenue Bonds, Series 2002 (Butterfield Trail Village Project) (the "Bonds") in an aggregate principal amount of not to exceed $25,000,000 for the purpose of providing moneys to refund prior bonds, pay the costs of issuing the Bonds and for other purposes related thereto: and

WHEREAS, the Bonds are not a debt of or pledge of the credit of either the City or the Board and neither the City or the Board is obligated to pay debt service on the Bonds; and

WHEREAS, the Act provides that none of the powers granted to the Board under the provisions of the Act shall be subject to the supervision or regulations or require the approval or consent of the State or of any municipality or political subdivision of the State, except as provided in the Ordinance; and

WHEREAS, pursuant to the provisions of the Ordinance, resolutions adopted by the Board which authorize the approval of bonds for financing residential housing, health care and related facilities for the elderly which are owned by non-profit corporations shall be ratified by the City; and

WHEREAS, the Board adopted a resolution on February 4, 2002 to approve the Bonds subject to the ratification by the City and subsequent approval by the Board of final financing terms; and

WHEREAS, such resolution adopted by the Board on February 4, 2002, authorized the Chairman and Secretary to execute documents to effect the issuance of the Bonds; and

WHEREAS, the City, as an exercise of its ministerial powers should ratify the Board's resolution in recognition that the City is not a part of the deliberative process of approval of the issuance of the Bonds and provided further that the City should ratify the resolution adopted by the Board on February 4, 2002, based upon a determination that the Board has solely and independently exercised its powers and responsibilities in a manner which complies with the Ordinance; and

WHEREAS, the City Council finds that an emergency exists due to the fact that the bonds in question must be refunded before March 1, 2002 in order to avoid default.

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF FAYETTEVILLE, ARKANSAS

Section 1. **Recognition of Board's Authority.** The Board is authorized by the Act and the Ordinance to approve the issuance of its not to exceed $25,000,000 Adjustable Rate Demand Refunding Revenue Bonds, Series 2002 (Butterfield Trial Village Project) (the "Bonds") for the purpose of providing moneys to refund prior bonds, pay the costs of issuing the Bonds and for other purposes related thereto and shall comply with other provisions of the Act and the Ordinance. The bonds by statute and intent of this city council are not a debt of or pledge of the credit of either the City or the Board and neither the City or the Board is obligated to pay debt service on the Bonds whether or not said bonds have been properly issued.

Section 2. **Ratification of Board's Resolution.** The provisions of the Board's resolution approved February 4, 2002, a copy of which is filed with the Clerk of the City, are hereby ratified by the City.

Section 3. **Severability.** If any provision of this Resolution shall be held or deemed to be or shall, in fact, be illegal, inoperative or unenforceable, the same shall not affect any other provision or provisions herein contained or render the same invalid, inoperative or unenforceable to any extent whatever.

Section 4. **Repeal of Resolutions in Conflict.** All resolutions and parts of resolutions in conflict herewith are hereby repealed to the extent of such conflict.

Section 5. **Emergency Clause.** That the City Council having found that immediate ratification is necessary in order to avoid default, hereby declares this resolution to be necessary to preserve the public peace, health, safety and welfare, and because of such, an emergency is hereby declared to exist and this resolution shall be in full force and effect from the date of its passage and approval.

PASSED and **APPROVED** this the _____ day of February, 2002.

APPROVED:

By: ___________________________
DAN COODY, Mayor

ATTEST:

By: ___________________________
Heather Woodruff, City Clerk

RESOLUTION NO. ______

A RESOLUTION EXPRESSING THE CITY COUNCIL'S OPPOSITION TO THE SEVENTY-SIX PERCENT (76%) RATE INCREASE FOR THE BASIC TIER CABLE TELEVISION SERVICE BY COX COMMUNICATIONS, INC., TO AUTHORIZE HIRING AN EXPERT TO AUDIT AND CHALLENGE THE INCREASE BEFORE THE FCC AND TO APPROVE A BUDGET ADJUSTMENT OF $6,000.00

WHEREAS, the programming on the Fayetteville Government Channel and Community Access Television is currently available only to Cox Cable subscribers; and

WHEREAS, the low and moderate income residents of the City of Fayetteville have come to rely on the availability of a reasonably priced basic cable rate plan in order to receive the programming on the Fayetteville Government Channel and Community Access Television; and

WHEREAS, the proposed Seventy-Six percent (76%) rate increase for basic cable television service proposed by Cox Communications, Inc. is not justified and would place a significant financial burden on low and moderate income residents wishing to receive said programming; and

WHEREAS, Cox Communications, Inc. submitted FCC forms 1240 and 1205 with 34 pages of complex accounting to justify its rate increase; and

WHEREAS, it will be necessary to hire an expert in the accounting procedures and rules of the FCC to analyze and challenge this basic tier rate increase.

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

Section 1. That the City Council of the City of Fayetteville, Arkansas hereby expresses its opposition to the proposed Seventy-Six Percent (76%) rate increase for basic cable television service proposed by Cox Communications, Inc.

Section 2. That the City Council of the City of Fayetteville, Arkansas authorizes and directs the Mayor to challenge this increase in cable rates for the basic tier, to hire a specialist to conduct an audit and examination of FCC forms

1240 and 1205 and supporting documents from Cox, and to file a complaint or challenge based upon this audit with the FCC.

Section 3. That the City Council of the City of Fayetteville, Arkansas approves a budget adjustment in the amount of Six Thousand Dollars ($6,000.00) to pay some or all of the expert's fee to audit, examine, and challenge the rate increase for the basic tier cable fee increase.

PASSED and APPROVED this _____ day of January, 2002.

APPROVED:

By: ______________________________
DAN COODY, Mayor

ATTEST:

By: ______________________________
Heather Woodruff, City Clerk

RECEIVED
JAN 3 1 2002
PLANNING DIV.

BILL OF ASSURANCE
FOR THE CITY OF FAYETTEVILLE, ARKANSAS

In order to obtain approval of a request for a zoning reclassification, the owner of this property, (hereinafter "Petitioner") M.B.B. Investment Corp., hereby voluntarily offers this Bill of Assurance and enters into this binding agreement and contract with the City of Fayetteville, Arkansas.

The Petitioner expressly grants to the City of Fayetteville the right to enforce any and all of the terms of this Bill of Assurance in the Circuit Court of Washington County, Arkansas, and agrees that if Petitioner or Petitioner's successors violate any term of this Bill of Assurance substantial irreparable damage justifying injunctive relief has been done to the citizens and City of Fayetteville, Arkansas. The Petitioner acknowledges that the Fayetteville Planning Commission and the Fayetteville City Council will reasonably rely upon all of the terms and conditions with this Bill of Assurance in considering whether to approve Petitioner's rezoning request.

Petitioner hereby voluntarily offers assurances that Petitioner and Petitioner's property shall be restricted as follows if Petitioner's rezoning is approved by the Fayetteville City Council:

The number and type of structures upon the property are limited to two (2) triplexes on one (1) lot and one (1) triplex [integrating existing house as one (1) unit of triplex] on the other lot for a total of three (3) triplexes on both lots.

Petitioner specifically agrees that all such restrictions and terms shall run with the land and bind all future owners unless and until specifically released by Resolution of the Fayetteville City Council. This Bill of Assurance shall be filed for record in the Washington County Circuit Clerk's Office after Petitioner's rezoning is effective and shall be noted on any Final Plat or Large Scale Development which includes some or all of Petitioner's property.

IN WITNESS WHEREOF and in agreement with all the terms and conditions stated above, M.B.B. Investment Corp. as the owner (Petitioner) voluntarily offers all such assurances.

M.B.B. INVESTMENT CORP.

By Brock Thompson
BROCK THOMPSON
President

DATE 1/30/02

SUBSCRIBED and SWORN to before me this 30th day of January, 2002.

Osborne

NOTARY PUBLIC

My Commission Expires:

____

RICHARD P. OSBORNE, NOTARY PUBLIC
WASHINGTON COUNTY, ARKANSAS
MY COMMISSION EXPIRES 03-03-03

ORDINANCE NO. ______

AN ORDINANCE AMENDING TITLE XV: UNIFIED DEVELOPMENT ORDINANCE, OF THE CODE OF FAYETTEVILLE, TO PROVIDE AMENDMENTS TO VARIOUS PROVISIONS CONCERNING THE FLOOD DAMAGE PREVENTION CODE.

WHEREAS, the flood hazard areas of the City of Fayetteville are subject to periodic inundation which results in loss of life and property, health and safety hazards, disruption of commerce and governmental services, and extraordinary public expenditures for flood protection and relief, all of which adversely affect the public health, safety and general welfare, and;

WHEREAS, these flood losses are created by the cumulative effect of obstructions in floodplains which cause an increase in flood heights and velocities, and by the occupancy of flood hazard areas by uses vulnerable to floods and hazardous to other lands because they are inadequately elevated, flood-proofed or otherwise protected from flood damage, and;

WHEREAS, the General Assembly of the State of Arkansas has, under A.C.A. §14-268-101 et seq. as amended, delegated the responsibility to local governmental units to adopt regulations designed to minimize flood losses.

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

Section 1. That Chapter 151: Definitions, Unified Development Ordinance, Code of Fayetteville is hereby amended by inserting Exhibit "A" attached hereto and made a part hereof.

Section 2. That Section 155.06(D)(1), Unified Development Ordinance, Code of Fayetteville is hereby repealed, and the following is inserted in its stead:

§155.05 APPEALS FROM STAFF INTERPRETATIONS/ACTIONS.

D. Appeals To the Planning Commission.

1. Floodplain Administrator. Any person aggrieved may appeal the decision of the Floodplain Administrator, provided that the Planning Commission shall hear and decide an appeal only when it is alleged there is an error in any requirement, decision, or determination made by the Floodplain Administrator in the enforcement or administration of this chapter.

Section 3. That Section 156.03(C), Unified Development Ordinance, Code of Fayetteville is hereby Amended by inserting the following:

g. Variances may be issued for new construction and substantial improvements and for other development necessary for the conduct of a functionally dependent use provided that the provisions of §168.03(A) are satisfied and that the structure or other development is protected by methods that minimize flood damages during the base flood and create no additional threats to public safety.

h. Upon consideration of the factors in this Section and the purposes of this ordinance, the Planning Commission may impose conditions to the granting of floodplain variances as it deems necessary to further the purposes of this ordinance.

i. Any applicant to whom a variance is granted shall be given written notice that the structure will be permitted to be built with a lowest floor elevation below the regulatory flood elevation surcharge and that the cost of flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation. A copy of the notice shall be recorded by the Floodplain Administrator in the office of the Washington County Clerk and shall be recorded in a manner so that it appears in the chain of title of the affected parcel of land.

Section 4. That Chapter 168: Flood Damage Prevention Code, Unified Development Ordinance, Code of Fayetteville is hereby repealed, and Exhibit "B" attached hereto and made a part hereof, is inserted in its stead.

PASSED and APPROVED this ______ day of ______________, 2001.

APPROVED:

By: ______________________
DAN COODY, Mayor

ATTEST:

By: ______________________
HEATHER WOODRUFF, City Clerk

EXHIBIT "A"

Existing manufactured home park or subdivision. (Flood Damage Prevention) A manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed before the effective date of the floodplain management regulations adopted by a community.

Expansion to an existing manufactured home park or subdivision. (Flood Damage Prevention) The preparation of additional sites by the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads)

Federal Emergency Management Agency (FEMA). (Flood Damage Prevention) The independent federal agency that, in addition to carrying out other activities, oversees the administration of the National Flood Insurance Program.

Federal Insurance Administration (FIA). (Flood Damage Prevention) The component of FEMA directly responsible for administering the National Flood Insurance Program.

Flood or flooding. (Flood Damage Prevention) A general and temporary condition of partial or complete inundation of normally dry land areas from the overflow of flood waters, or the unusual and rapid accumulation or run-off of surface water from any source.

Flood boundary and floodway map. (Flood Damage Prevention) The official map on which the Federal Insurance Administration has delineated both the areas of flood hazard and the floodway.

Flood Insurance Rate Map (FIRM). (Flood Damage Prevention) The official map on which the Federal Emergency Management Agency or Federal Insurance Administration has delineated both the areas of special flood hazards and the Floodway.

Flood Insurance Study. (Flood Damage Prevention) The official report provided by the Federal Insurance Administration that includes flood profiles, the FIRM, the Flood Boundary and Floodway Map, and the water surface elevation of the Base flood.

EXHIBIT "A"

base flood without cumulatively increasing the water surface elevation more than 1 foot. Also referred to as "Regulatory floodway."

Functionally dependent use. (Flood Damage Prevention) A use which cannot perform its intended purpose unless it is located or carried out in close proximity to water.

Highest adjacent grade. (Flood Damage Prevention) The highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.

Historic Structure. (Flood Damage Prevention) Any structure that is:

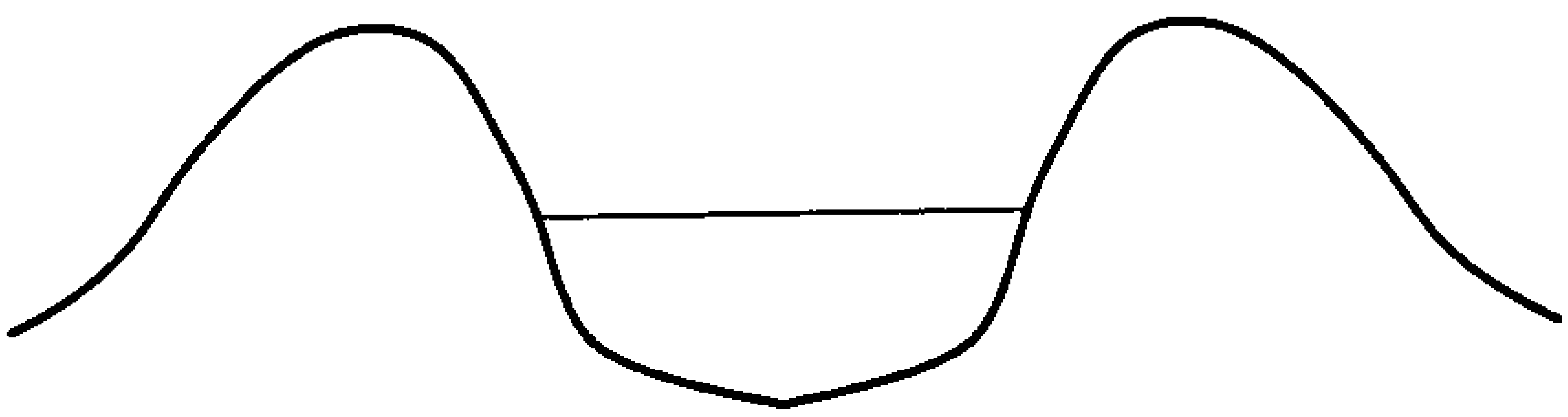
A. Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;

B. Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district; or

C. Individually listed on a state inventory of historic places which has been approved by the Secretary of the Interior.

Lowest floor. (Flood Damage Prevention) The lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access or storage in an area other than a basement area is not considered a building's lowest floor provided, that such an enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of this chapter.

Levee. (Flood Damage Prevention) A man-made structure, usually an earthen embankment, designed and constructed in accordance with sound engineering practices to contain, control, or divert the flow of water so as to provide protection from temporary flooding.



Levee

FLOOD DAMAGE PREVENTION CODE – EXHIBIT "A"

Riverine. (Flood Damage Prevention) Relating to, formed by, or resembling a river (including tributaries), stream, brook, etc.

Special flood hazard area (SFHA). (Flood Damage Prevention) An area having special flood or flood-related erosion hazards, and shown on an FHBM or FIRM as Zone A, AO, A1-30, AE, A99, CO, C1-V30, VE, or V.

Start of construction. (Flood Damage Prevention) The date the building permit is issued for either new construction or substantial improvement, provided the actual start of construction, repair, reconstruction, replacement, or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, beyond excavation, or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation or the installation of streets and/or walkways, nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure.

Stream. (Flood Damage Prevention) A watercourse having a source and terminus, banks, and channel through which waters flow at least periodically. Streams do not lose their character as a watercourse even though the water may dry up. For the purposes of this ordinance, streams are defined on the Flood Insurance Rate Maps as single lines with no floodplain or floodway defined.

Structure. A combination of materials to form a construction for use, occupancy, or ornamentation whether installed on, above, or below the surface of land or water.

Substantial damage. (Flood Damage Prevention) Damage of any origin sustained by a structure whereby the cost of restoring the structure to its before-damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

Substantial improvement. (Flood Damage Prevention) Any repair, reconstruction, or improvement of a structure, the cost of which equals or exceeds 50% of the market value of the structure either:

A. before the improvement or repair is started; or

B. if the structure has been damaged, and is being restored, before the damage occurred.

For the purposes of this definition "substantial improvement" is considered to occur when the first alteration of any wall, ceiling, floor, or other structural part of the

EXHIBIT "B"
CHAPTER 168: FLOOD DAMAGE PREVENTION

§168.01 PURPOSE.

A. It is the purpose of this ordinance to promote the public health, safety and general welfare and to minimize public and private losses due to flood conditions in specific areas as designated by the latest adopted Flood Insurance Rate Maps, in addition to the following:

1. To minimize expenditure of public money for costly flood control projects;

2. To minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;

3. To minimize prolonged business interruptions;

4. To minimize damage to public facilities and utilities such as water and gas mains; electric, telephone and sewer lines, streets and bridges located in floodplains;

5. To help maintain a stable tax base by providing for the sound use and development of flood-prone areas in such a manner as to minimize future flood blight areas;

6. To ensure that potential buyers are notified that property is in an area of special flood hazard;

7. To ensure that those who occupy the areas of special flood hazard assume responsibility for their actions; and,

8. To protect human life and health.

B. In order to accomplish its purposes, this ordinance uses the following methods:

1. Restricting or prohibiting uses that are dangerous to health, safety or property due to water or erosion hazards in times of flood or cause excessive increases in flood heights or velocities;

2. Requiring that uses vulnerable to floods, including facilities which serve such uses be protected against flood damage at the time of initial construction;

3. Controlling the alteration of natural floodplains, stream channels, and natural protective barriers, which are involved in the accommodation of flood waters;

4. Controlling filling, grading, dredging and other development which may increase flood damage;

5. Preventing or regulating the construction of flood barriers which will unnaturally divert flood waters or which may increase flood hazards to other lands.

§168.02 GENERAL PROVISIONS. This chapter shall apply to all areas of special flood hazards and areas of flood-related

This chapter does not imply that land outside the areas of special flood hazards, areas of flood-related erosion hazards, or uses permitted within such areas will be free from flooding or flood damages. This chapter shall not create liability on the part of the city, any officer or employee thereof, or the Federal Insurance Administration, for any flood damages that result from reliance on this chapter or any administrative decision lawfully made hereunder.

§168.03 ADMINISTRATION.

A. Floodplain Administrator. A Floodplain Administrator shall be designated by the Mayor and appointed to administer and implement this chapter by granting or denying Floodplain Development Permits in compliance with its provisions. Approval or denial of a Development Permit shall be based on all the provisions of this ordinance and the following relevant factors:

1. The danger to life and property due to flooding or erosion damage;

2. The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;

3. The danger that materials may be swept onto other lands to the injury of others;

4. The compatibility of the proposed use with existing and anticipated development;

5. The safety of access to the property in times of flood for ordinary and emergency vehicles;

6. The costs of providing governmental services during and after flood conditions including maintenance and repair of streets and bridges, and public utilities and facilities such as sewer, gas, electrical and water systems;

7. The expected heights, velocity, duration, rate of rise and sediment transport of the flood waters expected at the site;

8. The necessity to the facility of a waterfront location, where applicable;

9. The availability of alternative locations, not subject to flooding or erosion damage, for the proposed use;

10. The relationship of the proposed use to the General Plan 2010.

B. The duties and responsibilities of the Floodplain Administrator, as related to this chapter, shall include, but not be limited to:

a. Permit Review

i. Review all Floodplain Development Permits to determine that the permit requirements of this chapter have been satisfied;

ii. All other required state and federal permits have been obtained from those Federal, State, or local governmental agencies (including Section 404 of the Federal Water Pollution Control development within any area of special flood hazards or area of flood-related erosion hazards established in §168.02(A). An application for a Floodplain Development Permit shall be made on forms furnished by the Floodplain Administrator and may include, but not be limited to: plans in duplicate drawn to scale showing the nature, location, dimensions, and elevation of the area in question; existing or proposed structures, fill, storage of materials, drainage facilities; and the location of same. Specifically, the following information is required:

1. Proposed elevation in relation to mean sea level, of the lowest floor (including basement) of all structures;

2. Proposed elevation in relation to mean sea level to which any structure shall be flood-proofed;

3. All appropriate certifications listed in §168.03(A)(11)(a)(c); and

4. Description of the extent to which a watercourse will be altered or relocated as a result of proposed development.

§168.04 FLOOD HAZARD REDUCTION. In all areas of special flood hazards the following standards shall apply:

A. Anchoring.

1. All new construction and substantial improvements shall be anchored to prevent flotation, collapse or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy.

2. All manufactured homes shall meet the anchoring standards of §168.04(F).

B. Construction materials and methods.

1. All new construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage.

2. All new construction and substantial improvements shall be constructed using methods and practices that minimize or resist flood damage.

3. All new construction and substantial improvements shall be constructed with electrical, heating, ventilation, plumbing and air conditioning equipment and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.

C. Elevation and flood-proofing.

1. New construction and substantial improvement of structure shall have the lowest floor, including basement, elevated two feet above the base flood elevation specified in feet on the FIRM, or at least 2 feet above the highest adjacent grade if no depth number is specified (***see* Appendix, Figure 1**). Nonresidential structures shall meet the standards in §168.04(C)(2). Upon the completion of the structure, the elevation of the lowest floor including basement shall be certified by a registered professional engineer to be properly elevated. The certification or verification shall be provided to the Floodplain Administrator.

EXHIBIT "B"

3. All proposals shall be consistent with the need to minimize flood damage.

4. All proposals shall have public utilities and facilities such as sewer, gas, electrical, and water systems located and constructed to minimize flood damage.

5. All proposals shall provide adequate drainage to reduce exposure to flood hazards.

6. To the extent practicable, lot boundaries shall be made to coincide with natural and pre-existing man-made drainage ways within subdivisions to avoid the creation of lots that can be built upon only by altering such drainage ways (***see* Appendix, Figure 3**).

7. Any lot platted so that a portion of the lot lies in a special flood hazard area shall contain a minimum of 6,000 square feet of buildable area, including setbacks, outside the special flood hazard area, or if it contains less than 6000 square feet of buildable area, it shall be platted to contain a minimum of one acre. Any lot platted so that the entire lot lies in a special flood hazard area shall contain a minimum of one acre (*see* **Appendix, Figure 4**).

8. For subdivisions partially located in special flood hazard areas, minimum lot area requirements may be waived by the Director to allow the platting of lots to be clustered outside the special flood hazard area, the density permitted for the zoning district to be averaged over the entire parcel, provided a permanent conservation easement is granted to the City, a land trust, or the property owners association to ensure that the area of special flood hazard will remain undeveloped.

9. In any area that is located outside a special flood hazard area but where a stream is located, no building or fill may be located within a distance of the stream bank equal to ~~five times the width of the stream at the top of the bank or 20 feet on each side~~ two and one-half the width of the stream measured from top of bank to top of bank or 25 feet on each side, whichever is greater.

10. Base flood elevation data shall be generated for subdivision proposals and other proposed development including the placement of manufactured home parks and subdivisions which are greater than 50 lots or 5 acres, whichever is lesser, if not otherwise provided pursuant to §1[illegible]8.02(A) or §168.03(A)([illegible])(b).

11. In all areas designated as a Zone A on the FIRM, where a detailed study has not been completed to specify the floodway and base flood elevations, no building or fill shall be located within a distance of two and one half times the width of the stream measured from the top of the bank to the top of bank, or 25 feet on each side whichever is greater.

a. Provided, the applicant may choose if not required by other provisions of this chapter, to provide a detailed hydrologic and hydraulic study which delineates the floodway, 100 year floodplain boundary and base flood elevations. At such time a study is provided and adopted by ordinance, the applicant shall meet all requirements for areas designated with floodway, 100 year floodplain, and base flood elevations.

EXHIBIT "B"

flooding is unpredictable and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow; therefore, the following provisions apply:

1. All new construction and substantial improvements of residential structures have the lowest floor (including basement) elevated above the highest adjacent grade at least as high as the depth number specified on the FIRM (at least two feet if no depth number is specified).

2. All new construction and substantial improvements of non-residential structures:

a. have the lowest floor (including basement) elevated above the highest adjacent grade at least as high as the depth number specified on the FIRM (at least two feet if no depth number is specified),

b. together with attendant utility and sanitary facilities be designed so that below the base flood level the structure is watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads of effects of buoyancy.

3. A registered professional engineer or architect shall submit a certification to the Floodplain Administrator that the standards of this section, as set forth in §168.03(B), are satisfied.

4. Require adequate drainage paths around structures on slopes to guide flood waters around and away from proposed structures.

FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

TENTATIVE AGENDA
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.

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.

A. CONSENT AGENDA

1. **APPROVAL OF THE MINUTES:**

2. **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.

3. **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.

4. **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.

5. **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.

6. **EGIS CONSULTING:** A resolution approving Amendment No. 2 in the amount of $55,700 to the contract with EGIS Consulting for additional services.

113 WEST MOUNTAIN 72701 501 521-7700
FAX 501 575-8257

7. **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.

8. **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.

B. OLD BUSINESS

1. **CIVIL SERVICE VETO:** Veto of Civil Service Ordinance.

2. **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.

3. **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.

C. NEW BUSINESS

1. **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.

2. **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.

3. **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.

4. **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.

5. **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.

6. **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.

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

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

9. **CIVIL SERVICE:** An ordinance to increase the number of Civil Service Commissioners to seven.

Nominating Comm.
Page 1

FAYETTEVILLE HOUSING AUTHORITY

#1 NORTH SCHOOL AVE.
FAYETTEVILLE, AR. 72701-5928
PH: (501) 521-3850 FAX (501) 442-6771

January 22, 2002

Honorable Mayor Dan Coody
City of Fayetteville
113 West Mountain
Fayetteville, AR 72701

Dear Mayor Coody,

The Fayetteville Housing Authority Board of Commissoners met in monthly meeting on December 19, 2001 and re-elected Janet Richardson to the Board of Commissioners. Her five year term will run to December 28, 2006.

We would appreciate the City Board's confirmation of this election at their next regular meeting.

Sincerely yours,

Bromo Wilson

Bromo Wilson
Executive Director

STAFF REVIEW FORM

_X_ AGENDA REQUEST
_X_ CONTRACT REVIEW
___ GRANT REVIEW

For the Fayetteville City Council meeting of February 5, 2002

FROM:

Sid Norbash	Engineering	Public Works
Name	Division	Department

ACTION REQUIRED: Approval of:
(1) The Construction Contract with Fayette Tree & Trench, Inc. for **E.Ridgeway Area Water Line Replacements Project** in the amount of $248,295. (2) A project contingency amount of $37,244 (15%). (3) The related Budget Adjustment.

COST TO CITY:

$298,582.00	$-0-	Ridgeway Area Waterline Rpmts.
Cost of this Request	Category/Project Budget	Category/Project Name
5400-5600-5808-00	-0-	Capital Water Mains
Account Number	Funds Used To Date	Program Name
01021-20	-0-	Water and Sewer
Project Number	Remaining Balance	Fund

BUDGET REVIEW: _X_ Budgeted Item _X_ Budget Adjustment Attached

Budget Coordinator

Administrative Services Director

CONTRACT/GRANT/LEASE REVIEW: **GRANTING AGENCY:**

	Date		Date
Accounting Manager	12/12/01	ADA Coordinator	
City Attorney	12/12/01	Internal Auditor	12/12/01
Purchasing Officer	12/12/01		

STAFF RECOMMENDATION: Approval of the contract, and the contingency,

	Date
Division Head	12-12-01
Department Director	12-17-01
Administrative Services Director	1/8/02
Mayor	1/8/02

Cross Reference

New Item: **Yes** _X_ **No**__

Prev Ord/Res #:______

Orig Contract Date:______

Orig Contract # ______

FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

DEPARTMENTAL CORRESPONDENCE

To: Fayetteville City Council

Thru: Dan Coody, Mayor
Greg Boettcher, Public Works Director
Jim Beavers, City Engineer Jim Beavers

From: Sid Norbash, Staff Engineer SN

Date: January 2, 2002

Subject: **Ridgeway Area Water Line Replacement Project And Joyce Boulevard Loop**

BACKGROUND

The Fayetteville Fire Department has identified areas of the City that do not have adequate water supplies for fire fighting operations. A high priority need for increased water distribution capacity exists at the Ridgeway Street area of Mount Sequoyah Subdivision. Existing 2-inch diameter water mains do not meet the minimum fire flow requirements for a residential setting. The construction of water distribution improvements in the Ridgeway Street area was included in the Fiscal Year 2001 Capital Improvement Budget for the Water/Sewer Division.

In addition to this project, the City of Fayetteville has an obligation to construct off-site water distribution improvements along Joyce Boulevard, under the conditions of approval for the Millennium Commercial Center. The Commercial Center developer was required to contribute $6,600.00 towards the construction of 232 feet of 6-inch water main. This water main loop shall improve capacity and reliability of the Fayetteville water distribution system. To secure competitive pricing for this comparatively small project, the Engineering Division has incorporated this activity into the Ridgeway Area Project, and **maps denoting the Project locations are attached.**

On December 6, 2001 bids for this composite project (Ridgeway Area and Joyce Boulevard) were opened, with the five official bids being summarized as follows:

Basic Construction Company	$339,555.00
McClinton-Anchor (APAC)	$330,359,50
Goodwin & Goodwin, Inc.	$286,349.00
Keith Austin Construction Co.	$270,816.00
Fayette Tree & Trench, Inc.	$248,295.00

An itemized bid tabulation with unit prices is attached. The low bidder is Fayetteville Tree and Trench, Inc. with a base bid of $248,295.00. It is estimated that the Ridgeway Area construction portion of this project represents a cost of $237,739 and that the work along Joyce Boulevard represents a cost of $10,556. Fayette Tree & Trench, Inc. is an approvable contractor, with the proposed bid prices being found to be reasonable and competitive.

The budgeted funding for the Ridgeway Area in FY 2001 was $300,000.00, with the low bid price being well below original estimates. The lower bid price is attributed to a cost-saving final design approach developed by the Engineering Division. The preliminary design for this project anticipated replacement of all small diameter water-lines, whereas, final design found several segments of existing line that could be continued in service, reducing scope and costs. Such design decisions produced the noted construction cost under-run.

The costs for the Joyce Boulevard work shall be obtained from the off-site assessment escrow account ($6,600.00) and the annual budget for general water/sewer improvements.

In addition to the funding approval for the base construction contract amount ($248,295.00), the approval should include a 15% contingency ($37,244.00), and anticipated labor charges from the Engineering Division for design, Right Of Way, advertising, bidding, and construction phase activities ($35,872). **The total project funding, to address all aspects of the project costs, is therefore $321,411.**

RECOMMENDATIONS

The Fayetteville City Council is requested to approve the award of the construction contract to Fayetteville Tree and Trench, Inc. in the amount of $248,295.00, to approve funding of a 15% Project Contingency ($37,244.00), and to approve of all necessary Budget Adjustments to fund the Construction Contracts, fund in-house engineering efforts, to allocate off-site escrow funds to the Joyce Boulevard segment of the Project ($6,600.00) and to transfer supplemental funds to fully fund the approved project budget of $321,411.00.

SN/sn
attachments: Vicinity maps, Bid Tabulation Sheet,
Contract, and Budget Adjustment

Ridgeway Water Line Replacement
Revised Cost Estimate
January 7, 2002

	Combined Project	**Ridgeway**	**Joyce Blvd.**
Engineering/ Inspection	$ 21,300	$20,395	$ 905*
R.O.W.	$ 12,750	-0-	$12,750
Advertising	$ 1,222 (re-adv)	$1,170	$ 52
Printing	$ 600	$ 575	$ 25
Sub Total Engineering	$35,872	$22,140	$13,732
Construction	$248,295	$237,739	$10,556
Proposed Contingency (15%)	$ 37,244	$35,662	$1,582
Total	**$321,411**	**$295,541**	**$25,870**
Project Expenditures - 2001	22,829	10,002	12,827
Projected Cost - 2002	$298,582	$285,539	$13,043

The proposed budget adjustment is needed because the project funding lapsed at calendar year end.

CONTRACT

THIS AGREEMENT, made and entered into the 2nd day of January, 2002, by and between the City of Fayetteville, County of Washington, State of Arkansas, Party of the First Part, hereinafter called the Owner, and Fayette Tree & Trench, Inc., of the City of Fayetteville, Arkansas, Party of the Second Part, hereinafter called the Contractor.

WITNESSETH THAT:

WHEREAS, the Owner has called for bids for water system improvements, as set out in the Plans and Specifications and approved by the City of Fayetteville, Arkansas; and

WHEREAS, pursuant to the published calls for bids under said Plans and Specifications, the Contractor is the lowest and best qualified bidder for the construction of said Improvements;

NOW THEREFORE, the Contractor agrees with the Owner to commence and complete the construction of:

Bid No. 01-61 which shall be the **Ridgeway Area Water Line Replacements and Upgrades**, Fayetteville, Arkansas; including all Work required for a complete and acceptable installation, for the unit and lump sum prices bid in the Bid Proposal, all of which become and are a part of this Contract, the total sum thus being

Two hundred forty-eight thousand two hundred ninety-five and 00/100 dollars ($248,295.00), such sum being the agreed amount upon which bonds and liabilities are based, and at his own cost and expense furnish all materials, supplies, labor, machinery, equipment, tools, supervision, bonds, insurance and other accessories and services necessary to complete the said construction in accordance with the conditions and prices stated in the Bid attached hereto and made a part hereof, and in accordance with the Technical Specifications, the General Conditions, the Supplementary Conditions, and in accordance with the Plans, which include all maps, plats, blueprints, and other drawings, and written or printed explanatory matter thereof.

The Contractor agrees to commence work under this contract within ten days of the issuance of the Notice to Proceed and totally complete all work within ninety (90) calendar days.

The Owner agrees to pay the Contractor in current funds for the performance of the contract in accordance with the accepted Bid therefor, subject to additions and deductions, as provided in the Specifications, and to make payment on account thereof as provided below.

As soon as is practicable after the first of each calendar month, and in accordance with the Contract Specifications, the Owner will make partial payments to the Contractor for work performed during the preceding calendar month, based upon the Engineer's estimate of work completed, said estimate being certified by the Contractor and accepted by the Owner. Retainage shall be withheld from the partial payments as provided by Arkansas state laws by the Owner until final completion and acceptance by the Owner and Engineer. The Engineer shall then issue a Final Estimate of work done based upon the original contract and subsequent changes made and agreed upon, it any.

Time is hereby expressly declared to be of the essence of this contract, and the time of beginning, manner of progress and time of completion of the work hereunder shall be and are essential conditions hereof.

The Contractor agrees to commence work within ten (10) calendar days from the date of the Notice to Proceed and to proceed with the construction of the work and to prosecute the work with an adequate force and in a manner so as to complete the work within the time stipulated herein. If the Contractor fails in completing the contract within the time stipulated herein, the Contractor agrees to pay the Owner, as **liquidated damages** the sum of **three hundred dollars ($300.00) per day for each calendar day of delay** in completion, said amounts being fixed and agreed upon by and between the parties hereto. Because of the impracticability and extreme difficulty in fixing and ascertaining the actual damages Owner would in such event sustain, said amounts are to be presumed by the parties to this contract to be the amounts of damage Owner would sustain. Said amounts of liquidated damages shall be deductible from any amount due Contractor under the Final Estimate of said work, after the completion thereof, and Contractor shall be entitled any to the Final Estimate less such amounts of liquidated damages.

If the Contractor be delayed at any time in the progress of the work by any act or neglect of the Owner or of the Owner's employees, or by any other Contractor employed by the Owner, or by changes ordered in the work, or by strikes, lockouts, fire, unusual delay in transportation, unavoidable casualties or any causes beyond the Contractor's control, or by delay authorized by the Engineer pending arbitration, or by any cause which the Engineer shall decide to justify the delay, then the time of completion shall be extended for such reasonable time as the Engineer may decide.

No such extension shall be made for delay occurring more than seven days before claim therefor is made in writing to the Engineer. In the case of a continuing cause for delay, only one claim is necessary.

In the event the Contractor abandons the work hereunder or fails, neglects or refuses to continue the work after ten (10) days written notice, given Contractor by the Owner or by the Engineer, then the Owner shall have the option of 1) declaring this contract at an end, in which event the Owner shall not be liable to the Contractor for any work theretofore performed, or 2) requiring the surety hereto, upon ten (10) days notice, to complete and carry out the contract of

Contractor; and in that event, should be surety fail, neglect or refuse to carry out said contract, 3) said Owner may complete the contract as its own expense and maintain an action against the Contractor and the surety hereto for the actual cost of same, together with any damages or other expense sustained or incurred by Owner in completing this contract, less the total amount provided for hereunder to be paid Contractor upon the completion of this contract.

This contract shall be binding upon the heirs, representatives, successors or assigns of the parties hereto, including the surety.

IN WITNESS WHEREOF, the Owner and Contractor have hereto set their hands and seals, respectively.

Fayette Tree & Trench Firm Name

By Eugene Nottenkamper
Authorized Representative Pres.

Sue Yates
Witnesses*

*If corporation, secretary should attest.

CITY OF FAYETTEVILLE, ARKANSAS

Attest: Sue Yates

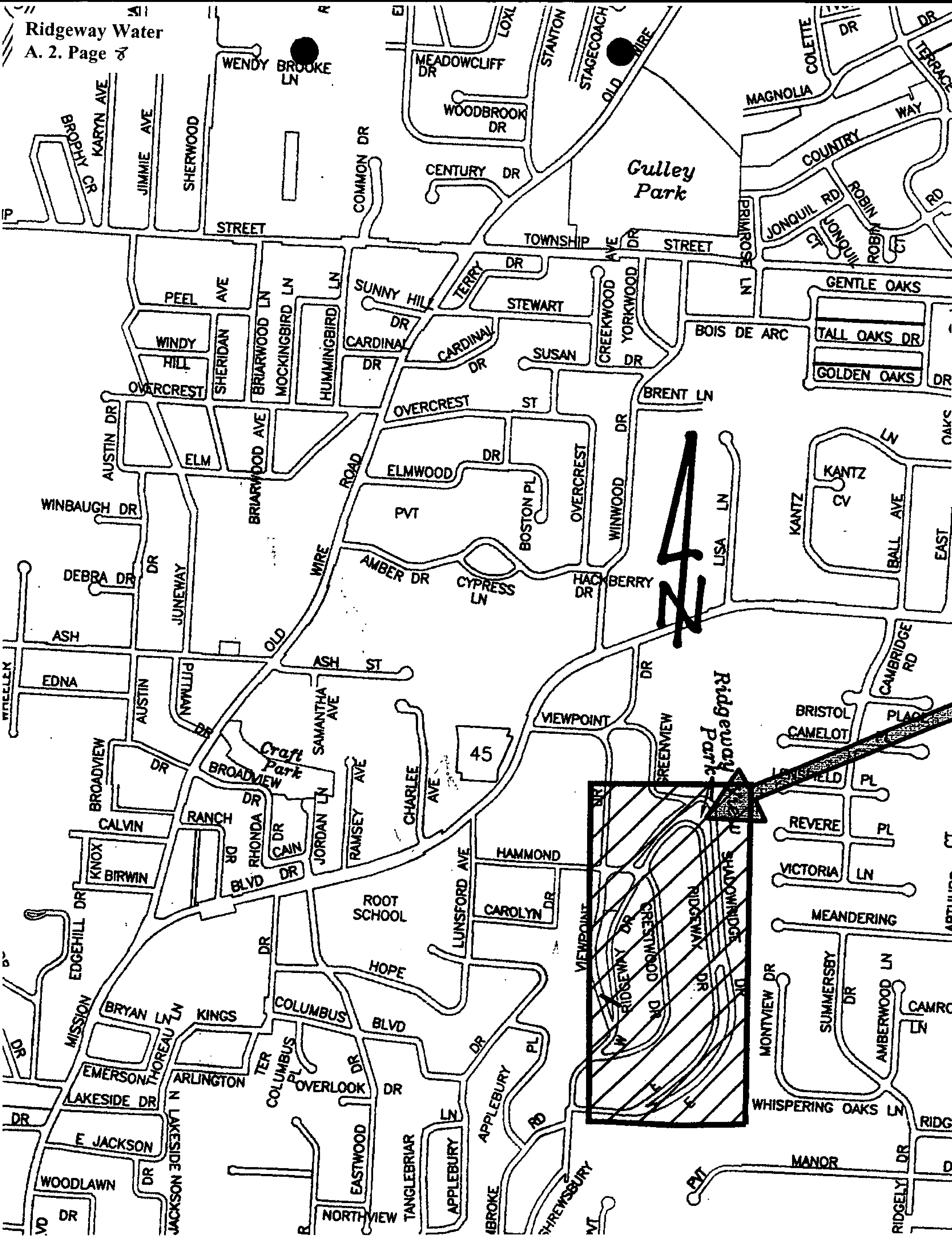
Dan Coody, Mayor

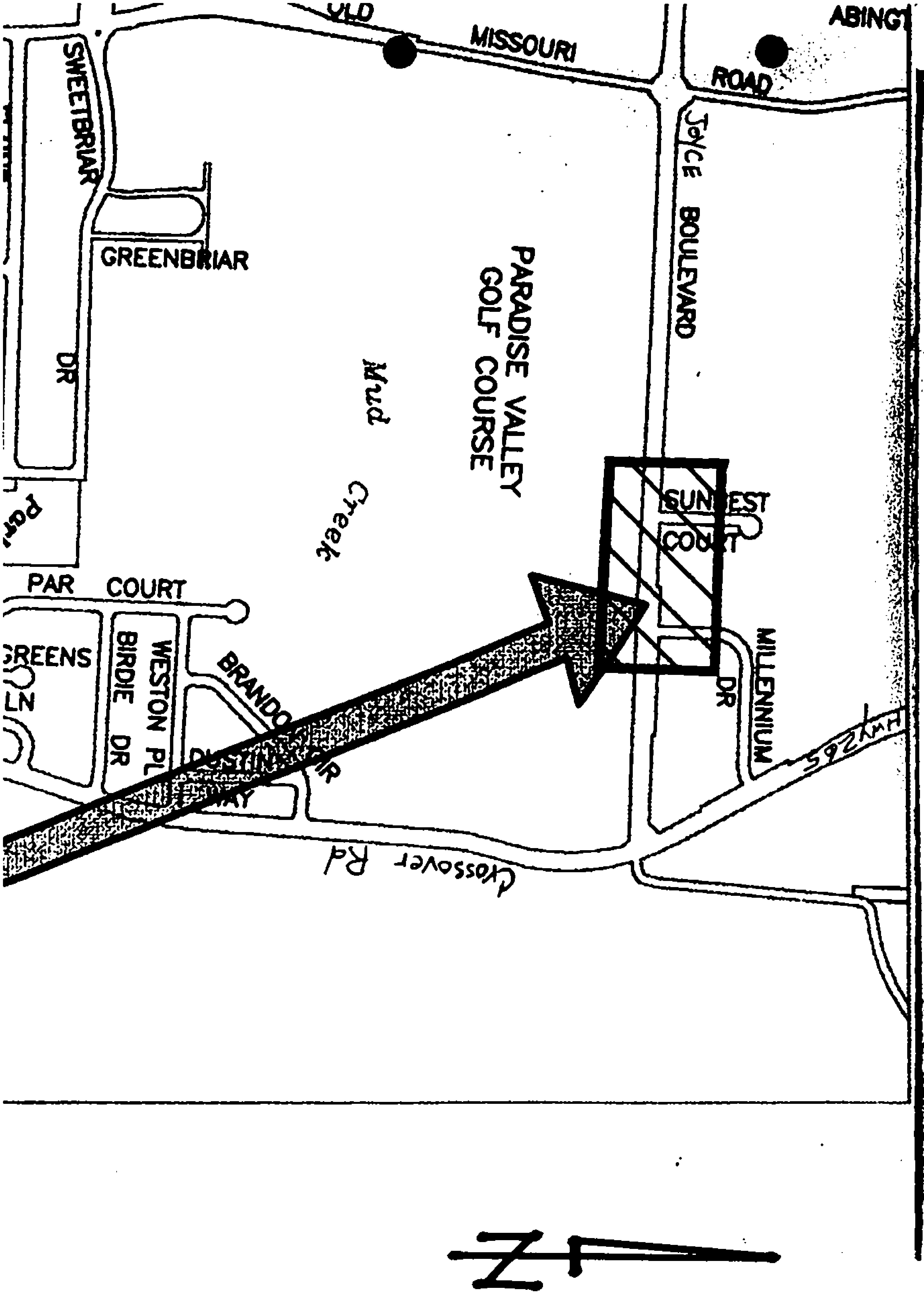
Heather Woodruff, City Clerk

End of Contract

RECEIVED
DEC 11 2001
Eng.

Ridgeway Water
A. 2. Page 8




OLD MISSOURI ROAD
SWEETBRIAR
GREENBRIAR
DR
JOYCE BOULEVARD
PARADISE VALLEY GOLF COURSE
Mud Creek
COURT
PAR COURT
GREENS
LN
BIRDIE DR
WESTON PL
MILLENNIUM
DR
Hwy 265
Crossover Rd
N

CITY OF FAYETTEVILLE

Purchase Requisition

(not a purchase order)

Requisition No.:	Date: 01/03/02
P.O. Number:	Expected Delivery Date: ASAP

Vendor #: 26360	Vendor Name: FAYETTE TREE & TRENCH, INC.
Mail: Yes___ No_XX_	Taxable: Yes___ No_____
Address: PO BOX 471	FOB Point: Fayetteville, AR
City: FAYETTEVILLE	State: AR
Zip: 72702	Ship To Code: 090
Division Head Approval: for Sid Norbash	
Requester: SID NORBASH	*Requester's Employee#: 76
Extension: 205	

Item	Description:	Quantity	Unit of issue	Unit Cost	Extended Cost	Account Number:	Project/SubProject Number:	Inventory #	Fixed Asset #
1	(a) RIDGEWAY AREA W/L REPLACEMENTS	1		$237,739.00	$237,739.00	5400-5600-5808.00	01021-20		
2	(b) JOYCE BLVD. W/L EXTENSION	1		$10,556.00	$10,556.00	5400-5600-5808.00	97 021-20		
3					$0.00				
4					$0.00				
5					$0.00				
6					$0.00				
7					$0.00				
8					$0.00				
9					$0.00				
10					$0.00				
11					$0.00				
	SHIPPING/HANDLING				$0.00				

Special Instructions: PLEASE RETURN PO TO ENGINEERING

Subtotal: $248,295.00

Tax:

TOTAL: $248,295.00

Approvals:
Mayor:
Admin. Services Director:

rchasing office use only)
Department Director: Greg Boettcher
Budget Coordinator:

Purchasing Manager:
Data Processing Mgr:

Ridgeway Water
A. 2. Page 11

East Ridgeway Water Line Improvements
Bid 01-61, Bid Tabulation Form
Bid Opening - December 6, 2001 @2:00 p.m.
City of Fayetteville, Arkansas

Item No	Description	Unit	Estimated Quantity	Keith Austin Construction Unit Price	Keith Austin Construction Extended Price	Basic Construction Unit Price	Basic Construction Extended Price	APAC - McClinton-Anchor Unit Price	APAC - McClinton-Anchor Extended Price
1	8" PVC C-900 DR 14 Water Main w/ tracing wire	LF	4650	$19.90	$92,535.00	$29.00	$134,850.00	$18.36	$85,374.00
2	8"x6" Tapping Tee and Tapping Valve complete in place	EA	3	$1,645.00	$4,935.00	$1,700.00	$5,100.00	$2,140.00	$6,420.00
3	Compact ductile iron fittings (including Mega-lug retainers)	LBS	2000	$3.40	$6,800.00	$3.00	$6,000.00	$3.75	$7,500.00
4	Six (6) inch gate valve with box	EA	12	$625.00	$7,500.00	$600.00	$7,200.00	$569.00	$6,828.00
5	Fire hydrant assemblies including 6" gate valves	EA	9	$2,270.00	$20,430.00	$2,400.00	$21,600.00	$2,360.00	$21,240.00
6	2 1/4"x2" Tie in (excluding gate valve)	LS	1	$315.00	$315.00	$1,500.00	$1,500.00	$930.00	$930.00
7	Two (2) inch gate valve with box	EA	1	$425.00	$425.00	$400.00	$400.00	$365.00	$365.00
8	Asphalt Street Repair	SY	515	$27.00	$13,905.00	$55.00	$28,325.00	$58.85	$30,307.75
9	Concrete Street Repair	SY	90	$85.00	$7,650.00	$50.00	$4,500.00	$51.60	$4,644.00
10	Driveway Repair	SY	50	$68.00	$3,400.00	$40.00	$2,000.00	$42.60	$2,130.00
11	Connection of existing service lines (front yard connections)	EA	25	$965.00	$24,125.00	$500.00	$12,500.00	$1,395.00	$34,875.00
12	Connection of existing service lines (back yard connections)	EA	11	$1,250.00	$13,750.00	$3,700.00	$40,700.00	$5,221.00	$57,431.00
13	3/4" Poly-wrapped copper	LF	10	$3.40	$34.00	$13.00	$130.00	$7.60	$76.00
14	1" Poly-wrapped copper	LF	10	$3.40	$34.00	$15.00	$150.00	$8.00	$80.00
15	Sodding of non-paved trenches	LS	1	$6,500.00	$6,500.00	$14,000.00	$14,000.00	$27,500.00	$27,500.00
16	Solid rock excavation	CY	10	$227.00	$2,270.00	$150.00	$1,500.00	$240.00	$2,400.00
17	Class 7 aggregate backfill	TON	630	$23.00	$14,490.00	$16.00	$10,080.00	$13.50	$8,505.00
18	Trench Safety per OSHA requirements	LS	1	$1,700.00	$1,700.00	$750.00	$750.00	$465.00	$465.00
19	Mobilization	LS	1	$10,200.00	$10,200.00	$2,000.00	$2,000.00	$8,575.00	$8,575.00
20	Tree Protection Fencing	LF	35	$5.80	$203.00	$10.00	$350.00	$8.40	$294.00
21	Water Under Sanitary Sewer Crossing	EA	1	$1,135.00	$1,135.00	$1,200.00	$1,200.00	$1,320.00	$1,320.00
22	Asphalt Street Repair (Line "C" STA 0+00 - STA 10+50)	SY	585	$28.00	$16,380.00	$32.00	$18,720.00	$20.35	$11,904.75
23	Install polyethylene encasement under pavement by directional bore	LF	650	$34.00	$22,100.00	$40.00	$26,000.00	$20.30	$13,195.00
	Subtotal Construction Costs				$279,816.00		$339,653.00		$330,358.90
	Contingency 15%								
	Total Construction Costs								

Item No	Fayette Tree & Trench Unit Price	Fayette Tree & Trench Extended Price	Goodwin & Goodwin Unit Price	Goodwin & Goodwin Extended Price	Mean Value Unit Price	Mean Value Extended Price	Median Value Unit Price	Median Value Extended Price	City of Fayetteville Unit Price	City of Fayetteville Extended Price
1	$19.00	$88,350.00	$21.00	$97,650.00	$21.45	$99,751.80	$19.90	$92,535.00	$20.00	$93,000.00
2	$1,465.00	$4,395.00	$18.00	$54.00	$1,393.60	$4,180.80	$1,645.00	$4,935.00	$1,600.00	$4,800.00
3	$3.25	$6,500.00	$3.50	$7,000.00	$3.38	$6,760.00	$3.40	$6,800.00	$4.10	$8,200.00
4	$480.00	$5,760.00	$600.00	$7,200.00	$574.80	$6,897.60	$600.00	$7,200.00	$800.00	$9,600.00
5	$1,850.00	$16,650.00	$2,000.00	$18,000.00	$2,176.00	$19,584.00	$2,270.00	$20,430.00	$1,800.00	$16,200.00
6	$450.00	$450.00	$800.00	$800.00	$799.00	$799.00	$800.00	$800.00	$500.00	$500.00
7	$360.00	$360.00	$400.00	$400.00	$388.00	$388.00	$400.00	$400.00	$250.00	$250.00
8	$35.00	$18,025.00	$45.00	$23,175.00	$44.17	$22,747.55	$45.00	$23,175.00	$35.00	$18,025.00
9	$50.00	$4,500.00	$85.00	$7,650.00	$64.32	$5,788.80	$51.60	$4,644.00	$36.00	$3,240.00
10	$40.00	$2,000.00	$50.00	$2,500.00	$48.12	$2,406.00	$42.60	$2,130.00	$32.00	$1,600.00
11	$550.00	$13,750.00	$600.00	$15,000.00	$802.00	$20,050.00	$600.00	$15,000.00	$350.00	$8,750.00
12	$1,500.00	$16,500.00	$1,000.00	$11,000.00	$2,534.20	$27,876.20	$1,500.00	$16,500.00	$1,200.00	$13,200.00
13	$4.50	$45.00	$15.00	$150.00	$8.70	$87.00	$7.60	$76.00	$10.00	$100.00
14	$15.00	$150.00	$18.00	$180.00	$11.88	$118.80	$15.00	$150.00	$12.00	$120.00
15	$20,925.00	$20,925.00	$25,000.00	$25,000.00	$18,785.00	$18,785.00	$20,925.00	$20,925.00	$8,000.00	$8,000.00
16	$200.00	$2,000.00	$90.00	$900.00	$181.40	$1,814.00	$200.00	$2,000.00	$48.00	$480.00
17	$14.00	$8,820.00	$18.00	$11,340.00	$16.90	$10,647.00	$16.00	$10,080.00	$27.00	$17,010.00
18	$4,000.00	$4,000.00	$500.00	$500.00	$1,483.00	$1,483.00	$750.00	$750.00	$1,500.00	$1,500.00
19	$4,000.00	$4,000.00	$10,000.00	$10,000.00	$6,955.00	$6,955.00	$8,575.00	$8,575.00	$10,000.00	$10,000.00
20	$10.00	$350.00	$15.00	$525.00	$9.84	$344.40	$10.00	$350.00	$8.00	$280.00
21	$2,500.00	$2,500.00	$1,500.00	$1,500.00	$1,531.00	$1,531.00	$1,320.00	$1,320.00	$2,000.00	$2,000.00
22	$35.00	$20,475.00	$45.00	$26,325.00	$32.07	$18,760.95	$32.00	$18,720.00	$22.00	$12,870.00
23	$12.00	$7,800.00	$30.00	$19,500.00	$27.26	$17,719.00	$30.00	$19,500.00	$14.00	$9,100.00
Subtotal Construction Costs		$248,295.00		$286,343.00		$285,074.80		$274,895.00		$238,825.00
Contingency 15%		$37,244.25								15%
Total Construction Costs		$285,539.25								$274,648.75

Ridgeway Water
A. 2. Page 12

City of Fayetteville, Arkansas
Budget Adjustment Form

Budget Year	Department:	Water & Sewer	Date Requested	Adjustment #
2002	Division:	Capital Water Mains	01/08/2002	
	Program:			

Project or Item Requested:

$285,539 is requested for the East Ridgeway Water Line Project.

$13,043 is requested for the Water & Sewer Cost Sharing Project.

Project or Item Deleted:

$298,582 from the fund balance is proposed for this project.

Justification of this Increase:

The item is requested to fund the construction improvements.

Justification of this Decrease:

Both projects were funded in 2001, the expenditure authorization lapsed at year end and the project needs to be reauthorized. The budgeted funds for this project were closed to fund balance at December 31, 2001.

Increase Expense (Decrease Revenue)

Account Name	Amount	Account Number					Project Number	
Waterline Improvements	285,539	5400	5600		5808	00	01021	20
Waterline Improvements	13,043	5400	5600		5808	00	97021	20

Decrease Expense (Increase Revenue)

Account Name	Amount	Account Number					Project Number	
Use of Fund Balance	298,582	5400	0940		4999	99		

Approval Signatures

Requested By ______ Date ______

[signature] Budget Manager — Date 1-4-02

Department Director ______ Date ______

[signature] Admin. Services Director — Date 1/6/02

Mayor ______ Date ______

Budget Office Use Only

Type: A B C D E

Date of Approval ______

Posted to General Ledger ______

Posted to Project Accounting ______

Entered in Category Log ______

Blue Copy: Budget & Research / Yellow Copy: Requester

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Boys and Girls Club
A. 3. Page 1

STAFF REVIEW FORM

__X__ AGENDA REQUEST
_____ CONTRACT REVIEW
_____ GRANT REVIEW

FOR: COUNCIL MEETING OF February 5, 2002 **MAYOR'S APPROVAL** ___________

FROM:

Bob Davis — Name
City Alderman — Division
Department

ACTION REQUIRED: A Resolution To Waive The Building Permit Fee And Other Developmental Fees For The Construction Of The New Fayetteville Boys And Girls Club By The Fayetteville Boys And Girls Club, Inc.

COST TO CITY:

Cost of this Request	Category/Project Budget	Category/Project Name
Account Number	Funds Used to Date	Program Name
Project Number	Remaining Balance	Fund

BUDGET REVIEW: _____ Budgeted Item _____ Budget Adjustment Attached

Budget Coordinator
Administrative Services Director

CONTRACT/GRANT/LEASE REVIEW: **GRANTING AGENCY:** ___________

Accounting Manager	Date	Internal Auditor	Date
City Attorney	Date 1-24-02	ADA Coordinator	Date
Purchasing Officer	Date		

STAFF RECOMMENDATION:

Division Head	Date
Department Director	Date
Administrative Services Director	Date
Mayor	Date

CROSS REFERENCE

New Item: Yes No

Previous Ordinance/Resolution No.: ___________

RESOLUTION NO. ______

A RESOLUTION TO WAIVE THE BUILDING PERMIT FEE AND OTHER DEVELOPMENTAL FEES FOR THE CONSTRUCTION OF THE NEW FAYETTEVILLE BOYS AND GIRLS CLUB BY THE FAYETTEVILLE BOYS AND GIRLS CLUB, INC.

WHEREAS, the Fayetteville Boys and Girls Club, Inc. is a non-profit organization dedicated to providing recreational and educational opportunities to Fayetteville's youth; and

WHEREAS, the City of Fayetteville has long worked with and supported the Fayetteville Boys and Girls Club and the Fayetteville Youth Center and has contractual agreements to fund public recreation at the Boys and Girls Club; and

WHEREAS, the new Fayetteville Boys and Girls Club is being developed and constructed in conjunction with the development of adjoining city park land to the mutual benefit of both the Boys and Girls Club, Inc. and the City of Fayetteville; and

WHEREAS, it serves the public interest and is beneficial to the City as a whole that the Fayetteville Boys and Girls Club, Inc. provides such youth oriented recreation and education in Fayetteville.

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

Section 1. That the City Council of the City of Fayetteville, Arkansas finds that waiving the building permit fee and all other developmental fees normally required by the Unified Development Ordinance for the Fayetteville Boys and Girls Club, Inc.'s construction of the new Fayetteville Boys and Girls Club serves the public interest and is beneficial to the City as a whole.

Section 2. That the City Council of the City of Fayetteville, Arkansas hereby waives the normal building permit fee and all other developmental fees normally required by the Unified Development Ordinance for the Fayetteville Boys and Girls Club, Inc.'s construction of the new Fayetteville Boys and Girls Club located on Rupple Road in Fayetteville, Arkansas during the year 2002.

PASSED and **APPROVED** this the 5th day of February, 2002.

APPROVED:

DRAFT

By: ______________________
DAN COODY, Mayor

ATTEST:

By: ______________________
Heather Woodruff, City Clerk

STAFF REVIEW FORM

X AGENDA REQUEST
CONTRACT REVIEW
GRANT REVIEW

Council Mtg of Feb 5, 2002

FROM:

Tim Conklin	Planning	Urban Development
Name	Division	Department

ACTION REQUIRED: For the mayor to approve a change order in the amount of $7,500 for five additional "person-days" for Duncan Associates to attend additional impact fee meetings. ($1,500/ person/day). Approval of a budget adjustment is requested.

COST TO CITY:

$7500.00	39,174 (after ... approval)	Impact Fee Study
Cost of this Request	Category/Project Budget	Category/Project Name
4470-4470-5314-00 5400-1820-5314-00	15,198	
Account Number	Funds Used To Date	Program Name
00008-1	23,976	Sales Tax Water + Sewer
Project Number	Remaining Balance	Fund

BUDGET REVIEW: X Budgeted Item X Budget Adjustment Attached

Budget Manager

Administrative Services Director

CONTRACT/GRANT/LEASE REVIEW: **GRANTING AGENCY:**

Accounting Manager	Date 01/14/02	Internal Auditor	Date 1/10/02
City Attorney	Date 1/14/02	ADA Coordinator	Date
Purchasing Officer	Date 1/14/02		

STAFF RECOMMENDATION: Approval of change order.

Division Head	Date 1-10-02
Department Director	Date 1-15-02
Administrative Services Director	Date 1/17/02
Mayor	Date 1/17/02

Cross Reference

New Item: **Yes**

Prev Ord/Res #: 76-01

Orig Contract Date:

Orig Contract Number: 803

FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

113 W. Mountain St.
Fayetteville, AR 72701
Telephone: (501) 575-8264

PLANNING DIVISION CORRESPONDENCE

TO:	Mayor Dan Coody Fayetteville City Council
THRU:	Hugh Earnest, Urban Development Director
FROM:	Tim Conklin, A.I.C.P., City Planner
DATE:	January 18, 2002

BACKGROUND

Staff is bringing forward a change order to the contract for Duncan Associates to provide additional days for the consultant to attend meetings in Fayetteville. The change order will allow five additional person days at a flat rate of $1,500 per person per day to attend additional meetings for a total cost of $7,500. Under this contract rate, the consultant is responsible for all costs associated with all travel, food, lodging, and time spent in Fayetteville to attend additional meetings.

CURRENT STATUS

The impact fee study is ongoing and additional meetings with the consultant will be necessary to complete this project.

RECOMMENDATION

Staff recommends approval of the requested change order.

AMENDMENT TO
PROFESSIONAL SERVICES AGREEMENT
BETWEEN
CITY OF FAYETTEVILLE AND DUNCAN ASSOCIATES

This Amendment to Professional Services Agreement is made as of January ____, 2002, by and between the City of Fayetteville, a political subdivision of the State of Arkansas (City) and James Duncan and Associates, Inc., a professional corporation doing business as Duncan Associates located in Austin, Texas (Consultant).

WHEREAS, City has engaged Consultant to perform certain services relating to the development of impact fee reports, studies and ordinances.

WHEREAS, the scope of services has been divided into two phases, and this amendment covers Phase Two, which addresses the preparation of detailed impact fee studies for facilities selected in Phase One.

NOW, THEREFORE, in consideration of the mutual covenants and conditions hereinafter provided, City and Consultant agree as follows.

1. **Professional Services.** Consultant shall furnish amended services to City as set forth in Exhibit "A," which is attached hereto and incorporated herein by reference.

2. **Compensation and Hourly Rates.** For amended services provided by Consultant as described in Exhibit "A," City shall compensate Consultant based upon the completion of individual tasks and in accordance with the amended fee schedule outlined in Exhibit "C". Payment of each such invoice shall be due to Consultant within thirty (30) days of receipt by City.

IN WITNESS WHEREOF, City and Consultant have caused this instrument to be signed by their respective duly authorized officers, all on the day and year first above written.

ATTEST:

Clancy Muller

JAMES DUNCAN AND ASSOCIATES, INC.

By: James B. Duncan
James B. Duncan, President

CORPORATE SEAL

ATTEST:

____

CITY OF FAYETTEVILLE

By:

Exhibit A

AMENDED SCOPE OF SERVICES

The project has been divided into two phases. The earlier Phase One: "Policy Directions," reviewed the legal framework, reviewed local data and potential fees, and determined in conjunction with local officials the type of impact fee system that should be developed in the this second phase.

This Phase Two will implement the policy directions provided by the City at the conclusion of Phase One. It entails the development of impact fees for water, wastewater and roads, as well as an update and revision of the City's existing park land dedication and fee-in-lieu requirements.

PHASE TWO: IMPLEMENTATION

Task 2.1: Draft Impact Fee Study

Facilities to be included in the impact fee study include water transmission, distribution and storage facilities; wastewater collection and treatment plant facilities; arterial and collector roads, including City participation in the cost of state road improvements; and parks. The park component will be limited to updating the City's park land dedication requirements, as well as updating the fees paid in lieu of dedication.

The first task will be to prepare a preliminary draft of the impact fee study for staff review. The impact fee study will include all of the elements mandated by statutory and constitutional requirements. These elements include an inventory of existing capital facilities; the cost of improvements required to remedy any existing service deficiencies; and the cost of improvements required to accommodate increased service demands.

The impact fee studies will calculate the cost per service unit to provide new development with the existing or adopted level of service, as well as appropriate revenue credits to ensure that new development is not charged more than its proportionate share of the cost of new facilities. Each study will include a table that establishes the number of service units and amount of facility demand associated with different land use types. Finally, the studies will include, for each of the facility types, a net unit cost schedule that represents the maximum impact fees that could be charged.

<u>DELIVERABLES</u>: DRAFT IMPACT FEE STUDIES

Task 2.2: Local Review Meeting

At least two weeks after delivery of the draft Impact Fee Study, Consultant will schedule a one-day meeting with City staff to present the draft Impact Fee Study and receive staff comments. We will also use this opportunity to meet with developer representatives or a stakeholder advisory committee.

DELIVERABLE: LOCAL REVIEW MEETING (1 PERSON-DAY)

Task 2.3: Final Impact Fee Study

Following the local review meeting, we will prepare the final draft of the impact fee study. The final draft will reflect staff and advisory committee comments on the initial draft. The final draft of the study will be delivered in both original and digital format. It will be accompanied by a spreadsheet in Excel 97 or other format specified by the City that contains all of the impact fee calculations and can be used by staff to easily update the study.

DELIVERABLE: FINAL IMPACT FEE STUDY

Task 2.4: Public Participation

In addition to the local review meeting in Task 2.2, key members of our team will be available to attend and participate in two additional meetings with City staff, a stakeholders advisory committee, Planning Commission, City Council, or the general public as desired by the City. Joint meetings or multiple meetings held on the same day will count as one meeting. The consultant team will prepare exhibits and handouts suitable for public meetings that illustrate and summarize the results and recommendations of the Phase Two: Implementation portion of the project. The meetings should be scheduled approximately two weeks after delivery of the documents to provide time for local review prior to the meetings. This task is limited to a maximum of two person-days of out-of-town consultant time. Team members will also be available for additional meetings on a time plus expense basis.

DELIVERABLE: PUBLIC MEETINGS (TWO PERSON-DAYS)

Task 2.5: Additional Presentations

Consultant shall attend additional meetings as requested by the City comprising up to five (5) additional person-days.

DELIVERABLE: PUBLIC MEETINGS (UP TO FIVE PERSON-DAYS)

Exhibit C
CONSULTANT COMPENSATION

The total cost of the professional services described in the accompanying proposal for Phase Two is ~~$45,725~~ $53,225. This lump-sum budget includes all direct and indirect expenses incurred by the consultant team in performing the services. The breakdown of project cost by task is presented below. The City will be billed monthly based on percent completion of individual tasks. Additional attendance at meetings under Task 2.5 will be billed only if attendance is requested by the City, at the rate of $1,500 per person-day.

Task		Amount
Task 2.1:	Draft Impact Fee Study	
Task 2.1a:	Roads	$9,785
Task 2.1b:	Water	$9,025
Task 2.1c:	Wastewater	$9,025
Task 2.1d:	Park Land Dedication	$3,655
Task 2.1 Subtotal		$31,490
Task 2.2:	Local Review Meeting	$1,260
Task 2.3:	Final Impact Fee Study	$9,975
Task 2.4:	Public Participation	$3,000
Task 2.5:	Additional Presentations (5)	$7,500
Total, Phase Two		~~$45,725~~ $53,225

Additional services beyond those specified in the accompanying Scope of Services may be negotiated or billed on a time and expense basis at the hourly rates provided on the Schedule of Professional Fees and Expenses. Extra meetings attended by one professional will be billed on a fixed-fee basis of $1,500 each, which includes all travel expenses.

SCHEDULE OF PROFESSIONAL FEES AND EXPENSES

Principal	$125
Land Use Attorney	$150
Senior Associates	$95
Associates	$75

Billable Expenses: Overnight Mail Only

AMENDMENT TO
PROFESSIONAL SERVICES AGREEMENT
BETWEEN
CITY OF FAYETTEVILLE AND DUNCAN ASSOCIATES

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IN WITNESS WHEREOF, City and Consultant have caused this instrument to be signed by their respective duly authorized officers, all on the day and year first above written.

ATTEST:

JAMES DUNCAN AND ASSOCIATES, INC.

By:
James B. Duncan, President

CORPORATE SEAL

ATTEST:

CITY OF FAYETTEVILLE

By:

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DELIVERABLE: LOCAL REVIEW MEETING (1 PERSON-DAY)

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DELIVERABLE: FINAL IMPACT FEE STUDY

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DELIVERABLE: PUBLIC MEETINGS (TWO PERSON-DAYS)

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Consultant shall attend additional meetings as requested by the City comprising up to five (5) additional person-days.

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Total, Phase Two		~~$45,725~~ $53,225

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SCHEDULE OF PROFESSIONAL FEES AND EXPENSES

Principal	$125
Land Use Attorney	$150
Senior Associates	$95
Associates	$75
Billable Expenses: Overnight Mail Only	

City of Fayetteville, Arkansas
Budget Adjustment Form

Duncan & Assoc.
A. 4. Page 15

Budget Year	Department: Sales Tax Capital Improvements Fund	Date Requested	Adjustment #
2002	Division:	January 23, 2002	
	Program:		

Project or Item Requested:
Approval of a roll-forward budget adjustment for the Impact Fee Study - City Wide project that reappropriates the remaining funding for the projet in 2002.

Project or Item Deleted:
None. The unused project funds approved in 2001 will be used to fund this request.

Justification of this Increase:
The project is in progress and the funding is needed to complete the remaining phases of work.

Justification of this Decrease:

Increase Expense (Decrease Revenue)

Account Name	Amount	Account Number				Project Number	
Professional Services	13,322	4470	9470	5314	00	00008	1
Professional Services	10,654	5400	1820	5314	00	00008	1

Decrease Expense (Increase Revenue)

Account Name	Amount	Account Number				Project Number	
Use of Fund Balance	13,322	4470	0947	4999	99		
Use of Fund Balance	10,654	5400	0940	4999	99		

Approval Signatures

Requested By — Date

Stephen Davis — 1-23-02
Budget Manager — Date

Department Director — Date

Admin. Services Director — Date

Mayor — Date

Budget Office Use Only

Type: A B C D E

Date of Approval

Posted to General Ledger

Posted to Project Accounting

Entered in Category Log

Blue Copy: Budget & Research / White Copy: Requester

H:\BUDGET\PROJECTS\BUD_ADJ\BA_2002\IMPAC_BA.WK

STAFF REVIEW FORM

X AGENDA REQUEST
X CONTRACT REVIEW
___ GRANT REVIEW

Amendment No. 2 to Engineering Services agreement

For the Fayetteville City Council meeting of February 5, 2002

FROM:

Name	Division	Department
Ray Boudreaux	Airport	Aviation & Economic Development

ACTION REQUIRED: Review and signature of the Mayor

COST TO CITY:

$ 116,730	$ 473,000	Professional Services
Cost of this Request	Category/Project Budget	Category/Project Name
5550-3960-5314-00	$ -0-	Airport Capital Exp
Account Number	Funds used to date	Program Name
98054 1	$ 473,000	Airport
Project Number	Remaining Balance	Fund

BUDGET REVIEW: X Budgeted Item ___ Budget Adjustment Attached

Budget Manager	1/21/02	Administrative Services Dir.	Date

CONTRACT/GRANT/LEASE REVIEW:

Accounting Manager	1/21/02	Internal Auditor	1/21/02	**GRANTING AGENCY**
City Attorney	1/21/02	ADA Coordinator	Date	
Purchasing Officer	1/22/02	Grants Coordinator	Date	

STAFF RECOMMENDATION: Approval & signature of Mayor

Division Head	Date 1/18/02
Department Director	Date 1/23/02
Administrative Services Director	Date 1/23/02
Mayor	Date

Cross Reference

New Item: Yes No
Prev. Ord/Res#: ___
Orig Cont. Date: 3/7/00
Orig Cont #: ___

STAFF REVIEW FORM

Description:

Meeting Date: 02/05/2002

Amendment No. 2 to Agreement for Engineering Services - McClelland Consulting Engineers, Inc.

Comments:

Budget Manager

Reference Comments:

Accounting Manager

Reference Comments:

City Attorney

Reference Comments:

Purchasing Officer

Reference Comments:

Internal Auditor

Reference Comments

ADA Coordinator

Reference Comments:

Grants Coordinator

Reference Comments:

FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS
DAN COODY, MAYOR

4500 School Ave., Suite F
Fayetteville, AR 72701
501.718.7642

AVIATION AND ECONOMIC DEVELOPMENT
RAY M. BOUDREAUX, DIRECTOR

TO:	Dan Coody, Mayor City Council Members
THRU:	Staff Review Committee
FROM:	Ray M. Boudreaux, Director
DATE:	January 4, 2002
SUBJECT:	Amendment #2 to Agreement for Engineering Services Task Order #9, Eastside Taxiway Extension

Background: On March 7, 2000 the Fayetteville City Council approved an engineering contract with McClelland Consulting Engineers, Inc. for multiple capital improvement projects scheduled at Drake Field. The contract was for one year with two one-year extensions. Included in the original contract approval were Task order #'s 1 & 2, Lancaster Drive extension project, and Engineering and construction observation of two 8-bay T-hangars respectively.

On December 19, 2000, the engineering contract was approved for renewal of the second year extension period with task order #'s 3 thru 8 added. Projects included Large Scale Development Plan, Pavement Rehabilitation, and hangar design. Other projects included in the task list did not go forward due to changing conditions/priorities. Task order # 8, the Pavement Rehabilitation project, is currently underway and due to be completed in the spring 2002. The current contract with McClelland Consulting Engineers expires on March 6, 2002.

Purpose: Anticipated in 2002 is Phase I of the extension of Taxiway "A" to the east-side development area in proximity to the pending USDA Forest Service Firefighting Base development.

The purpose of this request is to approve renewal of the engineering contract for the third of the possible three years as described in the initial engineering services agreement, and approval of Task Order # 9, Engineering and Construction Observation for Taxiway "A" Extension.

The Airport Board, at their meeting of January 10, 2002 approved of the engineering contract renewal and initiation of Task Order #9, and requested the contract be forwarded to the City Council for approval.

Budget Considerations:
The taxiway extension project is included in the airport's Capital Improvements program budget. No change to the budget is necessary at this time.

Requested Action: Staff recommends approval of, and signature by the Mayor of the attached Agreement for Engineering Services with McClelland Consulting Engineers, Inc.

RB/jn

Attachments: Amendment No. 2 to Agreement for Engineering Services - 3 originals
Task Order #9, Eastside Taxiway Extension - 3 originals

AMENDMENT NO. 2
TO
AGREEMENT FOR ENGINEERING SERVICES
DRAKE FIELD, FAYETTEVILLE MUNICIPAL AIRPORT

STATE OF ARKANSAS

COUNTY OF WASHINGTON

The basic agreement entitled CITY OF FAYETTEVILLE, AGREEMENT FOR ENGINEERING SERVICES, is hereby amended. The referenced basic agreement pertains to proposed improvements to Drake Field, Fayetteville's Municipal Airport. This Amendment entered into and executed on the date indicated beneath the signature blocks, by and between the City of Fayetteville (OWNER) and McClelland Consulting Engineers (ENGINEER) extends the duration of the contract for the third of a possible three years, as allowed in the first paragraph on page 1 of the basic agreement. This action is taken to allow the Engineer to undertake design and construction administration services beyond the already-amended contract expiration date of March 7, 2002. As a result, the amended contract expiration date becomes March 7, 2003.

SECTION I - PROJECT DESCRIPTION

The types of projects to be undertaken during this extended period include, but are not necessarily limited to, Large Scale Development Planning, hangar additions, pavement rehabilitation and improvements, site drainage improvements, and runway/taxiway construction.

SECTION II – BASIC AGREEMENT IN EFFECT:

Except as amended specifically herein, the basic AGREEMENT FOR ENGINEERING SERVICES shall remain in full force as originally approved and executed.

IN WITNESS WHEREOF, the parties hereto have caused this AGREEMENT to be duly executed as of the date and year first herein written.

FOR THE CITY OF FAYETTEVILLE:

By: ______________________ Attest: ______________________
Mayor

Date: ______________________

FOR McCLELLAND CONSULTING ENGINEERS, INC.:

By: John C. Quinn Attest: R. Wayne Jones
President

Date: 1/3/02

TASK ORDER NO. 9
EAST SIDE PARALLEL TAXIWAY

STATE OF ARKANSAS

COUNTY OF WASHINGTON

This Task Order is written pursuant to the basic agreement entitled CITY OF FAYETTEVILLE, AGREEMENT FOR ENGINEERING SERVICES, executed on March 7, 2000. The referenced basic agreement pertains to proposed improvements to Drake Field, Fayetteville's Municipal Airport. This Task Order entered into and executed on the date indicated below the signature block, by and between the City of Fayetteville (OWNER) and McClelland Consulting Engineers (ENGINEER) sets forth the project description, project schedule, and engineering fees related to pavement rehabilitation and improvements, Drake Field.

SECTION I - PROJECT DESCRIPTION

The project is to consist of: performing the preliminary engineering for extending the East side parallel Taxiway "A" at Drake Field between Taxiway "D" and Runway "34" at the South end of the Airport; formulating a phasing plan for construction; providing preliminary cost estimates for each phase; and performing the engineering services associated with the preliminary and detailed design and construction of the initial phase of development, which will extend southward from Taxiway "D" a distance between 1000 and 2800 feet (with a minimum paved width of 50 feet). During the preliminary engineering phase of the work, consideration will be given to widening Taxiway "D" and/or constructing a cross-connecting taxiway between the proposed parallel taxiway at Taxiway "E" or "F."

SECTION II - PROJECT SCHEDULE

From the time the OWNER issues the Notice To Proceed (NTP), the ENGINEER will endeavor to execute the project within the following time periods:

Task	Completion After NTP
A. Surveying:	45 calendar days
B. Geotechnial Investigation:	45 calendar days
C. Preliminary Engineering:	60 calendar days
D. Phasing Plan & Cost Estimates:	65 calendar days
E. Meeting with City to Present Engineering Report:	70 calendar days
F. Submittal of detailed Design, Phase I:	120 calendar days
G. Advertise for bids, Phase I:	150 calendar days

SECTION III - SCOPE OF SERVICES

The ENGINEER shall, generally, provide those services listed in the basic agreement which are applicable to this specific Task Order. Specifically, the project is likely to include:

A. Surveying for the entire length of the proposed East side parallel taxiway.

B. Performing a geotechnical investigation of the full length of the proposed parallel taxiway to categorize soil types and subsurface conditions to be encountered.

C. Performing preliminary engineering of horizontal and vertical alignment of the full length of the proposed parallel taxiway; including formulating a plan to phase the construction of the various segments of the parallel taxiway so as to fit each phase within the annual funding likely to be available, formulating preliminary construction cost estimates for each phase of the proposed implementation plan, and meeting with the City to discuss sources of funding and an implementation schedule for each phase of construction.

D. Performing the detailed design of the Taxiway Extension and Phase the construction project as determined by the City.

E. Coordinating with the U.S. Forestry Service, Federal Aviation Administration and the Arkansas State Department of Aeronautics to secure their review of the proposed project.

F. Advertising for competitive bids and recommending the award of a construction contract for Phase I.

G. Prepare Funding Application for FAA Grant.

H. Construction Administration, Inspection and prepare "Record Drawings" for Phase I at the completion of construction based upon the Contractor's mark-ups for Phase I.

I. Construction staking for a baseline for Phase I.

J. Construction materials testing for Phase I.

SECTION IV - FEES AND PAYMENTS

The following fees are to be paid to the Engineer as compensation for his services:

A. Surveying: a lump sum of $ 6,000.

B. Geotechnical Investigation: a lump sum of $ 6,420.

C. Preliminary Engineering; Phasing Plan, Cost Estimates, and Meetings a lump sum of $ 11,600.

D. Detailed Plans & Specs for Phase I: a lump sum of $ 23,260.

E. Coordination with Regulatory Agencies: hourly rates, estimated to be $ 2,000.

F. Bidding Service: a lump sum of $ 2,530.

G Funding Application Service a lump sum of $ 1,040.

H. Construction Administration & Inspection: hourly rates, estimated to be
Contr. Admin $ 5650.
Observation $ 42,200.
Record Drawings $ 1930.

I. Construction Staking: a lump sum of $ 1,030.

J. Construction materials testing: hourly rates & unit prices, estimated to be $ 13,070.

Appendix A presents hourly rates for personnel anticipated to be assigned to this project by the ENGINEER.

Appendix B presents the basis of payments to the ENGINEER.

SECTON V - BASIC AGREEMENT IN EFFECT:

Except as amended specifically herein, the basic AGREEMENT FOR ENGINEERING SERVICES shall remain in full force as originally approved and executed.

IN WITNESS WHEREOF, the parties hereto have caused this AGREEMENT to be duly executed as of the date and year first herein written.

FOR THE CITY OF FAYETTEVILLE:

By: ______________________________ Attest: ______________________________
Mayor

Date: ______________________________

FOR McCLELLAND CONSULTING ENGINEERS, INC.:

By: John C. Quinn Attest: R Wayne Jones
President Vice President

Date: 1/18/02

APPENDIX A

Hourly Rates for Personnel
Drake Field, Fayetteville Municipal Airport

CATEGORY	BILLABLE HOURLY RATE RANGE
Project Director	$98 to $112
Principal Engineer	$81 to $98
Engineer III	$65 to $81
Engineer II	$49 to $65
Engineer I	$41 to $49
Registered Surveyor	$41 to $49
Computer Technician	$46 to $55
Engineering Technician	$46 to $57
Survey Crew (2 man)	$55 to $68
Clerical Support	$22 to $38
CADD Technician III	$44 to $55
CADD Technician II	$32 to $44
CADD Technician I	$22 to $32
Soils Lab Supervisor	$38 to $44
Soils Technician II	$27 to $33
Soils Technician I	$22 to $27

Airport Taxiway Ext
A. 5. Page 12

APPENDIX "B"
BASIS FOR PAYMENTS TO THE ENGINEER
TASK ORDER NO. 9
EAST SIDE PARALLEL TAXIWAY
DRAKE FIELD, FAYETTEVILLE MUNICIPAL AIRPORT

LINE NO.	SCOPE I.D.	CLASSIFICATION > / Hourly Billing Rate > / TASK DESCRIPTION	PROJECT DIRECTOR $110.00	PRINCIPAL MANAGER $95.00	ENGINEER III $80.00	ENGINEER I $50.00	Compl\Engr TECH. $55.00	CADD TECH. III $50.00	CADD TECH. II $40.00	CADD TECH. I $30.00	LICENSED SURVEYOR $50.00	SURVEY CREW $70.00	CLERK TYPIST $30.00	INSPECTOR (ENGR. TECH.) $55.00	LAB Supervisor $40.00	SOILS TECH. II $30.00	SOILS TECH. I $25.00	MILEAGE $0.35	SUB.-CONS. FEE	DIRECT EXPENSE	EXTEN TOT/
1	A	SURVEYING	0.5	3	3		40				6	40						90		$80	$5,991.50
3	B	GEOTECHNICAL INVESTIGATION		6	16		8			8	0.5	2	2		8	24	24	60		$2,000	$6,416.00
2	C	PRELIMINARY ENGINEERING	3	20	20		40		20	20			4					25	$500	$25	$8,083.75
4		Formulate Plan For Phased Construction	0.5	4	2		4						2								$875.00
5		Formulate Construction Cost Estimates		2	6		16						4								$1,670.00
6		Meeting with City to Discuss Implementation	1	3	3		2						4					8		$100	$967.80
7	D	DETAILED DESIGN	2	40	80	30	16	12	80	40			40					16	$4,000	$250	$23,255.60
8	E	COORDINATION WITH U.S. FORESTRY & FAA/STATE		8	8		4						4					400		$35	$1,915.00
9	F	BIDDING SERVICES FOR PHASE I PROJECT	0.5	8	12				4				8					8		$350	$2,52[illegible]
10	G	FUNDING APPLICATION SERVICE	0.5	4	6								3					12		$25	$1,0[illegible]
11	H	CONSTRUCTION ADMINISTRATION & INSPECTION																			$0.[illegible]
12		Contract Administration	2	20	40		6														$5,650.00
13		Const. Observation	2	20	30								60	600				3,500	$1,500	$150	$42,195.00
14		Record Drawings	1	2	2				8	8				16						$30	$1,930.00
15	I	CONSTRUCTION STAKING			1						4	6		3				15		$15	$1,025.25
16	J	CONSTRUCTION MATERIALS TESTING	1	6	18								80		40	120	120	850		$50	$13,067.50
		Subtotals	13	140	178	30	136	12	112	68	6.5	42	129	616	8	24	24	4,119	$6,000	$3,045	$116,604.40

C:\DATA\RWJ\FAA\TO 9 FEE.wb3

STAFF REVIEW FORM

XXXX Agenda Request
XXXX Contract Review
____ Grant Review

For the Fayetteville City Council meeting of: February 5, 2002

FROM:

Gary Dumas		**Utility Services**
Name	Division	Department

ACTION REQUIRED: Review and Approve Amendment No. 2 to the contract dated 1-18-00 with EGIS Consulting.
Scope of Services Change: Deduct $134,946; Add $ 55,700

COST TO CITY:
$134,946 deduct

$55,700 **add**	**$ 145,415**	**Business and Technology Park**
Cost of this Request	Category/Project Budget	Category/Project Name
1010-6600-5314-00	**$ 145,415** ****	
Account Number	Funds Used to Date	Program Name
95075-10	**$ -0-**	**General Fund/Sales Tax**
Project Number	Remaining Balance	Fund

****After approval of this request $ 79,246 will remain in Project Balance

BUDGET REVIEW: X Budgeted Item ___Budget Adjustment Attached

Budget Manager ____ Administrative Services Director

CONTRACT/GRANT/LEASE REVIEW: **GRANTING AGENCY:**

Accounting Manager	Date 1/10/02	ADA Coordinator	Date
City Attorney	Date 1/10/02	Internal Auditor	Date 1/10/02
Purchasing Officer	Date 1/10/02		

STAFF RECOMMENDATION: Approve Ordinance Executing Change Order

Division Head	Date	Cross Reference
Department Director	Date 1-10-02	New Item: __Yes___ No
Administrative Services Director	Date 1/11/02	Prev Ord/Res #: ______
Mayor	Date 1/14/02	Orig Contract Date: ______

STAFF REVIEW FORM

Description________________________________ Meeting Date

Comments: Reference Comments:

Budget Coordinator

Accounting Manager

City Attorney

Purchasing Officer

ADA Coordinator

Internal Auditor

FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

DEPARTMENTAL CORRESPONDENCE

To: Mayor and City Council

From: Gary Dumas

Date: Tuesday, January 15, 2002

Subject: Amendment No. 2 with EGIS Consulting for Environmental Planning and Design for the Arkansas Business Technology Park

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Background: In the late 1980's, the City of Fayetteville began efforts to develop what was then known as the Arkansas Research and Technology Park. For a variety of reasons, the project failed to materialize through the 1990's. In July 1999, the City entered in to a small contract with EGIS Consulting for delineation of the wetlands within the site. In December 1999, a second small contract was entered into between EGIS and the City for EGIS to initiate the Army Corps of Engineers 404 permit process. On January 18, 2000, the City Council authorized an additional contract to coordinate the 404 process with other agencies and to develop preliminary mitigation plans. On September 15, 2000, Council authorized Amendment No.1, to the January 18, 2000 contract. This amendment expanded the scope of work and the fee by $164,050. On January 2, 2001, work on the project was stopped pending review. At the time of the cessation of work, $16,296.99 of the $164,050 had been expended.

In December 2001, following internal staff meetings and meetings with the Fayetteville Chamber of Commerce, additional meeting were held with the Army Corps of Engineers and EGIS to determine the status of the project. The outcomes were actions necessary to get the project reinitiated with the desire to have Phase 1 under construction the winter of 2002, with the mitigation activities underway simultaneously. Toward that end, the current contract with EGIS was reviewed to determine its status and if the tasks outlined remained necessary. The outcome was that the work required for the tasks concerning construction mitigation observation ($134,946) was unknown at this time. Therefore, those items are proposed to be deleted from Amendment No. 1 and a detailed process leading to and including the preparation of plans for the construction of any wetland mitigation is proposed to be added the scope of services by this Amendment No. 2. The cost of this additional service is $55,700. Funds encumbered by the current contract will be released and a portion will be used for this Amendment No. 2.

Recommendation: Approve Ordinance authorizing execution of the attached Contract Amendment No. 2

Environmental Services Department
113 West Mountain Street
Fayetteville, Arkansas 72703

Telephone: 501-575-8330
Fax: 501-575-8257
Email: gdumas@ci.fayetteville.ar.us

:55 PM EGIS CONSULTING 501 271 8627 P.01

Donna Mansell Gary Dumas 7 Pages

From: Donna Mansell (dmansell@egis-env.com)
Sent: Friday, December 28, 2001 2:41 PM
To: Gary Dumas (gdumas@ci.fayetteville.ar.us)
Subject: Amendment No. 2

Mr. Dumas:

Attached is Amendment No. 2. We are also faxing it your office.

Please give us a call if it meets with your approval and we will forward original signed documents to your office.

EGIS Amendment
No. 2-dlm.doc (...

Donna L. Mansell
EGIS, Inc. - Environmental Consulting
EGIS Natural Developments, Inc. - Environmental Construction
314 South Main Street
Bentonville, AR 72712

(501) 271-9252 or 1-800-718-2492
(501) 271-8627 fax

Meeting Environmental Challenges Nationwide

Donna -
Please review changes and forward signed originals.
Thanks.
Gary

AMENDMENT NO. 2
TO CONTRACT BETWEEN THE CITY OF FAYETTEVILLE AND EGIS CONSULTING DATED JANUARY 18, 2000 AND AMENDED AUGUST 15, 2000

This Amendment No. 2 to the Contract dated January 18, 2000, and amended August 15, 2000, is entered into this 17th day of January, 2002, by and between the City of Fayetteville acting by and through its Mayor hereinafter called the "OWNER" and EGIS Consulting, also known as EGIS, Inc. The said Contract regarding environmental services for the Arkansas Business Technology Park proposed development, hereinafter known as the "Project." This document incorporates all provision of the original contract and Amendment No. 1 unless otherwise noted.

It is mutually agreed as follows:

1. **Cessation of Work.** EGIS was assisting OWNER in the attainment of the final Section 404 permit from the Corps of Engineers ("COE") as specified in Amendment No. 1 to the Contract. EGIS was notified by OWNER stop all work on the Project until further notice.
2. **Resumption of Work.** EGIS was requested to resume environmental consulting services with OWNER under the Design Phase of Amendment No. 2. Alterations to the original layout and design of the Project are being considered.
3. **Deduction from Scope of Services in Amendment No. 1.** Remaining work in Amendment 1, Sections C & D are deducted by Amendment No. 2.
4. **Amendment No. 3 will be negotiated** to extend the Scope of Services through project bidding, construction and monitoring with EGIS Natural Developments, Inc.

5. **Additional Scope of Services Added in this Amendment No. 2** to the original contract dated January 18, 2000. EGIS will assist OWNER in designing the Project to be a positive balance between environmental concerns and economic development. EGIS will provide the following environmental services on an hourly basis, not to exceed $55,770.00. See Attachment A for professional hourly rates and estimated man-days for the environmental services listed below:

   A) **EGIS Will Coordinate With The US Fish And Wildlife Service ("USFWS")** regarding a potential OWNER and USFWS Candidate Conservation Agreement ("CCA") which involves sensitizing the Project to the Arkansas darter (*Etheostoma cragini*) and habitat opportunities involving Wilson Spring/Clabber Creek/Unnamed Tributary.

   B) **EGIS Will Coordinate** with the University of Arkansas, and local environmental groups (i.e., the Arkansas Audubon Society, the Nature Conservancy) regarding habitat preservation and/or enhancement opportunities.

   C) **Other Mitigation Opportunities:** EGIS will assist OWNER in determining appropriate opportunities between the Arkansas State Highway and Transportation Department, environmental groups, such as the Arkansas Audubon Society, Nature Conservancy group and/or bank interests, for use of land within the Project area and/or other sites for future local wetland mitigation opportunities, and transferring property and mitigation responsibility to outside parties.

D) **EGIS Will Provide Environmental Services** and secure necessary permits and clearances relating to federal, state and local regulations regarding:

   i. Section 401 of the Clean Water Act (Water Quality Certification)
   ii. Section 402 of the Clean Water Act (NPDES-Storm water Pollution Prevention)
   iii. Section 404 of the Clean Water Act (discharge of dredged/fill material into Wetlands/Waters of the US)
   iv. Section 404 permit
   v. Endangered Species Act, and
   vi. City of Fayetteville ordinances relating to environmental issues.

E) **EGIS Will Assist The Owner In Creating A Natural Resource Planning Prototype** to exemplify addressing environmental concerns and responsibility and commercial development. The Project will be showcased to the community, the state, and nation. EGIS will prepare news releases, publications, special natural resource presentations, etc.

F) **EGIS Will Review And Confirm Or Modify** existing proposed wetland mitigation plans.

G) **EGIS Will Lead Planning Charrette(s)** with OWNER and concerned citizenry to review and collect input concerning the proposed mitigation plan.

H) **EGIS Will Present Optional Environmental Configurations** for OWNER'S consideration following public input activities.

I) **EGIS Will Refine The Mitigation Plans, And Submit** the mitigation plans to the Corps of Engineers for written approval and will provide coordination between OWNER and other government agencies regarding mitigation design.

J) **EGIS Will Prepare A Project Design Concept** outlining the environmental benefits and economic development potential of the wetland area and the associated non-impacted area.

K) **EGIS Will Prepare Final Report** detailing the environmental and economic harmony of the overall development

L) **EGIS Will Research And Review Federal And State Grant And Cost-Sharing** opportunities and report potential for use of these cost-sharing opportunities to the City.

6. **Request for Change Orders** will be submitted to the City should additional funding become necessary. Change orders will be submitted with an explanation of substantial change of scope, complexity or character of the services to be performed. EGIS will submit the request for a Change Order and the City must approve before services will be rendered.

7. **Section III and IV of Amendment No. 1** are modified to reflect that EGIS will primarily be responsible for environmental design aspects of the Project. The City will make provision for engineering services. The City will provided all information previously collected for the Business Technology Park. EGIS

should verify environmental/mitigation design information and data provided. EGIS will communicate and coordinate with the City.

8. **Section X of Amendment No. 1** is modified to state EGIS will provide mitigation design documents in a timely manner to the City after Project configurations are finalized.
9. **Section VII, VIII and IX of Amendment No. 1** are omitted. These phases will be covered under Amendment No. 3.
10. **EGIS will coordinate work with the designer** for the interceptor sewer line extension to pass across the northern portion of the property.
11. **All other provisions of Amendment No. 1 remain in effect.**

CITY OF FAYETTEVILLE	ATTEST
By ______________________	______________________
Mayor Dan Coody	City Clerk
EGIS, INC.	WITNESS
By Manuel Barnes	Donna Mansell
Manuel Barnes, President	Donna Mansell

ATTACHMENT A

EGIS PROFESSIONAL HOURLY RATES

Principal Scientist	$75.00 / hr.
(Sr.) Environmental Scientist II	$60.00 / hr.
Environmental Scientist I	$55.00 / hr.
Research Specialist	$50.00 / hr.
Environmental Technician	$40.00 / hr.
CADD Technician	$50.00 / hr.
Clerical/Secretary	$35.00 / hr.

(Travel time is billed at ½ the regular rate.)

OWNER will be invoiced at the professional fees above. Fees are hourly not to exceed the estimated amount below. Amounts were estimated for number of man-days (10-hour days) multiplied by $66 -- a blend of the professional fees above.

		# of man Days (10-hr days)	x $66 per hour (blend of professional fees)
A	Coordination with USFWS	5	$ 3,300.00
B	Coordination with Environmental Groups	5	$ 3,300.00
C	Other Mitigation Opportunities	4.5	$ 2,970.00
D	Permitting & Clearances	11	$ 7,260.00
E	Natural Resource Planning Prototype	10	$ 6,600.00
F	Existing Mitigation Plan	7	$ 4,620.00
G	Lead Planning Charrette(s)	8	$ 5,280.00
H	Present Optional Environmental Configurations	9	$ 5,940.00
I	Refine Mitigation Plan	10	$ 6,600.00
J	Prepare Project Design Concept	2	$ 1,320.00
K	Prepare Project Final Report	8	$ 5,280.00
L	Research/Review Grant Opportunities	5	$ 3,300.00
			$55,770.00

STAFF REVIEW FORM

XXXX Agenda Request
XXXX Contract Review
—— Grant Review

For the Fayetteville City Council meeting of: February 5, 2002

FROM:

Gary Dumas		Utility Services
Name	Division	Department

ACTION REQUIRED: Review and Approve Contract with McClelland Engineering for design, bidding and construction phase administration in the development of the preliminary plat of phase 1 for the Arkansas Business Technology Park. Fee will be based on a per hour charge, not to exceed $128,158. Budget Amendment Attached.

COST TO CITY:

$128,158 Cost of this Request	**$ 145,415** Category/Project Budget	**Business and Technology Park** Category/Project Name
1010-6600-5314-00 **4470-9470-5809-00** Account Number	**$ 55,100** Funds Used to Date	Program Name
95075-10 Project Number	**$ 79,246** Remaining Balance	**General Fund/Sales Tax** Fund

BUDGET REVIEW: X Budgeted Item XXX Budget Adjustment Attached

Budget Manager

Administrative Services Director

CONTRACT/GRANT/LEASE REVIEW: **GRANTING AGENCY:**

Accounting Manager 1/24/02 Date

ADA Coordinator Date

City Attorney 1/24/02 Date

Internal Auditor 1/24/02 Date

Purchasing Officer 1/24/02 Date

STAFF RECOMMENDATION: Approve Resolution Executing Contract and Budget Amendment

Division Head Date

Department Director 1-24-02 Date

Administrative Services Director 1/25/02 Date

Mayor 1/25/02 Date

Cross Reference

New Item: __Yes___ No

Prev Ord/Res #: ________

Orig Contract Date: ________

FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

<u>DEPARTMENTAL CORRESPONDENCE</u>

To: Mayor and City Council

From: Gary Dumas

Date: Friday, January 25, 2002

Subject: Contract With McClelland Consulting Engineers for Subdivision Planning and Design for the Arkansas Business Technology Park

---

Background: In the late 1980's, the City of Fayetteville began efforts to develop what was then known as the Arkansas Research and Technology Park. The name has now been changed to not conflict with other area research parks, to the Arkansas Business and Technology Park. For a variety of reasons, the project failed to materialize through the 1990's.

The City is proposing a coordinated endeavor been the City, the Fayetteville Chamber of Commerce, EGIS Consulting, and McClelland Engineering to accomplish the long standing objective of creating an environmentally responsible business technology park development.

Through the 1990's, considerable effort was expended on the site planning but no conclusion could be reached due to the inability to reach closure on the appropriate balance between the environmental issues and the need to create a sustainable business development.

This project is being outsourced to McClelland Engineering due to the current workload within the City's Engineering Division and the need to expedite the site planning and development process in order to take advantage of Arkansas State Economic Development Grants that the Chamber of Commerce has successfully applied for.

McClelland will work closely with City staff and EGIS to design a project that takes full advantage of the unique environmental setting of this site and the desire to create a business park that offers site amenities not found in other business parks in the region.

Due to the variables in the amount of work that may be required as the project progresses and the amount of usable data generated by earlier efforts on this site the contract with McClelland Engineering is based on a hourly charge not to exceed the total amount of $128,158. The fewer changes required from earlier work, the lower the ultimate fee will be. In no event will the fee exceed $128,158.

Recommendation: Approve Resolution authorizing execution of the attached Contract.

Environmental Services Department
113 West Mountain Street
Fayetteville, Arkansas 72703

Telephone: 501-575-8330
Fax: 501-575-8257
Email: gdumas@ci.fayetteville.ar.us

City of Fayetteville, Arkansas
Budget Adjustment Form

Budget Year	Department: Sales Tax Capital Improvements Fund	Date Requested	Adjustment #
2002	Division:	January 23, 2002	
	Program:		

Project or Item Requested:
Approval of a roll-forward budget adjustment for the Research & Technology Park. project that reappropriates the remaining funding for the project in 2002.

Project or Item Deleted:
None. The unused project funds approved in 2001 will be used to fund this request. The project funds include $679,200 in grant funding received in 2000 and 2001.

Justification of this Increase:
The project is in progress and the funding is needed to complete the remaining phases of work.

Justification of this Decrease:
Cash & investments exist in Sales Tax Capital Improvement Fund for this project.

Increase Expense (Decrease Revenue)

Account Name	Amount	Account Number					Project Number	
Street Improvements	1,494,602	4470	9470		5809	00	95075	1

Decrease Expense (Increase Revenue)

Account Name	Amount	Account Number					Project Number	
Use of Fund Balance	1,494,602	4470	0947		4999	99		

Approval Signatures

	Date
Requested By	
Budget Manager	1-23-02
Department Director	1-24-02
Admin. Services Director	
Mayor	

Budget Office Use Only

Type: A B C D E

Date of Approval

Posted to General Ledger

Posted to Project Accounting

Entered in Category Log

Blue Copy: Budget & Research / White Copy: Requester

H:\BUDGET\PROJECTS\BUD_ADJ\BA_2002\R&T_540.WK4

MCE McCLELLAND CONSULTING ENGINEERS, INC.
DESIGNED TO SERVE
P.O. BOX 1229
Fayetteville, Arkansas 72702-1229
501-443-2377
FAX 501-443-9241

January 18, 2002

Mr. Gary Dumas
City of Fayetteville
113 W. Mountain St.
Fayetteville, AR 72701

RE: Proposed Engineering Services Contract
Fayetteville Business Technology Park

Dear Mr. Dumas:

I am transmitting herewith a copy of our proposed engineering Agreement in accordance with our recent discussions. I will be "mobile" (phone: 530-9939) until late afternoon today. I will call you upon my return to the office to see if you have comments or questions that need to be addressed prior to Monday morning.

By way of comments regarding the factors, which influenced the formulation of our proposal, I offer the following:

1. We understand that this will be a high-profile project because of its environmental sensitivity and we welcome the opportunity to serve on a team, which will undertake this challenge.

2. Prior to the preparation of this proposal, we met with the City Engineer's office, the City Planning Office, the City's Landscape Architect, and representatives of EGIS. So, we have gained some insight into the background of the project. We are committed to being a "team player" and pledge to carefully coordinate our activities with other team members.

3. We know that the schedule will be challenging. We are committed to meeting the bid opening date of October 2002. As specifically pointed out in our proposed Contract, in order to meet that deadline we will need to commence detailed design of the Phase 1 improvements not later than June 1, 2002, regardless of the status of the Corps of Engineers permit application.

4. Our proposed fee, presented on page 3 of the Agreement, has been presented in a way that allows you to see the various components that make up the total fee. Since this is a "different" kind of project, I want you to be able to see where some of the unusual costs are occurring. Please note the qualifying "Notes" at the bottom of the second page of Appendix "B" to the Contract. The Phase 1 design and construction phase services have been estimated for a typical development project that costs approximately $1 million since that appears to be the budget for McClelland's part of the work at this time. Obviously, the magnitude (and, thus, the fee) could change with a change in Phase 1 project scope and size.

Again, we thank you for the opportunity to work with the City on this important project. I look forward to calling you this afternoon to discuss this matter further.

Sincerely,

Johnny Quinn

Johnny Quinn, PE
President

ENGINEERING AGREEMENT

FAYETTEVILLE BUSINESS TECHNOLOGY PARK PROJECT

STATE OF ARKANSAS

COUNTY OF WASHINGTON

This Agreement is entered into and executed on the date indicated below the Owner's signature block, by and between the City of Fayetteville (OWNER) and McClelland Consulting Engineers (ENGINEER). The Sections that follow set forth the project description, project schedule, engineering fees, and other contract conditions related to the Fayetteville Business Technology Park Project for which the Engineer is hereby retained to provide services.

SECTION I - PROJECT DESCRIPTION

The project is to consist of: reviewing existing City-collected data to utilize whatever information might be helpful; coordinating very carefully with the City's Landscape Architect to promote a "campus-type" setting in the developed area; coordinating very carefully with EGIS (environmental consultants retained separately by the Owner to address wetlands mitigation and public input programs); performing the preliminary engineering necessary to prepare and submit a Preliminary Plat application in accordance with City requirements; formulating a phasing plan for construction; providing preliminary construction cost estimates for full development as well as for Phase 1 improvements, as determined by the Owner in accordance with budget restrictions; and performing the engineering services associated with the detailed design and construction of the Phase 1 development of a 289-acre (approximately) parcel of City-owned land into a Business Technology Park, of which approximately 95 acres are to be protected as a natural preserve area.

SECTION II - PROJECT SCHEDULE

From the time the OWNER issues the Notice To Proceed (NTP), the ENGINEER will endeavor to obtain the necessary approvals for the Preliminary Plat from the City's Planning Department and concurrence in advertising for bids from the City Engineering Department and the Arkansas Department of Health in order that construction bids for Phase 1 development of the Fayetteville Business Technology Park can be opened in October, 2002. It is expressly understood that for the Engineer to meet this schedule the Owner must provide timely reviews of the Engineer's work and respond with reasonable promptness to requests for direction made by the Engineer. Regardless of the status of the Corps of Engineers Permit Application (to be prepared and submitted by others), the Engineer must be authorized to commence detailed design not later than June 1, 2002 in order to meet the October, 2002 bid opening date.

SECTION III - SCOPE OF SERVICES

The ENGINEER shall, generally, provide those services necessary to prepare a Preliminary Plat and formulate bid documents for the Phase 1 development of the Business Technology Park. Specifically, the scope of work is likely to include those tasks listed by Line Number in Appendix B to this Agreement.

SECTION IV - FEES

Because of some uncertainty regarding the precise scope of work to be performed by the Engineer, due to the environmental sensitivity of the site to be developed, the Engineer is to be compensated on an hourly rate basis with the fees estimated to be as presented in Appendix B. Appendix A presents hourly rates for personnel anticipated to be assigned to this project by the ENGINEER. As a summary of Appendix B, the estimated fee breakdown is as follows:

• Team Planning and Coordination Meetings:	$ 6,875
• Preparation for and Presentations at Public Meetings:	$ 4,461
• Field Trip to Observe A Similar Preserved Wetlands Project:	$ 1,380
• Land "Swap" with Adjacent Property Owner:	$ 3,259
• Lot Split and/or Master Street Plan Revision:	$ 1,828
• Preliminary Engineering Required for Preliminary Plat:	$17,550
• Preparation and Submittal of Preliminary Plat:	$11,677
• Phase 1 Design Services:	$58,044
• Phase 1 Construction Phase Administration Services:	$17,373
• Construction Materials Testing:	$ 5,711
TOTAL ESTIMATED FEE:	$128,158

The total estimated fee presented above shall not be exceeded without the written approval of the Owner. It is specifically pointed out that the total estimated fee does not include any recreational facility design, nor day-to-day construction inspection, nor Final Plat work. However, these services can be provided under a contract amendment should the Owner desire to negotiate an additional fee for this work.

SECTION V - PAYMENTS

Payments to the ENGINEER for services provided as generally described hereinbefore are to be made within 30 days after the Engineer has forwarded an invoice to the Owner for services performed during the preceding months.

SECTION VI – OTHER PROVISIONS

The parties further mutually agree hereto:

1. That, the OWNER will designate a representative to direct and coordinate the ENGINEER's effort who will be the only source of instructions to the ENGINEER and who shall have the authority to interpret the OWNER's policy as necessary to maintain the ENGINEER's work schedule, administer the AGREEMENT, and certify the ENGINEER's payment request.

2. That, the OWNER shall make available to the ENGINEER all technical data in the OWNER's possession, including maps, surveys, boring logs, and other information required by the ENGINEER and relating to his work.

3. That, the estimates of cost for the projects provided for herein are to be prepared by the ENGINEER through exercise of his experience and judgment in applying presently available cost data, but it is recognized that the ENGINEER has no

control over cost of labor and materials conditions, so he cannot warrant that the project construction costs will not vary from his cost estimates.

4. That, the ENGINEER shall maintain a level of competency presently maintained by other practicing professional engineers in the same type of work in the middle southwestern United States, for the professional and technical soundness and accuracy of all designs, drawings, specifications, and other work and materials furnished under the AGREEMENT.

5. That, either party may terminate this AGREEMENT at any time by a notice in writing to the other party. If the AGREEMENT is terminated as provided herein, the ENGINEER will be paid for services actually performed; the amount of said payment shall bear the same ratio to the total compensation specified in the executed task orders as the services actually performed bear to the total services of the ENGINEER covered by the executed task orders, less payments of compensation previously made.

6. That, the OWNER may, from time to time, request changes in the scope of the services of the ENGINEER to be performed hereunder. Such changes, including any increase or decrease in the amount of the ENGINEER's compensation, which are mutually agreed upon by and between the OWNER and the ENGINEER, shall be incorporated in written amendments to this AGREEMENT.

7. That, the OWNER, shall pay for all costs of publishing advertisements for bids and for obtaining permits and licenses that may be required by local, State, or Federal authorities and shall secure the necessary land, easements and rights-of-way as described by the ENGINEER.

8. That, all claims, counter-claims, disputes and other matters in question between the OWNER and the ENGINEER arising out of or relating to this AGREEMENT or in the breach thereof, will be decided by arbitration only if both parties hereto specifically agree to the use of arbitration in regard to the individual matter in dispute.

9. That, in the event of any legal or other controversy requiring the services of the ENGINEER in providing expert testimony in connection with the Project, except suits or claims arising out of errors or omissions of the ENGINEER, the OWNER shall pay the ENGINEER for services rendered in regard to such legal or other controversy, on a basis to be negotiated.

10. That, visits to the construction site and observations made by the ENGINEER as part of his services shall not relieve the construction contractor (s) of his obligation to conduct comprehensive inspections of the work sufficient to ensure conformance with the intent of the Contract Documents, and shall not relieve the construction contractor (s) of his full responsibility for all construction means, methods, techniques, sequences, and procedures necessary for coordinating

and completing all portions of the work under the construction contracts(s) and for all safety precautions needed to execute construction and inspection.

11. That, if the Owner so directs, the ENGINEER shall provide on-site inspection personnel and will make reasonable efforts to guard the OWNER against defects and deficiencies in the work of the contractor(s) and to help determine if the construction contract has been fulfilled. Their day-to-day observation will not, however, cause the ENGINEER to be responsible for those duties and responsibilities which belong to the construction contractor(s) and which include, but are not limited to, full responsibility for the techniques and sequences of construction and the safety precautions incidental thereto, and for performing the construction work in accordance with the Contract Documents.

12. That, the ENGINEER has the right to subcontract services; however, the OWNER has the right to approve such subcontract services or to reject Subcontractors who are to perform work on the project in excess of $5,000.00.

13. That, all documents including drawings, specifications, estimates, field notes and other data pertaining to the work or to the project shall become the property of the OWNER. The OWNER shall not be restricted in the subsequent use of the design, design documents or ideas incorporated in the work. However, the ENGINEER shall bear no responsibility for such reuse of the design unless specifically agreed to in writing.

14. That, the AGREEMENT is to be binding on the heirs, successors, and assigns of the parties hereto and is not to be assigned by either party without first obtaining the written consent of the other.

IN WITNESS WHEREOF, the parties hereto have caused this AGREEMENT to be duly executed as of the date and year first herein written.

FOR THE CITY OF FAYETTEVILLE:

By: ______________________________ Attest: ______________________________

Mayor

Date: ______________________________

FOR McCLELLAND CONSULTING ENGINEERS, INC.:

By: ______________________________ Attest: ______________________________

President Vice President

Date: ______________________________

APPENDIX A

Hourly Rates for Personnel
Fayetteville Business Technology Park Project

CATEGORY	BILLABLE HOURLY RATE RANGE
Project Director	$104
Principal Engineer	$ 96
Engineer III	$ 78
Engineer II	$ 58
Engineer I	$ 49
Registered Surveyor	$ 51
Computer Technician	$ 53
Engineering Technician	$ 53
Survey Crew (2 man)	$ 70
Clerical Support	$ 36
CADD Technician III	$ 55
CADD Technician II	$ 47
CADD Technician I	$ 30
Soils Lab Supervisor	$ 45
Soils Technician II	$ 30
Soils Technician I	$ 27
Mileage	$0.34/mile

APPENDIX "B"

ESTIMATE OF PAYMENTS TO THE ENGINEER

SCOPE AND FEE SCHEDULE
BUSINESS TECHNOLOGY PARK
FAYETTEVILLE, ARKANSAS

LINE NO.	CLASSIFICATION > / HOURLY RATE > / TASK DESCRIPTION	PROJECT DIRECTOR	PRINCIPAL ENGINEER	ENGINEER III	ENGINEER II	COMPUTER TECH.	ENGR. TECH.	CADD TECH. III	CADD TECH. II	CADD TECH. I	LICENSED SURVEYOR	SURVEY CREW	CLERK TYPIST	LAB SUPERVISOR	SOILS TECH. II	SOILS TECH. I	MILEAGE	SUB.-CONS. FEE	DIRECT EXPENSE	EXTENDED TOTAL
	HOURLY RATE >	$104.00	$96.00	$78.00	$58.00	$53.00	$83.00	$58.00	$47.00	$30.00	$51.00	$70.00	$36.00	$46.00	$30.00	$27.00	$0.34			
59	FINALIZE & SUBMIT PRELIMINARY PLAT																			Items 60-7
60	- Grading / drainage designs with detention basins and trickle channels		1	2	20	3			12	8									$50	$2,42
61	- Pedestrian movement scheme		0.5	0.5	2															$203
62	- Landscape and streetscape design development / tree preservation plan			2	16				8	8										$1,700
63	- Lot layouts			1	4				2	2										$464
64	- Water / sewer concepts		4		8					2										$908
65	- Street layouts			8	2			2	2	2										$1,004
66	SUBMIT REQUESTED LOT SPLIT AND/OR REVISION TO STREET MASTER PLA				16				4		12								$100	$1,828.00
67	ATTEND PLAT REVIEW MEETING				4												7			$234.38
68	MAKE REVISIONS DUE TO PLAT REVIEW MEETING		0.5	2	4				8		2		1						$100	$1,050.00
69	ATTEND SUBDIVISION MEETING				4												7			$234.38
70	MAKE REVISIONS DUE TO SUBDIVISION MEETING				2				4				1						$100	$440.00
71	ATTEND PLANNING COMMISSION MEETING		4		4												7		$50	$668.38
72	SUBMIT CONCEPTUAL DESIGN OF WATER & SEWER TO CITY		1		0.5								0.5						$15	$158.00
73	SUBMIT CONCEPTUAL DESIGN OF WATER & SEWER TO HEALTH DEPT.		1		0.5								0.5						$15	$158.00
74	TEAM MEETING		2		2								1				10			$347.40
75	POSSIBLE: 3RD PUBLIC MEETING	1	4		8				16								10		$100	$1,807.4
76	TEAM MEETING TO REASSESS PLAN AS A RESULT OF PUBLIC INPUT		2		2								1				10			$347
77	PREPARATION OF CONSTRUCTION DOCUMENTS FOR PHASE 1																			Items 85-9
78	- Drainage		0.5	2	4				4											$424.00
79	- Grading		0.5	4	0.5				4											$577.00
80	- Pedestrian trails & bridges		0.5	2	24			4	16											$2,588.00
81	- Lot layouts		0.25		0.5					1										$83.00
82	- Water / sewer designs		40		10	4		1	20	20	4	12					15		$15	$7,291.10
83	- Street design with lighting and landscaping		0.5	80	2	16		4	40	40	4	24						$6,500		$18,936.00
84	- Landscape and streetscape designs		0.25		8				4	4										$796.00
85	- Incorporate wetlands mitigation into bid documents		0.5		24								32				50		$130	$2,739.00
86	- Details		3	8	12			4	12	12										$2,762.00
87	- Specifications		2	24	40	1							40						$50	$5,927.00
88	SUBMITTAL OF WATER / SEWER PLANS & SPECIFICATIONS TO CITY		1		0.5								0.5						$15	$168.00
89	SUBMITTAL OF WATER / SEWER PLANS & SPECIFICATIONS TO HEALTH DEPT		1		0.5								0.5						$50	$193.00
90	REVISE WATER / SEWER PLANS PER COMMENTS FROM HEALTH DEPT.	0.5	6		4			4	4	4			0.5						$25	$1,431.00
91	ADVERTISE / OPEN BIDS		6	4	16				4				6				10		$150	$2,373.40
92	CONSTRUCTION PHASE SERVICES																			Items 101-109
93	- Construction staking of baseline and benchmark		0.5	2							2	16					20		$25	$1,457.80
94	- Pre-construction conference		2	2	6								2				10	$100	$20	$891.40
95	- Administration	4	20	10	80								30				150	$300	$20	$9,207.00
96	- Submittals review		6	2	16								6						$20	$1,896.00
97	- Materials testing		8										50	16	40	40	200		$75	$6,711.00
98	- Monthly payments & final payment review		6	3	12								4							$1,650.00
99	- Punchlist formulation		4	4	4												10	$400		$1,331.40
100	- Preparation of record drawings		0.5	1	4				6	6								$100	$20	$940.00
	TOTAL ESTIMATES	13.5	222.5	222.5	662	78	8	20	231	139	69	92	189	16	40	40	881	$7,400	$1,656	$128,158.54

NOTES:

1. Fee estimates presume that the City's survey data will need to be supplemented by the Engineer's surveys.
2. It is presumed that the City's Landscape Architect will provide significant direction in regard to:
   a. Pedestrian travelways.
   b. Landscaping.
   c. Streetscaping.
   d. Overall review of the project for aesthetic appeal.
3. EGIS is to be responsible for matters related to wetlands mitigation and is to lead the public involvement program.
4. Recreational facility design is not included in this scope of work, but it can be provided under contract amendment.
5. Day-to-day construction is not included in these estimates, but it can be provided under a contract amendment if the City desires.
6. The Final Plat work is not included in this scope of work, but it can be provided under a contract amendment.

J:\2002\Proposals\FAYETTEVILLE\BUSINESS TECHNOLOGY PARK\FEE.wb3

APPENDIX "B"

ESTIMATE OF PAYMENTS TO THE ENGINEER

SCOPE AND FEE SCHEDULE
BUSINESS TECHNOLOGY PARK
FAYETTEVILLE, ARKANSAS

LINE NO.	CLASSIFICATION ► / HOURLY RATE ► / TASK DESCRIPTION	PROJECT DIRECTOR	PRINCIPAL ENGINEER	ENGINEER III	ENGINEER II	COMPUTER TECH.	ENGR. TECH.	CADD TECH. III	CADD TECH. II	CADD TECH. I	LICENSED SURVEYOR	SURVEY CREW	CLERK TYPIST	LAB SUPERVISOR	SOILS TECH. II	SOILS TECH. I	MILEAGE	SUB-CONS. FEE	DIRECT EXPENSE	EXTENDED TOTAL
	HOURLY RATE ►	$104.00	$98.00	$78.00	$88.00	$43.00	$43.00	$58.00	$47.00	$38.00	$61.00	$70.00	$36.00	$44.00	$38.00	$37.00	$0.34			
1	REVIEW EXISTING INFORMATION	2																		$208.00
2	INTERVIEWS WITH ASSOCIATED PARTIES	4			4												60			$988.40
3	COLLECT / ORGANIZE EXISTING DATA FROM CITY ENGINEER				2	1					1									$220.00
4	REVIEW DRAFT OF RESTRICTIVE COVENANTS		0.5		1															$108.00
5	BRAINSTORMING WITH TEAM MEMBERS	2	4		4								1				10			$863.40
6	FIELD TRIP TO TULSA TO SEE HEATHER RIDGE DETENTION FACILITY		8		8												200		$80	$1,380.00
7	PLOT "WORKING" MAP OF SITE				0.5	4			1		2								$5	$398.00
8	COLLECT / REVIEW AERIAL PHOTOS FOR VEGETATION				1	1													$25	$136.00
9	INTERFACE COMPUTER SYSTEMS WITH EGIS & STEVE HATFIELD					2													$20	$126.00
10	IDENTIFY & MAP AREAS TO BE PRESERVED				1	1													$10	$121.00
11	EVALUATE EXISTING INFRASTRUCTURE																			ITEMS 17-21
12	- Get water pressure readings and sewer plans from City				0.5															$29.00
13	- Study sewer record drawings from City		1																	$98.00
14	- Estimate capacities of existing water / sewer systems		1																	$98.00
15	- Confirm capacities of storm culverts			2																$166.00
16	- Confirm pump station & receiving sewer capacities		2		4		4													$634.00
17	DETERMINE EXISTING DRAINAGE PATTERNS																			Items 23-27
18	- Map apparent existing drainage patterns			1	4				4											$488.00
19	- Confirm City design requirements				1															$88.00
20	- Calculate peak flows for appropriate recurrence intervals			2	20															$1,316.00
21	- Size swales & culverts			1	8					4										$882.00
22	- Locate / size detention basins			1	16					4										$1,128.00
23	PREDICT PEDESTRIAN PATTERNS				8					8										$428.00
24	SUBDIVIDE THE LAND BASED UPON DRAINAGE PATTERNS		2	8		8			8		8									$2,024.00
25	SUBDIVIDE LAND MASS BASED UPON OCCUPANT USAGE																			Items 31-34
26	- Estimate lot sizes			1	8															$642.00
27	- Project work force size		1		16															$1,024.00
28	- Project traffic flows /patterns			2	16			1	8											$1,816.00
29	- Project water /sewer demands		16		4															$1,768.00
30	IDENTIFY CORRIDORS FOR UTILITIES			4	8	4					4									$1,192.00
31	PLANNING STATUS MEETING WITH TEAM		4		4												10		$30	$649.40
32	SUBSEQUENT "INTERIM MEETINGS" AND COORDINATION		20		30															$3,888.00
33	CONSIDERATION OF LAND "SWAP" WITH TRACTOR COMPANY																			Items 38-42
34	- Review / formulate legal descriptions for involved tracts				0.5						8									$437.00
35	- Survey boundaries of tracts										4	24					15		$25	$1,814.10
36	- Prepare plats for transfer of ownership						4				8		4							$784.00
37	- File at courthouse										2						5		$40	$143.70
38	FORMULATE "DRAFT" PRELIMINARY PLAT																			Items 44-64
39	- Map with boundary & topo, finalize boundary of "preserve" area				0.5	8														$347.00
40	- Grading & drainage plan, separation of "warm" and "cool" runoff water			15	40					8										$3,738.00
41	- Pedestrian route establishment				4					4										$362.00
42	- Landscaping concept				4				8								15			$615.10
43	- Lot layout			2	4				4		2									$878.00
44	- Infrastructure conceptual design, general location & approx. size		2	8	16				4	4										$2,082.00
45	- Evaluate "connectivity"				2								0.5							$134.00
46	- Decide whether to do concurrent lot split vs. platting of northern portion				1															$88.00
47	- Formulate preliminary construction cost estimate		2	8	16	8							1							$2,384.00
48	- Complete forms for submittal of Preliminary Plat to City		0.5		4								1							$316.00
49	STATUS MEETING WITH TEAM		4		4								1				10		$25	$809.40
50	PUBLIC MEETING		4		8				8								10		$100	$1,327.40
51	TEAM MEETING TO REASSESS PLAN AS A RESULT OF PUBLIC INPUT		2		2								0.5				10			$329.40
52	ASSESS NEED FOR ADDITIONAL FIELD INVESTIGATION		1	1	1															$322.00
53	POSSIBLE ADDITIONAL FIELD INVESTIGATION		12	1	1	16					4	16	2				10		$80	$3,666.40
54	RE-EVALUATE SCHEDULE		1		4								0.5							$348.00
55	REVISE PRELIMINARY PLAT		0.5	1	4				8		2		1							$372.[illegible]
56	UPDATE PRELIMINARY COST ESTIMATE		0.5	1	4															[illegible]
57	RECONFIRM PHASE I BUDGET		0.6																	$4[illegible]
58	PUBLIC MEETING		4		8				8								10		$100	$1,327.[illegible]

STAFF REVIEW FORM

X AGENDA REQUEST
X CONTRACT REVIEW
____ GRANT REVIEW

USDA Forest Service Lease

For the Fayetteville City Council meeting of February 5, 2002

FROM:

Ray Boudreaux	Airport	Aviation & Economic Development
Name	Division	Department

ACTION REQUIRED: Review and signature of the Mayor

COST TO CITY:

$ 28,160 (Revenue)	$ -0-	Ground Rent /Freight
Cost of this Request	Category/Project Budget	Category/Project Name
5550.0955.4557.00	$ -0-	Airport Revenue
Account Number	Funds used to date	Program Name
	$ -0-	Airport
Project Number	Remaining Balance	Fund

BUDGET REVIEW: ____ Budgeted Item X Budget Adjustment Attached

Budget Manager 1/15/02 Date — Administrative Services Dir. Date

CONTRACT/GRANT/LEASE REVIEW:

Marsha Farthing 1/14/02		Nancy Smith 1/14/02		
Accounting Manager	Date	Internal Auditor	Date	**GRANTING AGENCY**
1/14/02				
City Attorney	Date	ADA Coordinator	Date	
Peace 1/14/02				
Purchasing Officer	Date	Grants Coordinator	Date	

STAFF RECOMMENDATION: Approval & signature of Mayor

Division Head — Date

Boudreaux — Jan 11, 2002

Department Director — Date

1/14/02

Administrative Services Director — Date

Dan Coody — 1/14/02

Mayor — Date

Cross Reference

New Item: Yes No
Prev. Ord/Res#: ________
Orig Cont. Date: ________
Orig Cont #: ________

STAFF REVIEW FORM

Description:

Meeting Date: 02/05/2002

Forest Service Lease

Comments:

Budget Manager

Reference Comments:

Accounting Manager

Reference Comments:

City Attorney

Reference Comments:

Purchasing Officer

Reference Comments:

Internal Auditor

Reference Comments

ADA Coordinator

Reference Comments:

Grants Coordinator

Reference Comments:

FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS
DAN COODY, MAYOR

4500 School Ave., Suite F
Fayetteville, AR 72701
501.718.7642

AVIATION AND ECONOMIC DEVELOPMENT
RAY M. BOUDREAUX, DIRECTOR

TO:	Dan Coody, Mayor City Council Members
THRU:	Staff Review Committee
FROM:	Ray M. Boudreaux, Director
DATE:	January 4, 2002
SUBJECT:	USDA Forest Service Lease

Background: On March 26, 2001 The USDA Forest Service announced that they had selected Drake Field as the location to build their new Firefighting base. The Forest Service submitted a draft lease document which was reviewed and revised by city staff and returned to the Forest Service for their approval.

The Forest Service has returned a final lease document that appears satisfactory to both parties, excepting any further changes that may be required by city review committee thru re-review of the document.

Purpose: This Lease Agreement will provide a lease to the USDA Forest Service for 12.8 acres of Fayetteville Municipal Airport property. The lease is for an initial period of five (5) years with clause for renewal annually for up to twenty (20) years.

The lease will provide $28,160 revenue in the first year, and is adjustable in successive years according to the terms contained in the agreement.

Budget Considerations: A Budget Adjustment to recognize the revenue is attached for your approval.

Requested Action: Staff recommends approval by the City Council of; the Lease Agreement, Federal Assurances & Certifications, and the Budget Adjustment.

RB/jn

Attachments: Lease Document
Federal Assurances & Certifications
Budget Adjustment

UNITED STATES GOVERNMENT LEASE FOR AIR OPERATIONS BASE
(Under authority of sec. 1, Act of August 4, 1965, 79 Stat. 431; 7 U.S.C. 2250a.)

Lease Number: 57-43ZP-2-06

Date: January 10, 2002

LESSOR: City of Fayetteville, Arkansas
113 West Mountain
Fayetteville, Arkansas 72701
ATTN: Office of the City Clerk
Phone: 479-575-8323
Fax: 479-718-7695

With Copy to:
Fayetteville Municipal Airport
4500 South School Ave., Suite F
Fayetteville, Arkansas 72701
ATTN: Airport Administration Offices
Phone: 479-718-7642
Fax: 479-718-7646

LESSEE: The United States of America
By the Contracting Officer, Region 8
USDA Forest Service
1720 Peachtree Road, NW
Atlanta, GA 30309
Phone: 404-347-2618
Fax: 404-347-4866

THIS LEASE, made and entered into this date by and between the City of Fayetteville, Washington County, Fayetteville, Arkansas, and whose interest in the property hereinafter described is that of owner, hereinafter called the Lessor, and the United States of America by the Contracting Officer, Region 8, USDA Forest Service whose office address is Atlanta, Georgia, hereinafter called the Government:

WITNESSETH: The parties hereto for the considerations hereinafter mentioned, covenant and agree as follows:

The Lessor hereby leases to the Government the following described premises and easements at Fayetteville Municipal Airport (Drake Field), Fayetteville, Arkansas.

Fifth Principal Meridian, Township 15 North, Range 30 West, Section 4 – That part of Section 4 as shown on the attached plat, said plat being recorded in Book 2001, Page 110805 of Washington County Courthouse, Fayetteville, Arkansas, Said premises containing 12.8 acres total, more or less, as shown on the attached plat. The leased premises and easements are to be used to construct, maintain, access, and occupy the improvements and facilities necessary for air operations with access to airport runways and taxiways.

1. TO HAVE AND TO HOLD the said premises with appurtenances for the term beginning January 1, 2002, through December 31, 2006, subject to termination and renewal rights as may be hereinafter set forth.

2. The Government will pay the Lessor upon execution of this lease, rent at the rate of $28,160 for the first year. Rent for the second year shall be based on an 8% rate of return applied to the Fair Market Value (FMV) as determined by a licensed appraiser. Each year thereafter, the rent shall be increased or decreased based upon the Consumer Price Index (All Urban Consumers – All Items) as published by the United States Department of Labor, Bureau of Labor Statistics, plus one percent (1%). Payment shall be made quarterly in equal installments in arrears.

3. FMV determinations may be made at 5-year intervals and applied as stipulated in paragraph 2 above. Payment will continue to be made quarterly in equal installments in arrears.

4. The Government may terminate this lease at any time by giving 120 days notice in writing to the Lessor.

5. This lease may be renewed at the option of the Government for each year not to exceed a total period of 20 years - **January 1, 2003, through December 31, 2023,** under the existing terms if the Government notifies the Lessor in writing at least 60 days before this lease otherwise would expire.

6. The said property will be used for Government purposes, and the Government hereby covenants and agrees to not assign this lease without written permission from the Lessor and not permit the use of the above described tracts or parcels of land by anyone other than the Government, its agents and servants, and cooperators with the Government.

7. The Lessor shall furnish to the Government, during the occupancy of said premises under the terms of the lease, the following:

   a. Ingress to and Egress from Adjacent Property. The Government shall have all reasonable right, free of charge, to ingress to and egress from said property for the uses and purposes herein mentioned, provided, that the use of adjacent property and of all runways and airport facilities shall be subject to all rules and regulations governing the use of said airport facilities. The Lessor agrees to complete the improvement project currently underway to widen taxiways designated on the attached drawing to a minimum width of 50' within two years.

   b. Routine Services. Lessor agrees to furnish the Government such routine services as are furnished to other tenants of the Fayetteville Municipal Airport and at proportionate rates should there be a charge for such services. These services shall include, but not be limited to, fire protection, snow removal and weed control, notwithstanding the requirement of the Government to maintain their leased premises, the boundaries of such leased premises as represented by attachment to this lease. The Lessor also agrees to provide control tower services as long as it remains economically feasible to provide such services as determined by the Airport Advisory Board.

c. Rights-of-Way. The Lessor guarantees to the Government rights-of-way, free of charge, to install at Government expense all power lines, sewer lines, gas lines and waterlines and any other utility lines required to service the Government improvements and facilities.

8. The Government shall have rights, during the existence of this lease:

   a. To erect such structures and associated facilities as may be needed upon the premises hereby leased, such improvements to be and remain the property of the Government and may be removed therefrom by the Government within a reasonable time after termination of this lease or renewal thereof. The Government shall provide written notice to the City of Fayetteville of planned new structural development during the term of the lease.

   b. To dispose of improvements in place, in the event that use is discontinued by the Government; provided that if disposition of the improvements is to a party or parties other than the Lessor, the improvements shall be removed from the premises within a reasonable period.

9. Any structures or improvements erected or constructed upon the premises will not compromise the airport requirements consistent with the Federal Acquisition Regulation 77, Objects Affecting Navigable Airspace, and other recommended airport design criteria of the Federal Aviation Administration, unless previously approved by the Administrator's duly authorized representative. Facility construction shall be in compliance with current building codes in effect at the time of construction.

10. It is agreed and understood by and between the parties that the Government will maintain the structures furnished under this lease in good repair and tenantable condition during the term of the lease.

11. A joint physical survey and inspection report of the demised property shall be made as of the effective date of the lease, reflecting the then present condition, and shall be signed on behalf of the parties hereto.

12. Nothing in this lease shall be construed as obligating the Government to expend, or as involving the United States in any obligation for the future payment of money in excess of appropriations authorized by law and administratively made available.

13. The Lessor agrees to not discriminate by segregation or otherwise against any person or persons because of race, creed color, religion, national origin, sex, martial status, or handicap in the furnishing, or by refusing to furnish, to such persons the use of any facility, including any and all services, privileges, accommodations, and activities provided thereby. Nothing herein shall require the furnishing to the general public of the use of any facility customarily furnished by the Lessor solely to tenants, their employees, customers, patients, client, guests, and invites.

14. No member of, or Delegate to, Congress, or Resident Commissioner, shall be admitted to any share or part of this lease contract, or to any benefit that may arise therefrom; but this provision shall not be construed to extend to this lease contract if made with a corporation for its general benefit.

IN WITNESS WHEREOF, the parties hereto have hereunder subscribed their names as of the date first above written.

LESSOR

City of Fayetteville, Arkansas

By ______________________________, Date ________________________
Dan Coody, Mayor
Fayetteville, Arkansas

ATTEST

__________________________________, ________________________________
Heather Woodruff, City Clerk ADDRESS

LESSEE

UNITED STATES OF AMERICA

By ______________________________, Date ________________________
Phyllis Carter, Contracting Officer
Southern Region,
Department of Agriculture - Forest Service

REPRESENTATIONS AND CERTIFICATIONS (Short Form) (Simplified Acquisition of Leasehold Interests in Real Property for Leases Up to $100,000 Annual Rent)	Solicitation Number **R8-02-01**	Dated **December 20, 2001**

Complete appropriate boxes, sign the form, and attach to offer.

The Offeror makes the following Representations and Certifications. NOTE: The "Offeror," as used on this form, is the owner of the property offered, not an individual or agent representing the owner.

1. SMALL BUSINESS REPRESENTATION (SEP 1999)

(a) It [ ] is, [ ] is not a small business. "Small" means a concern, including its affiliates, that is independently owned and operated, is not dominant in the field of operation, and has average annual gross revenues of $15 million or less for the preceding three fiscal years. The standard industrial classification (SIC) code for this acquisition is 6515.

(b) It [ ] is, [ ] is not a small disadvantaged business. (See 48 CFR 52.219-1 for definition.)

(c) It [ ] is, [ ] is not a women-owned small business (other than a small business). (See 48 CFR 52.204-5 for definition.)

2. 52.222-22 - PREVIOUS CONTRACTS AND COMPLIANCE REPORTS (APR 1984)

(Applicable to leases which exceed $10,000.)

The Offeror represents that --

(a) It [ ] has, [ ] has not participated in a previous contract or subcontract subject either to the Equal Opportunity clause of this solicitation, the clause originally contained in Section 310 of Executive Order No. 10925, or the clause contained in Section 201 of Executive Order No. 11114;

(b) It [ ] has, [ ] has not filed all required compliance reports; and

(c) Representations indicating submission of required compliance reports, signed by proposed subcontractors, will be obtained before subcontract awards. (Approved by OMB under Control Number 1215-0072.)

3. 52.222-25 - AFFIRMATIVE ACTION COMPLIANCE (APR 1984)

(Applicable to leases which exceed $10,000.)

(Applicable to contracts which include the clause at FAR 52.222-26, Equal Opportunity.)

The Offeror represents that --

(a) It [ ] has developed and has on file, [ ] has not developed and does not have on file, at each establishment affirmative action programs required by the rules and regulations of the Secretary of Labor (41 CFR 60-1 and 60-2), or

(b) It [ ] has not previously had contracts subject to the written affirmative action programs requirement of the rules and regulations of the Secretary of Labor. (Approved by OMB under Control Number 1215-0072.)

4. 52.203-11 - CERTIFICATION AND DISCLOSURE REGARDING PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS (APR 1991) (DEVIATION)

(Applicable to leases which exceed $100,000.)

(a) The definitions and prohibitions contained in the clause, at FAR 52.203-12, Limitation on Payments to Influence Certain Federal Transactions, are hereby incorporated by reference in paragraph (b) of this certification.

(b) The offeror, by signing its offer, hereby certifies to the best of his or her knowledge and belief that on or after December 23, 1989, --

(1) No Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on his or her behalf in connection with the awarding of a contract resulting from this solicitation.

(2) If any funds other than Federal appropriated funds (including profit or fee received under a covered Federal transaction) have been paid, or will be paid, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on his or her behalf in connection with this solicitation, the offeror shall complete and submit, with its offer, OMB standard form LLL, Disclosure of Lobbying Activities, to the Contracting Officer; and

(3) He or she will include the language of this certification in all subcontract awards at any tier and require that all recipients of subcontract awards in excess of $100,000 shall certify and disclose accordingly.

(c) Submission of this certification and disclosure is a prerequisite for making or entering into this contract imposed by section 1352, title 31, United States Code. Any person who makes an expenditure prohibited under this provision or who fails to file or amend the disclosure form to be filed or amended by this provision, shall be subject to a civil penalty of not less than $10,000, and not more than $100,000, for each such failure.

INITIALS: ______________ & ______________
LESSOR GOVERNMENT

5. 52.204-3 - TAXPAYER IDENTIFICATION (JUN 1997)

(a) *Definitions.*

"*Common parent*," as used in this solicitation provision, means that corporate entity that owns or controls an affiliated group of corporations that files its Federal income tax returns on a consolidated basis, and of which the offeror is a member.

"*Taxpayer Identification Number* (TIN)," as used in this solicitation provision, means the number required by the IRS to be used by the offeror in reporting income tax and other returns.

(b) All offerors must submit the information required in paragraphs (d) through (f) of this provision to comply with debt collection requirements of 31 U.S.C. 7701(c) and 3325(d), reporting requirements of 26 U.S.C. 6041, 6041A, and 6050M, and implementing regulations issued by the IRS. If the resulting contract is subject to the payment reporting requirements described in Federal Acquisition Regulation (FAR) 4.904, the failure or refusal by the offeror to furnish the information may result in a 31 percent reduction of payments otherwise due under the contract.

(c) The TIN may be used by the Government to collect and report on any delinquent amounts arising out of the offeror's relationship with the Government (31 U.S.C. 7701(c)(3)). If the resulting contract is subject to the payment reporting requirements described in FAR 4.904, the TIN provided hereunder may be matched with IRS records to verify the accuracy of the offeror's TIN.

(d) *Taxpayer Identification Number (TIN).*

- TIN:____________________.
- TIN has been applied for.
- TIN is not required because:
- Offeror is a nonresident alien, foreign corporation, or foreign partnership that does not have income effectively connected with the conduct of a trade or business in the United States and does not have an office or place of business or a fiscal paying agent in the United States;
- Offeror is an agency or instrumentality of a foreign government;
- Offeror is an agency or instrumentality of the Federal government;

(d) *Type of organization.*

- Sole proprietorship;
- Partnership; Not a corporate entity:
- Corporate entity (not tax-exempt);
- Corporate entity (tax-exempt);
- Government entity (Federal, State, or local);
- Foreign government;
- International organization per 26 CFR 1.6049-4;
- Other ____________________.

(e) *Common Parent.*

- Offeror is not owned or controlled by a common parent as defined in paragraph (a) of this provision.
- Name and TIN of common parent:

Name____________________________
TIN____________________________

6. OFFEROR'S DUNS NUMBER (APR 1996)

Enter number, if known: ________________

OFFEROR OR AUTHORIZED REPRESENTATIVE	Name and Address (Including ZIP Code) Signature	Telephone Number Date

INITIALS: ____________ & ____________
LESSOR GOVERNMENT

GENERAL CLAUSES (Simplified Leases)
(Acquisition of Leasehold Interests in Real Property for Leases Up to $100,000 Net Annual Rent)
FULL TEXT OF CLAUSES

1. The Government reserves the right, at any time after the lease is signed and during the term of the lease, to inspect the leased premises and all other areas of the building to which access is necessary to ensure a safe and health work environment for the Government tenants and the Lessor's performance under this lease.

2. If the building is partially or totally destroyed or damaged by fire or other casualty so that the leased space is untenantable as determined by the Government, the Government may terminate the lease upon 15 calendar days written notice to the Lessor and no further rental will be due.

3. The Lessor shall maintain the demised premises, including the building, building systems, and all equipment, fixtures, and appurtenances furnished by the Lessor under the lease, in good repair and tenantable condition. Upon request of the Contracting Officer, the Lessor shall provide written documentation that building systems have been maintained, tested, and are operational.

4. In the event the Lessor fails to perform any service, to provide any item, or meet any requirement of the lease, the Government may perform the service, provide the item, or meet the requirement, either directly or through a contract. The Government may deduct any cost incurred for the service or item, including administrative costs, from rental payments.

5. 552.203-5 - COVENANT AGAINST CONTINGENT FEES (FEB 1990)

   (a) The Contractor warrants that no person or agency has been employed or retained to solicit or obtain this contract upon an agreement or understanding for a contingent fee, except a bona fide employee or agency. For breach or violation of this warranty, the Government shall have the right to annul this contract without liability or, in its discretion, to deduct from the contract price consideration, or otherwise recover the full amount of the contingent fee.

   (b) "Bona fide agency," as used in this clause, means an established commercial or selling agency (including licensed real estate agents or brokers), maintained by a Contractor for the purpose of securing business, that neither exerts nor proposes to exert improper influence to solicit or obtain Government contracts nor holds out as being able to obtain any Government contract or contracts through improper influence.

   "Bona fide employee" as used in this clause, means a person, employed by a Contractor and subject to the Contractor's supervision and control as to time, place, and manner of performance, who neither exerts nor proposes to exert improper influence to solicit or obtain Government contract or contracts through improper influence.

   "Contingent fee" as used in this clause, means any commission, percentage, brokerage, or other fee that is contingent upon the success that a person or concern has in securing a Government contract.

   "Improper influence," as used in this clause, means any influence that induces or tends to induce a Government employee or officer to give consideration or to act regarding a Government contract on any basis other than the merits of the matter.

INITIALS: ______________ & ______________
LESSOR GOVERNMENT

6. 552.203-70 - PRICE ADJUSTMENT FOR ILLEGAL OR IMPROPER ACTIVITY (SEP 1999)

(Applicable to leases over $100,000.)

(a) If the head of the contracting activity (HCA) or his or her designee determines that there was a violation of subsection 27(a) of the Office of Federal Procurement Policy Act, as amended (41 U.S.C. 423), as implemented in the Federal Acquisition Regulation, the Government, at its election, may--

(1) Reduce the monthly rental under this lease by 5 percent of the amount of the rental for each month of the remaining term of the lease, including any option periods, and recover 5 percent of the rental already paid;
(2) Reduce payments for alterations not included in monthly rental payments by 5 percent of the amount of the alterations agreement; or
(3) Reduce the payments for violations by a Lessor's subcontractor by an amount not to exceed the amount of profit or fee reflected in the subcontract at the time the subcontract was placed.

(b) Prior to making a determination as set forth above, the HCA or designee shall provide to the Lessor a written notice of the action being considered and the basis therefor. The Lessor shall have a period determined by the agency head or designee, but not less than 30 calendar days after receipt of such notice, to submit in person, in writing, or through a representative, information and argument in opposition to the proposed reduction. The agency head or designee may, upon good cause shown, determine to deduct less than the above amounts from payments.

(c) The rights and remedies of the Government specified herein are not exclusive, and are in addition to any other rights and remedies provided by law or under this lease.

7. 52.209-6 - PROTECTING THE GOVERNMENT'S INTEREST WHEN SUBCONTRACTING WITH CONTRACTORS DEBARRED, SUSPENDED, OR PROPOSED FOR DEBARMENT (AUG 1995)

(Applicable to leases over $25,000.)

(a) The Government suspends or debars Contractors to protect the Government's interest. Contractors shall not enter into any subcontract in excess of the small purchase limitation at FAR 13.000 with a Contractor that has been debarred, suspended, or proposed for debarment unless there is a compelling reason to do so.

(b) The Contractor shall require each proposed first-tier subcontractor whose subcontract will exceed. the small purchase limitation as FAR 13.000, to disclose to the Contractor, in writing, whether as of the time of award of the subcontract, the subcontractor, or its principals, is or is not debarred, suspended, or proposed for debarment by the Federal Government.

(c) A corporate officer or designee of the Contractor shall notify the Contracting Officer, in writing, before entering into a subcontract with a party that is debarred, suspended or proposed for debarment (See FAR 9.404 for information on the List of Parties Excluded from Federal Procurement and Nonprocurement Programs). The notice must include the following:

(1) The name of the subcontractor,
(2) The Contractor's knowledge of the reasons for the subcontractor being on the List of Parties Excluded from Federal Procurement and Nonprocurement Programs;
(3) The compelling reason(s) for doing business with the subcontractor notwithstanding its inclusion on the List of parties Excluded from Federal Procurement and Nonprocurement Programs;
(4) The systems and procedures the Contractor has established to ensure that it is fully protecting the Government's interest when dealing with such subcontractor in view of the specific basis for the part's debarment, suspension, or proposed debarment.

8. 52.219-9 SMALL, SMALL DISADVANTAGED AND WOMEN-OWNED SMALL BUSINESS SUBCONTRACTING PLAN (AUG 1996)

(Applicable to leases over $500,000.)

(a) This clause does not apply to small business concerns.

(b) "Commercial product," as used in this clause, means a product in regular production that is sold in substantial quantities to the general public and/or industry at established catalog or market prices. It also means a product which, in the opinion of the Contracting Officer, differs only insignificantly from the Contractor's commercial product.

"Subcontract," as used in this clause, means any agreement (other than one involving an employer-employee relationship) entered into by a Federal Government prime Contractor or subcontractor calling for supplies or services required for performance of the contract or subcontract.

(c) The Offeror, upon request by the Contracting Officer, shall submit and negotiate a subcontracting plan, where applicable, which separately addresses subcontracting with small business concerns, with small disadvantaged business concerns and with women-owned small business concerns. If the Offeror is submitting an individual contract plan, the plan must separately address subcontracting with small business concerns, small disadvantaged business concerns, and women-owned small business concerns with a separate part for the basic contract and separate parts for each option (if any). The plan shall be included in and made a part of the resultant contract. The subcontracting plan shall be negotiated within the time specified by the Contracting Officer. Failure to submit and negotiate the subcontracting plan shall make the Offeror ineligible for award of a contract.

(d) The offer's subcontracting plan shall include the following:

(1) Goals, expressed in terms of percentages of total planned subcontracting dollars, for the use of small business concerns, small disadvantaged business concerns and women-owned small business concerns as subcontractors. The offeror shall include all subcontracts that contribute to contract performance, and may include a proportionate share of products and services that are normally allocated as indirect costs.

(2) A statement of--
   (i) Total dollars planned to be subcontracted;
   (ii) Total dollars planned to be subcontracted to small business concerns;
   (iii) Total dollars planned to be subcontracted to small disadvantaged business concerns; and
   (iv) Total dollars planned to be subcontracted to women-owned small business concerns.

(3) A description of the principal types of supplies and services to be subcontracted, and an identification of the types planned for subcontracting to (i) small business concerns, (ii) small disadvantaged business concerns and (iii) women-owned small business concerns.

(4) A description of the method used to develop the subcontracting goals in paragraph (d)(1) of this clause.

(5) A description of the method used to identify potential sources for solicitation purposes (e.g., existing company source lists, the Procurement Automated Source System (PASS) of the Small Business Administration, the National Minority Purchasing Council Vendor Information Service, the Research and Information Division of the Minority Business Development Agency in the Department of Commerce, or small, small disadvantaged and women-owned small business concerns trade associations). A firm may rely on the information contained in PASS as an accurate representation of a concern's size and ownership characteristics for purposes of maintaining a small business source list. A firm may rely on PASS as a small business source list. Use of the PASS as its source list does not relieve a firm of its responsibilities (e.g., outreach, assistance, counseling, publicizing subcontracting opportunities) in this clause.

(6) A statement as to whether or not the Offeror included indirect costs in establishing subcontracting goals, and a description of the method used to determine the proportionate share of indirect costs to be incurred with (i) small business concerns, (ii) small disadvantaged business concerns, and (iii) women-owned small business concerns.

(7) The name of the individual employed by the Offeror who will administer the offeror's subcontracting program, and a description of the duties of the individual.

(8) A description of the efforts the Offeror will make to assure that small, small disadvantaged and women-owned small business concerns have an equitable opportunity to compete for subcontracts.

(9) Assurances that the Offeror will include the clause in this contract entitled "Utilization of Small, Small Disadvantaged and Women-Owned Small Business Concerns" in all subcontracts that offer further subcontracting opportunities, and that the Offeror will require all subcontractors (except small business concerns) who receive subcontracts in excess of $500,000 ($1,000,000 for construction of any public facility) to adopt a plan similar to the plan agreed to by the Offeror.

(10) Assurances that the Offeror will (i) cooperate in any studies or surveys as may be required, (ii) submit periodic reports in order to allow the Government to determine the extent of compliance by the Offeror with the subcontracting plan, (iii) submit Standard Form (SF) 294, Subcontracting Report for Individual Contracts, and/or SF 295, Summary Subcontract Report, in accordance with the instructions on the forms, and (iv) ensure that its subcontractors agree to submit Standard Forms 294 and 295.

(11) A recitation of the types of records the Offeror will maintain to demonstrate procedures that have been adopted to comply with the requirements and goals in the plan, including establishing source lists; and a description of its efforts to locate small, small disadvantaged and women-owned small business concerns and award subcontracts to them. The records shall include at least the following (on a plant-wide or company-wide basis, unless otherwise indicated):

(i) Source lists (e.g., PASS), guides, and other data that identify small, small disadvantaged and women-owned small business concerns.

(ii) Organizations contacted in an attempt to locate sources that are small, small disadvantaged or women-owned small business concerns.

(iii) Records on each subcontract solicitation resulting in an award of more than $100,000, indicating (A) whether small business concerns were solicited and if not, why not, (B) whether small disadvantaged business concerns were solicited and if not, why not, (C) whether women-owned small business concerns were solicited and if not, why not, and (D) if applicable, the reason award was not made to a small business concern.

(iv) Records of any outreach efforts to contact (A) trade associations, (B) business development organizations, and (C) conferences and trade fairs to locate small, small disadvantaged and women-owned small business sources.

(v) Records of internal guidance and encouragement provided to buyers through (A) workshops, seminars, training, etc., and (B) monitoring performance to evaluate compliance with the program's requirements.

(vi) On a contract-by-contract basis, records to support award data submitted by the Offeror to the Government, including the name, address, and business size of each subcontractor. Contractors having company or division-wide annual plans need not comply with this requirement.

(e) In order to effectively implement this plan to the extent consistent with efficient contract performance, the Contractor shall perform the following functions:

(1) Assist small, small disadvantaged and women-owned small business concerns by arranging solicitations, time for the preparation of bids, quantities, specifications, and delivery schedules so as to facilitate the participation by such concerns. Where the Contractor's lists of potential small, small disadvantaged and women-owned small business subcontractors are excessively long, reasonable efforts shall be made to give all such small business concerns an opportunity to compete over a period of time.

(2) Provide adequate and timely consideration of the potentialities of small, small disadvantaged and women-owned small business concerns in all "make-or-buy" decisions.

(3) Counsel and discuss subcontracting opportunities with representatives of small, small disadvantaged and women-owned small business firms.

(4) Provide notice to subcontractors concerning penalties and remedies for misrepresentations of business status as small, small disadvantaged or women-owned small business for the purpose of obtaining a subcontract that is to be included as part or all of a goal contained in the Contractor's subcontracting plan.

(f) A master subcontracting plan on a plant or division-wide basis which contains all the elements required by paragraph (d) of this clause, except goals, may be incorporated by reference as a part of the subcontracting plan required of the Offeror by this clause; provided, (1) the master plan has been approved, (2) the Offeror ensures that the master plan is updated as necessary and provides copies of the approved master plan, including evidence of its approval, to the Contracting Officer, and (3) goals and any deviations from the master plan deemed necessary by the Contracting Officer to satisfy the requirements of this contract are set forth in the individual subcontracting plan.

(g) (1) If a commercial product is offered, the subcontracting plan required by this clause may relate to the offeror's production generally, for both commercial and noncommercial products, rather than solely to the Government contract. In these cases, the Offeror shall, with the concurrence of the Contracting Officer, submit one company-wide or division-wide annual plan.

(2) The annual plan shall be reviewed for approval by the agency awarding the Offeror its first prime contract requiring a subcontracting plan during the fiscal year, or by an agency satisfactory to the Contracting Officer.

(3) The approved plan shall remain in effect during the Offeror's fiscal year for all of the Offeror's commercial products.

(h) Prior compliance of the Offeror with other such subcontracting plans under previous contracts will be considered by the Contracting Officer in determining the responsibility of the Offeror for award of the contract.

(i) The failure of the Contractor or subcontractor to comply in good faith with (1) the clause of this contract entitled "Utilization of Small, Small Disadvantaged and Women-Owned Small Business Concerns," or (2) an approved plan required by this clause, shall be a material breach of the contract.

9. 52.219-16 LIQUIDATED DAMAGES--SUBCONTRACTING PLAN (JAN 1999)

(Applicable to leases over $500,000.)

(a) *Failure to make a good faith effort to comply with the subcontracting plan*, as used in this clause, means a willful or intentional failure to perform in accordance with the requirements of the subcontracting plan approved under the clause in this contract entitled "Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan," or willful or intentional action to frustrate the plan.

(b) Performance shall be measured by applying the percentage goals to the total actual subcontracting dollars or, if a commercial plan is involved, to the pro rata share of actual subcontracting dollars attributable to Government contracts covered by the commercial plan. If, at contract completion or, in the case of a commercial plan, at the close of the fiscal year for which the plan is applicable, the Contractor has failed to meet its subcontracting goals and the Contracting Officer decides in accordance with paragraph (c) of this clause that the Contractor failed to make a good faith effort to comply with its subcontracting plan, established in accordance with the clause in this contract entitled "Small Business Subcontracting Plan," the Contractor shall pay the Government liquidated damages in an amount stated. The amount of probable damages attributable to the Contractor's failure to comply shall be an amount equal to the actual dollar amount by which the Contractor failed to achieve each subcontract goal.

(c) Before the Contracting Officer makes a final decision that the Contractor has failed to make such good faith effort, the Contracting Officer shall give the Contractor written notice specifying the failure and permitting the Contractor to demonstrate what good faith efforts have been made and to discuss the matter. Failure to respond to the notice may be taken as an admission that no valid explanation exists. If, after consideration of all the pertinent data, the Contracting Officer finds that the Contractor failed to make a good faith effort to comply with the subcontracting plan, the Contracting Officer shall issue a final decision to that effect and require that the Contractor pay the Government liquidated damages as provided in paragraph (b) of this clause.

(d) With respect to commercial products plans; i.e., company-wide or division-wide subcontracting plans approved under paragraph (g) of the clause in this contract entitled "Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan," the Contracting Officer of the agency that originally approved the plan will exercise the functions of the Contracting Officer under this clause on behalf of all agencies that awarded contracts covered by that commercial products plan.

(e) The Contractor shall have the right of appeal, under the clause in this contract entitled Disputes, from any final decision of the Contracting Officer.

(f) Liquidated damages shall be in addition to any other remedies that the Government may have.

10. 52.222-26 - EQUAL OPPORTUNITY (FEB 1999)

(Applicable to leases over $10,000.)

(a) If, during any 12-month period (including the 12 months preceding the award of this contract), the Contractor has been or is awarded nonexempt Federal contracts and/or subcontracts that have an aggregate value in excess of $10,000, the Contractor shall comply with subparagraphs (b)(1) through (11) below. Upon request, the Contractor shall provide information necessary to determine the applicability of this clause.

(b) During performing this contract, the Contractor agrees as follows:

(1) The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. However, it shall not be a violation of this clause for the Contractor to extend a publicly announced preference in employment to Indians living on or near an Indian reservation, in connection with employment opportunities on or near an Indian reservation, as permitted by 41 CFR 60-1.5.

(2) The Contractor shall take affirmative action to ensure the applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. This shall include, but not be limited to, (i) employment, (ii) upgrading, (iii) demotion, (iv) transfer, (v) recruitment or recruitment advertising, (vi) layoff or termination, (vii) rates of pay or other forms of compensation, and (viii) selection for training, including apprenticeship.

(3) The Contractor shall post in conspicuous places available to employees and applicants for employment the notices to be provided by the Contracting Officer that explain this clause.

(4) The Contractor shall, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

(5) The Contractor shall send, to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, the notice to be provided by the Contracting Officer advising the labor union or workers' representative of the Contractor's commitments under this clause, and post copies of the notice in conspicuous places available to employees and applicants for employment.

(6) The Contractor shall comply with Executive Order 11246, as amended, and the rules, regulations, and orders of the Secretary of Labor.

(7) The Contractor shall furnish to the contracting agency all information required by Executive Order 11246, as amended, and by the rules, regulations, and orders of the Secretary of Labor. Standard Form 100 (EEO-1), or any successor form, as prescribed in 41 CFR part 60-1. Unless the Contractor has filed within the 12 months preceding the date of contract award, the Contractor shall, within 30 days after contract award, apply to either the regional Office of Federal Contract Compliance Programs (OFCCP) or the local office of the Equal Employment Opportunity Commission for the necessary forms

(8) The Contractor shall permit access to its premises, during normal business hours, by thecontracting agency or the OFCCP for the purpose of conducting on-site compliance evaluations and complaint investigations. The Contractor shall permit the Government to inspect and copy any books, accounts, records (including computerized records), and other material that may be relevant to the matter under investigation and pertinent to compliance with Executive Order 11246, as amended, and rules and regulations that implement the Executive Order.

(9) If the OFCCP determines that the Contractor is not in compliance with this clause or any rule, regulation, or order of the Secretary of Labor, this contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts, under the procedures authorized in Executive Order 11246, as amended. In addition, sanctions may be imposed and remedies invoked against the Contractor as provided in Executive Order 11246, as amended, the rules, regulations, and orders of the Secretary of Labor, or as otherwise provided by law.

(10) The Contractor shall include the terms and conditions of subparagraph (b)(1) through
(11) of this clause in every subcontract or purchase order that is not exempted by the rules, regulations, or orders of the Secretary of Labor issued under Executive Order 11246, as amended, so that these terms and conditions will be binding upon each subcontractor or vendor.

(12) The Contractor shall take such action with respect to any subcontract or purchase order as the contracting agency may direct as a means of enforcing these terms and conditions, including sanctions for noncompliance; provided, that if the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of any direction, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.

(c) Notwithstanding any other clause in this contract, disputes relative to this clause will be governed by the procedures in 41 CFR 60-1.1.

11. 52.222-21 – PROHIBITION OF SEGREGATED FACILITIES (FEB 1999)

(a) "Segregated facilities," as used in this clause, means any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees, that are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, sex, or national origin because of written or oral policies or employee custom. The term does not include separate or single-user rest rooms or necessary dressing or sleeping areas provided to assure privacy between the sexes.

(b) The Contractor agrees that it does not and will not maintain or provide for its employees any segregated facilities at any of its establishments, and that it does not and will not permit its employees to perform their services at any location under its control where segregated facilities are maintained. The Contractor agrees that a breach of this clause is a violation of the Equal Opportunity clause in this contract.

(c) The Contractor shall include this clause in every subcontract and purchase order that isissubject to the Equal Opportunity clause of this contract.

12. 52.222-35 - AFFIRMATIVE ACTION FOR DISABLED VETERANS AND VETERANS OF THE VIETNAM ERA (APR 1998) (DEVIATION)

(a) Definitions.

"Appropriate office of the State employment service system," as used in this clause, means the local office of the Federal-State national system of public employment offices with assigned responsibility for serving the area where the employment opening is to be filled, including the District of Columbia, Guam, Puerto Rico, and the Virgin Islands.

"Positions that will be filled from within the Contractor's organization," as used in this clause, means employment openings for which no consideration will be given to persons outside the Contractor's organization (including any affiliates, subsidiaries, and the parent companies) and includes any openings that the Contractor proposes to fill from regularly establish "recall" lists.

"Employment openings," as used in this clause, includes full-time employment, temporary employment of over 3 days, and part-time employment, but does not include (1) executive and top management positions, (2) positions that will be filled from within the Contractor's organization or under a customary and traditional employer-union hiring arrangement, or (3) openings in an educational institution that are restricted to students of that institution.

"Veteran of the Vietnam era" means a person who--

Served on active duty for a period of more than 180 days, any part of which occurred between August 5, 1964, and May 7, 1975, and was discharged or released therefrom with other than a dishonorable discharge; or

Was discharged or released from active duty for a service-connected disability if any part of such active duty was performed between August 5, 1964, and May 7, 1975.

(b) General.

(1) Regarding any position for which the employee or applicant for employment is qualified, the Contractor shall not discriminate against the individual because the individual is a disabled veteran or veteran of the Vietnam era. The Contractor agrees to take affirmative action to employ, advance in employment, and otherwise treat qualified disabled veterans and veterans of the Vietnam era without discrimination based upon their disability or veterans' status in all employment practices such as--
   (i) Employment;
   (ii) Upgrading;
   (iii) Demotion or transfer;
   (iv) Recruitment;
   (v) Advertising;
   (vi) Layoff or termination;
   (vii) Rates of pay or other forms of compensation; and
   (viii) Selection for training, including apprenticeship.

(2) The Contractor agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor (Secretary) issued under the Vietnam Era Veterans' Readjustment Assistance Act of 1972 (the Act), as amended.

(c) Listing openings.

(1) The Contractor agrees to list all employment openings existing at contract award or occurring during contract performance, at an appropriate office of the State employment service system in the locality where the opening occurs. These openings include those occurring at any contractor facility, including one not connected with performing this contract. An independent corporate affiliate is exempt from this requirement.

(2) State and local government agencies holding Federal contracts of $10,000 or more shall also list all their openings with the appropriate office of the State employment service.

(3) The listing of employment openings with the State employment service system is required at least concurrently with using any other recruitment source or effort and involves the obligations of placing a bona fide job order, including accepting referrals of veterans and nonveterans. This listing does not require hiring any particular job applicant or hiring from any particular group of job applicants and is not intended to relieve the Contractor from any requirements of Executive orders or regulations concerning nondiscrimination in employment.

(4) Whenever the Contractor becomes contractually bound to the listing terms of this clause, it shall advise the State employment service system, in each State where it has establishments, of the name and location of each hiring location in the State. As long as the Contractor is contractually bound to these terms and has so advised the State system, it need not advise the State system of subsequent contracts. The Contractor may advise the State system when it is no longer bound by this contract clause.

(d) Applicability.

(1) This clause does not apply to the listing of employment openings which occur and are filled outside the 50 states, the District of Columbia, the Commonwealth of Puerto Rico, Guam, and the Virgin Islands.

(2) The terms of paragraph (c) above of this clause do not apply to openings that the Contractor proposes to fill from within its own organization or under a customary and traditional employer-union hiring arrangement. This exclusion does not apply to a particular opening once an employer decides to consider applicants outside of its own organization or employer-union arrangement for that opening.

(e) Postings.

(1) The Contractor agrees to post employment notices stating (i) the Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified disabled veterans and veterans of the Vietnam era, and (ii) the rights of applicants and employees.

(2) These notices shall be posted in conspicuous places that are available to employees and applicants for employment. They shall be in a form prescribed by the Director, Office of Federal Contract Compliance Programs, Department of Labor (Director), and provided by or through the Contracting Officer.

(3) The Contractor shall notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the Contractor is bound by the terms of the Act, and is committed to take affirmative action

to employ, and advance in employment, qualified disabled veterans and veterans of the Vietnam era.

(f) Noncompliance. If the Contractor does not comply with the requirements of this clause, appropriate actions may be taken under the rules, regulations, and relevant orders of the Secretary issued pursuant to the Act.

(g) Subcontracts. The Contractor shall include the terms of this clause in every subcontract or purchase order of $10,000 or more unless exempted by rules, regulations, or orders of the Secretary. The Contractor shall act as specified by the Director to enforce the terms, including action for noncompliance.

13. 52.222-35 - AFFIRMATIVE ACTION FOR DISABLED VETERANS AND VETERANS OF THE VIETNAM ERA (APR 1998) (DEVIATION)

(Applicable to leases over $10,000.)

(a) Definitions.

"Appropriate office of the State employment service system," as used in this clause, means the local office of the Federal-State national system of public employment offices with assigned responsibility for serving the area where the employment opening is to be filled, including the District of Columbia, Guam, Puerto Rico, and the Virgin Islands.

"Positions that will be filled from within the Contractor's organization," as used in this clause, means employment openings for which no consideration will be given to persons outside the Contractor's organization (including any affiliates, subsidiaries, and the parent companies) and includes any openings that the Contractor proposes to fill from regularly establish "recall" lists.

"Employment openings," as used in this clause, includes full-time employment, temporary employment of over 3 days, and part-time employment, but does not include (1) executive and top management positions, (2) positions that will be filled from within the Contractor's organization or under a customary and traditional employer-union hiring arrangement, or (3) openings in an educational institution that are restricted to students of that institution.

"Veteran of the Vietnam era" means a person who--

Served on active duty for a period of more than 180 days, any part of which occurred between August 5, 1964, and May 7, 1975, and was discharged or released therefrom with other than a dishonorable discharge; or

Was discharged or released from active duty for a service-connected disability if any part of such active duty was performed between August 5, 1964, and May 7, 1975.

(b) General.

(1) Regarding any position for which the employee or applicant for employment is qualified, the Contractor shall not discriminate against the individual because the individual is a disabled veteran or veteran of the Vietnam era. The Contractor agrees to take affirmative action to employ, advance in employment, and otherwise treat qualified disabled veterans and veterans of the Vietnam era without discrimination based upon their disability or veterans' status in all employment practices such as--
   (i) Employment;
   (ii) Upgrading;
   (iii) Demotion or transfer;
   (iv) Recruitment;
   (v) Advertising;
   (vi) Layoff or termination;
   (vii) Rates of pay or other forms of compensation; and
   (viii) Selection for training, including apprenticeship.

(2) The Contractor agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor (Secretary) issued under the Vietnam Era Veterans' Readjustment Assistance Act of 1972 (the Act), as amended.

(c) Listing openings.

(1) The Contractor agrees to list all employment openings existing at contract award or occurring during contract performance, at an appropriate office of the State employment service system in the locality where the opening occurs. These openings include those occurring at any contractor facility, including one not connected with

performing this contract. An independent corporate affiliate is exempt from this requirement.

(2) State and local government agencies holding Federal contracts of $10,000 or more shall also list all their openings with the appropriate office of the State employment service.

(3) The listing of employment openings with the State employment service system is required at least concurrently with using any other recruitment source or effort and involves the obligations of placing a bona fide job order, including accepting referrals of veterans and nonveterans. This listing does not require hiring any particular job applicant or hiring from any particular group of job applicants and is not intended to relieve the Contractor from any requirements of Executive orders or regulations concerning nondiscrimination in employment.

(4) Whenever the Contractor becomes contractually bound to the listing terms of this clause, it shall advise the State employment service system, in each State where it has establishments, of the name and location of each hiring location in the State. As long as the Contractor is contractually bound to these terms and has so advised the State system, it need not advise the State system of subsequent contracts. The Contractor may advise the State system when it is no longer bound by this contract clause.

(d) Applicability.

(1) This clause does not apply to the listing of employment openings which occur and are filled outside the 50 states, the District of Columbia, the Commonwealth of Puerto Rico, Guam, and the Virgin Islands.

(2) The terms of paragraph (c) above of this clause do not apply to openings that the Contractor proposes to fill from within its own organization or under a customary and traditional employer-union hiring arrangement. This exclusion does not apply to a particular opening once an employer decides to consider applicants outside of its own organization or employer-union arrangement for that opening.

(e) Postings.

(1) The Contractor agrees to post employment notices stating (i) the Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified disabled veterans and veterans of the Vietnam era, and (ii) the rights of applicants and employees.

(2) These notices shall be posted in conspicuous places that are available to employees and applicants for employment. They shall be in a form prescribed by the Director, Office of Federal Contract Compliance Programs, Department of Labor (Director), and provided by or through the Contracting Officer.

(3) The Contractor shall notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the Contractor is bound by the terms of the Act, and is committed to take affirmative action to employ, and advance in employment, qualified disabled veterans and veterans of the Vietnam era.

(f) Noncompliance. If the Contractor does not comply with the requirements of this clause, appropriate actions may be taken under the rules, regulations, and relevant orders of the Secretary issued pursuant to the Act.

(g) Subcontracts. The Contractor shall include the terms of this clause in every subcontract or purchase order of $10,000 or more unless exempted by rules, regulations, or orders of the Secretary. The Contractor shall act as specified by the Director to enforce the terms, including action for noncompliance.

14. 52.222-36 - AFFIRMATIVE ACTION FOR WORKERS WITH DISABILITIES (JUN 1998)

(Applicable to lease over $2,500.)

(a) General.

(1) Regarding any position for which the employee or applicant for employment is qualified, the Contractor shall not discriminate against any employee or applicant because of physical or mental disability. The Contractor agrees to take affirmative action to employ, advance in employment and otherwise treat qualified individuals with disabilities without discrimination based upon their physical or mental disability in all employment practices such as--
(i) Recruitment, advertising, and job application procedures;

(ii) Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff, and rehiring;
(iii) Rates of pay or any other form of compensation and changes in compensation;
(iv) Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists;
(v) Leaves of absence, sick leave, or any other leave;
(vi) Fringe benefits available by virtue of employment, whether or not administered by the Contractor;
(vii) Selection and financial support for training, including apprenticeships, professional meetings, conferences, and other related activities, and selection for leaves of absence to pursue training
(viii) Activities sponsored by the Contractor, including social or recreational programs; and
(ix) Any other term, condition, or privilege of employment

(2) The Contractor agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor (Secretary) issued under the Rehabilitation Act of 1973 (29 USC 793) (the Act), as amended.

(b) Postings.

(1) The Contractor agrees to post employment notices stating (i) the Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified individuals with disabilities and (ii) the rights of applicants and employees.

(2) These notices shall be posted in conspicuous places that are available to employees and applicants for employment. The Contractor shall ensure that applicants and employees with disabilities are informed of the contents of the notice (e.g., the Contractor may have the notice read to a visually disabled individual, or may lower the posted notice so that it might be read by a person in a wheelchair). The notices shall be in a form prescribed by the Deputy Assistant Secretary for Federal Contract Compliance of the U.S. Department of Labor (Deputy Assistant Secretary) and shall be provided by or through the Contracting Officer.

(3) The Contractor shall notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the Contractor is bound by the terms of Section 503 of the Act and is committed to take affirmative action to employ, and advance in employment, qualified individuals with physical or mental disabilities.

(c) Noncompliance. If the Contractor does not comply with the requirements of this clause, appropriate actions may be taken under the rules, regulations, and relevant orders of the Secretary issued pursuant to the Act.

(d) Subcontracts. The Contractor shall include the terms of this clause in every subcontract or purchase order in excess of $2,500 unless exempted by rules, regulations, or orders of the Secretary. The Contractor shall act as specified by the Director to enforce the terms, including action for noncompliance.

15. 52.222-37 - EMPLOYMENT REPORTS ON DISABLED VETERANS AND VETERANS OF THE VIETNAM ERA (JAN 1999)

(Applicable to leases over $10,000.)

(a) Unless the Contractor is a State or local government agency, the Contractor shall report at least annually, as required by the Secretary of Labor, on:

(1) The number of disabled veterans and the number of veterans of the Vietnam era in the workforce of the contractor by job category and hiring location; and

(2) The total number of new employees hired during the period covered by the report, and of that total, the number of special disabled veterans, and the number of veterans of the Vietnam era.

(b) The above items shall be reported by completing the form entitled "Federal Contractor Veterans' Employment Report VETS-100."

(c) Reports shall be submitted no later than September 30 of each year beginning September 30, 1988.

(d) The employment activity report required by paragraph (a)(2) of this clause shall reflect total hires during the most recent 12-month period as of the ending date selected for the employment profile report required by paragraph (a)(1) of this clause. Contractors may select an ending date: (1) As of the end of any pay period during the period January through March 1 of the year the report is due, or (2) as of December 31, if the Contractor has previous written approval from the Equal Employment Opportunity Commission to do so for purposes of submitting the Employer Information Report EEO-1 (Standard Form 100).

(e) The count of veterans reported according to paragraph (a) of this clause shall be based on voluntary disclosure. Each Contractor subject to the reporting requirements at 38 U.S.C. 4212 shall invite all special disabled veterans and veterans of the Vietnam era who wish to benefit under the affirmative action program at 38 U.S.C. 4212 to identify themselves to the Contractor. The invitation shall state that the information is voluntarily provided, that the information will be kept confidential, that disclosure or refusal to provide the information will not subject the applicant or employee to any adverse treatment, and that the information will be used only in accordance with the regulations promulgated under 38 U.S.C. 4212.

(f) Subcontracts. The Contractor shall include the terms of this clause in every subcontract or purchase order of $10,000 or more unless exempted by rules, regulations, or orders of the Secretary.

16. 52.232-23 - ASSIGNMENT OF CLAIMS (JAN 1986)

(a) The Contractor, under the Assignment of Claims Act, as amended, 31 U.S.C. 3727, 41 U.S.C. 15 (hereafter referred to as "the Act"), may assign its right to be paid amounts due or to become due as a result of the performance by contract to a bank, trust company, or other financing institution, including any Federal lending agency. The assignee under such an assignment may thereafter further assign or reassign or reassign its right under the original assignment to any type of financing institution described in the preceding sentence.

(b) Any assignment or reassignment authorized under the Act and this clause shall cover all unpaid amounts payable under this contract, and shall not be made to more than one party, except that an assignment or reassignment may be made to one party as agent or trustee for two or more parties participating in the financing of this contract.

(c) The Contractor shall not furnish or disclose to any assignee under this contract any classified document (including this contract) or information related to work under this contract until the Contracting Officer authorizes such in writing.

17. 552.232-75 - PROMPT PAYMENT (SEP 1999)

The Government will make payments under the terms and conditions specified in this clause. Payment shall be considered as being made on the day a check is dated or an electronic funds transfer is made. All days referred to in this clause are calendar days, unless otherwise specified.

(a) Payment due date.

(1) Rental payments. Rent shall be paid monthly in arrears and will be due on the first workday of each month, and only as provided for by the lease.

(i) When the date for commencement of rent falls on the 15th day of the month or earlier, the initial monthly rental payment under this contract shall become due on the first workday of the month following the month in which the commencement of the rent is effective.

(ii) When the date for commencement of rent falls after the 15th day of the month, the initial monthly rental payment under this contract shall become due on the first workday of the second month following the month in which the commencement of the rent is effective.

(2) Other payments. The due date for making payments other than rent shall be the later of the following two events:

(i) The 30th day after the designated billing office has received a proper invoice from the Contractor.

(ii) The 30th day after Government acceptance of the work or service. However, if the designated billing office fails to annotate the invoice with the actual date of receipt, the invoice payment due date shall be deemed to be the 30th day after the Contractor's invoice is dated, provided a proper invoice is received and there is no disagreement over quantity, quality, or Contractor compliance with contract requirements.

(b) Invoice and inspection requirements for payments other than rent.

(1) The Contractor shall prepare and submit an invoice to the designated billing office after completion of the work. A proper invoice shall include the following items:
(i) Name and address of the Contractor.
(ii) Invoice date.
(iii) Lease number.
(iv) Government's order number or other authorization.
(v) Description, price, and quantity of work or services delivered.
(vi) Name and address of Contractor official to whom payment is to be sent (must be the same as that in the remittance address in the lease or the order.)
(vii) Name (where practicable), title, phone number, and mailing address of person to be notified in the event of a defective invoice.

(2) The Government will inspect and determine the acceptability of the work performed or services delivered within 7 days after the receipt of a proper invoice or notification of completion of the work or services unless a different period is specified at the time the order is placed. If actual acceptance occurs later, for the purpose of determining the payment due date and calculation of interest, acceptance will be deemed to occur on the last day of the 7-day inspection period. If the work or service is rejected for failure to conform to the technical requirements of the contract, the 7 days will be counted beginning with receipt of a new invoice or notification. In either case, the Contractor is not entitled to any payment or interest unless actual acceptance by the Government occurs.

(c) Interest Penalty.

(1) An interest penalty shall be paid automatically by the Government, without request from the Contractor, if payment is not made by the due date.
(2) The interest penalty shall be at the rate established by the Secretary of the Treasury under Section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 611) that is in effect on the day after the due date. This rate is referred to as the "Renegotiation Board Interest Rate," and it is published in the Federal Register semiannually on or about January 1 and July 1. The interest penalty shall accrue daily on the payment amount approved by the Government and be compounded in 30-day increments inclusive from the first day after the due date through the payment date.
(3) Interest penalties will not continue to accrue after the filing of a claim for such penalties under the clause at 52.233-1, Disputes, or for more than 1 year. Interest penalties of less than $1.00 need not be paid.
(4) Interest penalties are not required on payment delays due to disagreement between the Government and Contractor over the payment amount or other issues involving contract compliance or on amounts temporarily withheld or retained in accordance with the terms of the contract. Claims involving disputes, and any interest that may be payable, will be resolved in accordance with the clause at 52.233-1, Disputes.

18. 552.232-76 - ELECTRONIC FUNDS TRANSFER PAYMENT (SEP 1999) (Variation)

(a) The Government will make payments under this lease by electronic funds transfer (EFT). After award, but no later than 30 days before the first payment, the Lessor shall designate a financial institution for receipt of EFT payments, and shall submit this designation to the Contracting Officer or other Government official, as directed.

(b) The Lessor shall provide the following information:

(1) The lease number to which this notice applies.
(2) The American Bankers Association 9-digit identifying number for wire transfers of the financing institution receiving payment if the institution has access to the Federal Reserve Communications System.
(3) Number of account to which funds are to be deposited.
(4) Type of depositor account ("C" for checking, "S" for savings).
(5) If the Lessor is a new enrollee to the EFT system, a completed "Payment Information Form," SF 3881.

(c) In the event the Lessor, during the performance of this contract, elects to designate a different financial institution for the receipt of any payment made using EFT procedures, notification of such change and the required information specified in (b), above must be received by the appropriate Government official no later than 30 days prior to the date such change is to become effective.

(d) The documents furnishing the information required in this clause must be dated and contain the signature, title, and telephone number of the Lessor or an authorized representative designated by the Lessor, as well as the Lessor's name and lease number.

(e) Lessor failure to properly designate a financial institution or to provide appropriate payee bank account information may delay payments of amounts otherwise properly due.

19. 52.233-1 - DISPUTES (DEC 1998)

(a) This contract is subject to the Contract Disputes act of 1978, as amended (41 U.S.C. 601-613

(b) Except as provided in the Act, all disputes arising under or relating to this contract shall be resolved under this clause.

(c) "Claim," as used in this clause, means a written demand or written assertion by one of the contracting parties seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of contract terms, or other relief arising under or relating to this contract. A claim arising under a contract, unlike a claim relating to that contract, is a claim that can be resolved under a contract clause that provides for the relief sought by the claimant. However, a written demand or written assertion by the Contractor seeking the payment of money exceeding $100,000 is not a claim under the Act until certified as required by subparagraph (d)(2) of this clause. A voucher, invoice, or other routine request for payment that is not in dispute when submitted is not a claim under the Act. The submission may be converted to a claim under the Act, by complying with the submission and certification requirements of this clause, if it is disputed either as to liability or amount or is not acted upon in a reasonable time.

(d) (1) A claim by the Contractor shall be made in writing and, unless otherwise stated in this contract, submitted within 6 years after accrual of the claim to the Contracting Officer for a written decision. A claim by the Government against the Contractor shall be subject to a written decision by the Contracting Officer.

(2) (i) The Contractor shall provide the certification specified in paragraph (d)(2)(iii) of this clause when submitting any claim exceeding $100,000.

(ii) The certification requirement does not apply to issues in controversy that have not been submitted as all or part of a claim.

(iii) The certification shall state as follows: "I certify that the claim is made in good faith; that the supporting data are accurate and complete to the best of my knowledge and belief; that the amount requested accurately reflects the contract adjustment for which the Contractor believes the Government is liable; and that I am duly authorized to certify the claim on behalf of the Contractor."

(3) The certification may be executed by any person duly authorized to bind the Contractor with respect to the claim.

(e) For Contractor claims of $100,000 or less, the Contracting Officer must, if requested in writing by the Contractor, render a decision within 60 days of the request. For Contractor-certified claims over $100,000, the Contracting Officer must, within 60 days, decide the claim or notify the Contractor of the date by which the decision will be made.

(f) The Contracting Officer's decision shall be final unless the Contractor appeals or files a suit as provided in the Act.

(g) If the claim by the Contractor is submitted to the Contracting Officer or a claim by the Government is presented to the Contractor, the parties, by mutual consent, may agree to use alternative disputes resolution (ADR). If the Contractor refuses an offer for ADR, the Contractor shall inform the Contracting Officer, in writing, of the Contractor's specific reasons for rejecting the offer.

(h) The Government shall pay interest on the amount found due and unpaid from (1) the date that the Contracting Officer receives the claim (certified if required); or (2) the date that payment otherwise would be due, if that date is later, until the date of payment. With regard to claims having defective certifications, as defined in FAR 33.201, interest shall be paid from the date that the Contracting Officer initially receives the claim. Simple interest on claims shall be paid at the rate, fixed by the Secretary of the Treasury as provided in the Act, which is applicable to the period during which the Contracting Officer receives the claim and then at the rate applicable for each 6-month period as fixed by the Treasury Secretary during the pendency of the claim.

(i) The Contractor shall proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal, or action arising under the contract, and comply with any decision of the Contracting Officer.

20. 52.215-10 - PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA (OCT 1997)

(Applies when cost or pricing data are required for work or service exceeding $500,000.)

(a) If any price, including profit or fee, negotiated in connection with this contract, or any cost reimbursable under this contract, was increased by any significant amount because—

(1) The Contractor or a subcontractor furnished cost or pricing data that were not complete, accurate, and current as certified in its Certificate of Current Cost or Pricing Data;
(2) A subcontractor or prospective subcontractor furnished the Contractor cost or pricing data that were not complete, accurate, and current as certified in the Contractor's Certificate of Current Cost or Pricing Data; or
(3) Any of these parties furnished data of any description that were not accurate, the price or cost shall be reduced accordingly and the contract shall be modified to reflect the reduction.

(b) Any reduction in the contract price under paragraph (a) of this clause due to defective data from a prospective subcontractor that was not subsequently awarded the subcontract shall be limited to the amount, plus applicable overhead and profit markup, by which (1) the actual subcontract or (2) the actual cost to the Contractor, if there was no subcontract, was less than the prospective subcontract cost estimate submitted by the Contractor; *provided*, that the actual subcontract price was not itself affected by defective cost or pricing data.

(c) (1) If the Contracting Officer determines under paragraph (a) of this clause that a price or cost reduction should be made, the Contractor agrees not to raise the following matters as a defense:
(i) The Contractor or subcontractor was a sole source supplier or otherwise was in a superior bargaining position and thus the price of the contract would not have been modified even if accurate, complete, and current cost or pricing data had been submitted.
(ii) The Contracting Officer should have known that the cost or pricing data in issue were defective even though the Contractor or subcontractor took no affirmative action to bring the character of the data to the attention of the Contracting Officer.
(iii) The contract was based on an agreement about the total cost of the contract and there was no agreement about the cost of each item procured under the contract.
(iv) The Contractor or subcontractor did not submit a Certificate of Current Cost or Pricing Data.

(2) (i) Except as prohibited by subdivision (c)(2)(ii) of this clause, an offset in an amount determined appropriate by the Contracting Officer based upon the facts shall be allowed against the amount of a contract price reduction if--
(A) The Contractor certifies to the Contracting Officer that, to the best of the Contractor's knowledge and belief, the Contractor is entitled to the offset in the amount requested; and
(B) The Contractor proves that the cost or pricing data were available before the "as of" date specified on its Certificate of Current Cost or Pricing Data, and that the data were not submitted before such date.
(ii) An offset shall not be allowed if--
(A) The understated data were known by the Contractor to be understated before the "as of" date specified on its Certificate of Current Cost or Pricing Data; or
(B) The Government proves that the facts demonstrate that the contract price would not have increased in the amount to be offset even if the available data had been submitted before the "as of" date specified on its Certificate of Current Cost or Pricing Data.

(d) If any reduction in the contract price under this clause reduces the price of items for which payment was made prior to the date of the modification reflecting the price reduction, the Contractor shall be liable to and shall pay the United States at the time such overpayment is repaid--

(1) Simple interest on the amount of such overpayment to be computed from the date(s) of overpayment to the Contractor to the date the Government is repaid by the Contractor at the applicable underpayment rate effective for each quarter prescribed by the Secretary of the Treasury under 26 U.S.C. 6621(a)(2); and

(2) A penalty equal to the amount of the overpayment, if the Contractor or subcontractor knowingly submitted cost or pricing data that were incomplete, inaccurate, or noncurrent.

21. 52.215-12 - SUBCONTRACTOR COST OR PRICING DATA (OCT 1997)

(Applies when the clause at FAR 52.215-10 is applicable.)

(a) Before awarding any subcontract expected to exceed the threshold for submission of cost or pricing data at FAR 15.403-4, on the date of agreement on price or the date of award, which ever is later; or before pricing any subcontract modification involving a pricing adjustment expected to exceed the threshold for submission of cost or pricing data at FAR 15.403-4, the Contractor shall require the subcontractor to submit cost or pricing data (actually or by specific identification in writing), unless an exception under FAR 15.403-1 applies.

(b) The Contractor shall require the subcontractor to certify in substantially the form prescribed in FAR 15.406-2 that, to the best of its knowledge and belief, the data submitted under paragraph (a) of this clause were accurate, complete, and current as of the date of agreement on the negotiated price of the subcontract or subcontract modification.

(c) In each subcontract that exceeds the threshold for submission of cost or pricing data at FAR 15.403-4, when entered into, the Contractor shall insert either--

(1) The substance of this clause, including this paragraph (c), if paragraph (a) of this clause requires submission of cost or pricing data for the subcontract; or
(2) The substance of the clause at FAR 52.215-13, Subcontractor Cost or Pricing Data -- Modifications.

22. 52.222-1 – PROHIBITION OF SEGREGATED FACILITIES (FEB 1999)

(a) "Segregated facilities," as used in this clause, means any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees, that are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, sex, or national origin because of written or oral policies or employee custom. The term does not include separate or single-user rest rooms or necessary dressing or sleeping areas provided to assure privacy between the sexes.
(b) The Contractor agrees that it does not and will not maintain or provide for its employees any segregated facilities at any of its establishments, and that it does not and will not permit its employees to perform their services at any location under its control where segregated facilities are maintained. The Contractor agrees that a breach of this clause is a violation of the Equal Opportunity clause in this contract.
(c) The Contractor shall include this clause in every subcontract and purchase order that isissubject to the Equal Opportunity clause of this contract.

City of Fayetteville, Arkansas
Budget Adjustment Form

Budget Year	Department / Division / Program	Date Requested	Adjustment #
2002	Department: Aviation & Economic Development Division: Airport Program: Revenue	02/05/2002	

Project or Item Requested:

Credit Use of Fund Balance in the amount of $28,160 - Land Lease Revenue from USDA Forest Service.

Project or Item Deleted:

Recognize USDA Forest Service Lease revenue in the amount of $28,160.

Justification of this Increase:

This project will enable the USDA Forest Service to begin development of a Fire-fighting Base at Fayetteville Municipal Airport / Drake Field.

Justification of this Decrease:

The USDA Forest Service Lease will provide revenue and other benefits to the Airport.

Increase Expense (Decrease Revenue)

Account Name	Amount	Account Number					Project Number	
Use of Fund Balance	28,160	5550	0955		4999	99		

Decrease Expense (Increase Revenue)

Account Name	Amount	Account Number					Project Number	
Ground Rent / Freight	28,160	5550	0955		4457	00		

Approval Signatures

	Date
Requested By	
Budget Manager [signature]	1-14-02
Department Director	
Admin. Services Director	
Mayor	

Budget Office Use Only

Type: A B C D E

Date of Approval

Posted to General Ledger

Posted to Project Accounting

Entered in Category Log

Blue Copy: Budget & Research / Yellow Copy: Requester

Civil Service Veto
B. 1. Page 1

FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

January 16, 2002

Veto for Ordinance #4364

I hereby veto the decision of the City Council to remove the Mayor's authority for hiring and firing Fayetteville's Police and Fire Chiefs and place it with the unelected Civil Service Commission. Some of the reasons this ordinance is contrary to the public interest are explained below.

1. I respect our Fire and Police Departments. Our police and fire personnel are the most effected by this City Council action and both have expressed strong opposition to this unnecessary change. They understand that our current system can address problems more efficiently than a committee. If a member of the department felt compelled to appeal an action or decision of their Chief, that member would have to appeal to the very commission that would have hired that Chief creating a potential for conflict. Any appeal beyond that would have to go to Court.

2. Fire and Police Chiefs need to be directly accountable to the public they are sworn to serve and protect. Only if an elected Mayor retains authority over the Fire and Police Chiefs can this accountability be assured through the democratic process.

3. We have changed our hiring process so both employees and personnel professionals have a seat at the table when interviewing applicants for department director positions. This has worked successfully to bring in our new Fire Chief to reorganize our Fire department through teamwork.

I have decided to veto this ordinance because it is contrary to the public interest.

Dan Coody, Mayor

Dan Coody

113 WEST MOUNTAIN 72701 501 521-7700
FAX 501 575-8257

ORDINANCE NO. 4364

AN ORDINANCE GRANTING AUTHORITY TO THE FAYETTEVILLE CIVIL SERVICE COMMISSION TO APPOINT AND REMOVE THE POLICE CHIEF AND FIRE CHIEF, AND FOR OTHER PURPOSES

WHEREAS, under A.C.A. §14-42-110(a)(2), a City of the first class is authorized to delegate the authority to appoint and remove the heads of the Police and Fire Departments to the City's Civil Service Commission; and,

WHEREAS, the City Council for the City of Fayetteville, Arkansas, finds that it is in the City's best interest to have the authority to appoint and remove the Police Chief and Fire Chief with the Fayetteville Civil Service Commission.

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

Section 1. The City of Fayetteville delegates the authority to appoint the Police Chief and Fire Chief of the City of Fayetteville, Arkansas, to the Fayetteville Civil Service Commission. When appointing the Police Chief or Fire Chief, the Fayetteville Civil Service Commission shall appoint the person standing the highest on the civil service examination for the appointment to the position of Chief, at a salary as set by the Council approved city pay plan.

Section 2. After the appointment is complete, the Mayor may still suspend the Chief without pay for a period not to exceed 30 days or take any other disciplinary action except for termination as allowed by the City's Personnel Policy. If the Mayor believes that the Chief should be discharged, he shall address the reasons he believes the Chief should be discharged or reduced in rank to the Fayetteville Civil Service Commission. The Chief shall have the normal rights of appeal provided by law for disciplinary action against him/her. However, no Police Chief or Fire Chief who has not previously held a position within the same department may be reduced in rank to another civil service position.

PASSED and **APPROVED** this the 15th day of January, 2002.

APPROVED:

By: ______________________
DAN COODY, Mayor

ATTEST:

By: ______________________
Heather Woodruff, City Clerk

STAFF REVIEW FORM

__X__ AGENDA REQUEST
_____ CONTRACT REVIEW
_____ GRANT REVIEW

FOR: COUNCIL MEETING OF **MAYOR'S APPROVAL** ___________

FROM:

Trent Trumbo, Alderman
Name Division Department

ACTION REQUIRED:
An Ordinance Granting Authority To The Fayetteville Civil Service Commission To Appoint And Remove The Police Chief and Fire Chief, And For Other Purposes

COST TO CITY:

Cost of this Request	Category/Project Budget	Category/Project Name
Account Number	Funds Used to Date	Program Name
Project Number	Remaining Balance	Fund

BUDGET REVIEW: _____ Budgeted Item _____ Budget Adjustment Attached

Budget Coordinator Administrative Services Director

CONTRACT/GRANT/LEASE REVIEW: **GRANTING AGENCY:** ___________

Accounting Manager	Date	Internal Auditor	Date
City Attorney	Date 1-3-02	ADA Coordinator	Date
Purchasing Officer	Date		

STAFF RECOMMENDATION:

Division Head Date

Department Director Date

Administrative Services Director Date

Mayor Date

CROSS REFERENCE

New Item: **Yes** No

Previous Ordinance/Resolution No.: ___________

ORDINANCE NO. ______

AN ORDINANCE GRANTING AUTHORITY TO THE FAYETTEVILLE CIVIL SERVICE COMMISSION TO APPOINT AND REMOVE THE POLICE CHIEF AND FIRE CHIEF, AND FOR OTHER PURPOSES

WHEREAS, under A.C.A. §14-42-110(a)(2), a City of the first class is authorized to delegate the authority to appoint and remove the heads of the Police and Fire Departments to the City's Civil Service Commission; and,

WHEREAS, the City Council for the City of Fayetteville, Arkansas, finds that it is in the City's best interest to have the authority to appoint and remove the Police Chief and Fire Chief with the Fayetteville Civil Service Commission.

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

Section 1. The City of Fayetteville delegates the authority to appoint the Police Chief and Fire Chief of the City of Fayetteville, Arkansas, to the Fayetteville Civil Service Commission. When appointing the Police Chief or Fire Chief, the Fayetteville Civil Service Commission shall appoint the person standing the highest on the civil service examination for the appointment to the position of Chief, at a salary as set by the Council approved city pay plan.

Section 2. After the appointment is complete, the Mayor may still suspend the Chief without pay for a period not to exceed 30 days or take any other disciplinary action except for termination as allowed by the City's Personnel Policy. If the Mayor believes that the Chief should be discharged, he shall address the reasons he believes the Chief should be discharged or reduced in rank to the Fayetteville Civil Service Commission. The Chief shall have the normal rights of appeal provided by law for disciplinary action against him/her. However, no Police Chief or Fire Chief who has not previously held a position within the same department may be reduced in rank to another civil service position.

PASSED and **APPROVED** this the ____ day of ___________, 2002

DRAFT

APPROVED:

By: ______________________
DAN COODY, Mayor

ATTEST:

By: ______________________
Heather Woodruff, City Clerk

CASE NOTES

ANALYSIS

Constitutionality.
Hearing and determination.
Nonfeasance.
Removal.

Constitutionality.

An ordinance limiting the city attorney's salary to $1.00 per annum when in fact the city attorney was uncontested in his bid for the election, passed simultaneously with an ordinance removing the city attorney from office on the eve of the election, was punitive in that it intended to constructively bar him from assuming the position to which he was duly elected by the people; accordingly, the first ordinance and its implementing resolution were unconstitutional as bills of attainder. Crain v. City of Mt. Home, 611 F.2d 726 (8th Cir. 1979).

Hearing and Determination.

A writ of prohibition would not lie to a circuit court to prohibit a circuit judge from proceeding to try the mayor of a city for nonfeasance in office without a jury; such an action of the circuit judge, if erroneous, was reversible only on appeal. McClendon v. Wood, 125 Ark. 155, 188 S.W. 6 (1916).

Nonfeasance.

The enforcement of the laws rests on the mayor, police judge, and other elective officials. Rowland v. State, 213 Ark. 780, 213 S.W.2d 370 (1948), cert. denied, 336 U.S. 918, 69 S. Ct. 641, 93 L. Ed. 1081.

Removal.

The actions of a municipal council in impeaching a municipal judge are judicial in their nature, and where the accused has been granted a public hearing and has been represented by council, it is proper for the council to retire and consider their verdict in secret. Faucette v. Gerlach, 132 Ark. 58, 200 S.W. 279 (1918).

Cited: Clark v. Mahan, 268 Ark. 37, 594 S.W.2d 7 (1980).

14-42-110. Appointment and removal of department heads.

(a)(1) Mayors in cities of the first class and second class and incorporated towns shall have the power to appoint and remove all department heads, including city and town marshals when an ordinance has been passed making city and town marshals appointed, unless the city or town council shall, by a two-thirds (⅔) majority of the total membership of the council, vote to override the mayor's action.

(2) Provided, however, that in cities of the first class and second class with civil service commissions, the governing body of the city may, by ordinance, delegate the authority to appoint and remove the heads of the police and fire departments to the city's civil service commission.

(b) City managers in cities having a city manager form of government shall have the power to appoint and remove all department heads. In cities with a city manager form of government and with civil service commissions, the civil service commission shall have the power to override the city manager's appointment or removal of the police or fire chief by a majority vote of the total membership of the commission.

(c) The provisions of this section shall not apply to department heads not under the control of the governing body of the city and shall not apply to cities having a city administrator form of government.

History. Acts 1981, No. 795, §§ 1, 3; A.S.A. 1947, § 19-1013.1; Acts 1995, No. 534, § 1; 1995, No. 914, § 1.

Amendments. The 1995 amendment by Nos. 523 and 914 deleted "Unless otherwise provided by state law" from the beginning in (a)(1); added (a)(2); inserted present (b), redesignating former (b) as

FINAL DRAFT

ORDINANCE NO. _____

AN ORDINANCE TO PREVENT INJURY OR ANNOYANCE WITHIN THE CORPORATE LIMITS OF FAYETTEVILLE BY REGULATING MOTOR VEHICLE RACING FACILITIES SO THAT THESE FACILITIES WILL NOT BE NUISANCES

WHEREAS, the City Council of Fayetteville, Arkansas recognizes the value, attraction, and history of motor vehicle racing facilities within and near the corporate limits of Fayetteville; and

WHEREAS, the City Council of Fayetteville, Arkansas recognizes and agrees with the Arkansas State Legislature that motor vehicle racing facilities cause noise, air pollution, and traffic congestion; and

WHEREAS, many citizens have petitioned the City Council to abate a motor vehicle racing facility as a nuisance because of its late hours of operation and loud noise; and

WHEREAS, previous owners and/or operators of this motor vehicle racing facility were enjoined by the Washington County Chancery Court from operating after 10:00 P.M. because the Chancellor held that the facility's "operation after 10:00 P.M. does constitute a nuisance."

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

Section 1. **Finding of Nuisance and Need for Abatement.**

The City Council of the City of Fayetteville, Arkansas determines and finds that operation of a motor vehicle racing facility is a nuisance to the citizens and city of Fayetteville, Arkansas if operated or used other than as prescribed in Section 2 and, therefore, should be abated by the reasonable regulations required by this ordinance.

Final Draft

Section 2. **Abatement of Nuisance.**

A. All motor vehicle racing facilities shall only be allowed to operate during the period of 10:00 A.M. until 10:30 P.M.

B. Except for any make-up race days allowed in subsection C and any special two-day racing events allowed in subsection D, all motor vehicle racing facilities shall only be allowed to operate one day per week and only during the racing session (within the months of March through October).

C. If a regularly scheduled race day is rained out or otherwise cannot be held, a make-up race day may be held within the following seven days.

D. Special two-day racing events may be held up to five times per racing season in place of the normal one racing day that week.

Section 3. **Jurisdiction of This Ordinance.**

Pursuant to A.C.A. §14-54-103(1), this ordinance to abate a nuisance shall be applicable to any and all motor vehicle racing facilities located within the corporate limits of Fayetteville and for one (1) mile beyond the city limits as prescribed in A.C.A. §14-262-102.

Section 4. **Definitions.**

A. "**Motor vehicle racing facility**" for purposes of this ordinance shall mean any facility designed or used for practicing or for competitive racing by automobiles or trucks which are modified for racing or for practice of competitive racing by motorcycles or other motor vehicles.

B. "Motor vehicle racing facility" does **NOT** include facilities such as Lokomotion which only allows its customers to operate its own low powered and quiet vehicles and operates in such a way that it is not a nuisance.

Section 5. **Penalty.**

A. Any owner, lessor or lessee of real property upon which is located a motor vehicle racing facility and any operator, manager, or promoter of such facility shall ensure such facility is operated within the limits of this ordinance and shall be guilty of a misdemeanor for any violation of the requirements of this ordinance.

B. Any driver or operator of a motor vehicle upon a motor vehicle racing facility shall be guilty of a misdemeanor if the driver or operator operates his motorized vehicle in violation of any of the terms of this ordinance.

C. Each hour or part thereof in violation of the operational hour limitations of this Ordinance shall constitute a separate violation of this ordinance and shall be punished by a fine up to $500.00.

Section 6. Nothing in this ordinance removes or reduces a property owner's right to sue or seek an injunction against any owner or operator of a motor vehicle racing facility if such facility constitutes a private or public nuisance to that property owner.

PASSED and **APPROVED** this the _____ day of January, 2002.

APPROVED:

By: DRAFT
DAN COODY, Mayor

ATTEST:

By: ____________________________
Heather Woodruff, City Clerk

FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

KIT WILLIAMS, CITY ATTORNEY
DAVID WHITAKER, ASST. CITY ATTORNEY

LEGAL DEPARTMENT

DEPARTMENTAL CORRESPONDENCE

TO: **Heather Woodruff**, City Clerk

FROM: **Kit Williams**, City Attorney Kit

DATE: **January 16, 2002**

RE: **Motor Vehicle Racing Facility Ordinance**

Attached is the final, amended draft of the proposed Motor Vehicle Racing Facilities Ordinance. Since there were several previous slightly different versions, I have written "Final Draft" on this so the City Council will be able to easily locate the ordinance actually under consideration.

RESOLUTION NO. _____

A RESOLUTION EXPRESSING THE CITY COUNCIL'S OPPOSITION TO THE PROPOSED SEVENTY-FIVE PERCENT (75%) RATE INCREASE FOR BASIC CABLE TELEVISION SERVICE PROPOSED BY COX COMMUNICATIONS, INC.

WHEREAS, the programming on the Fayetteville Government Channel and the citizens' Community Access Television is currently available only to Cox Cable subscribers; and

WHEREAS, the low and moderate income residents of the City of Fayetteville have come to rely on the availability of a reasonably priced basic cable rate plan in order to receive the programming on the Fayetteville Government Channel and the citizens' Community Access Television; and

WHEREAS, the proposed Seventy-Five percent (75%) rate increase for basic cable television service proposed by Cox Communications, Inc. would place a significant financial burden on low and moderate income residents wishing to receive said programming.

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

Section 1. That the City Council hereby expresses its opposition to the proposed Seventy-Five Percent (75%) rate increase for basic cable television service proposed by Cox Communications, Inc.

PASSED and **APPROVED** this _____ day of ____________________, 2001.

APPROVED:

By: ____________________
DAN COODY, Mayor

ATTEST:

By: ____________________
HEATHER WOODRUFF, City Clerk

FAYETTEVILLE
THE CITY OF FAYETTEVILLE, ARKANSAS

KIT WILLIAMS, CITY ATTORNEY
DAVID WHITAKER, ASST. CITY ATTORNEY

LEGAL DEPARTMENT

DEPARTMENTAL CORRESPONDENCE

TO: **Dan Coody**, Mayor
City Council Members

FROM: **Kit Williams**, City Attorney

DATE: **December 26, 2001**

RE: **Cable rate increase for basic tier service only**

We misunderstood Alderman Zurcher's request concerning his opposition to the increase in the lowest level of cable service (Basic tier). Alderman Zurcher called me and asked that I redraft the Resolution so that its passage would result in an actual legal challenge to the cable rate increase. I have done so, and attached hereto is the expanded Resolution.

Under federal law, the City can only challenge increases in this lowest level of service. Cable companies can charge whatever they want for cable services above this lowest level.

In light of Alderman Zurcher's new Resolution to require a legal challenge, I wanted to provide you a letter provided to me from the last person who conducted such an audit and challenge to a cable rate increase for us, Mr. Brian Grogan (our cable franchise negotiator and advisor). I wrote to Mr. Grogan about this issue and three others in

June once I found out about the proposed cable rate increase. His letter of June 26, 2001 addressing these issues is attached. Also attached is his letter of October 2, 2001 about this issue.

I shared this letter with the Telecommunications Board and spoke with them at a couple of meetings about this issue. Attached is a memo from Marvin Hilton dated December 21 in which he reports to you that the Telecommunications Board voted unanimously not to recommend to the City Council that an audit of Cox's basic tier rate be undertaken.

FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

DEPARTMENTAL CORRESPONDENCE

TO: MAYOR COODY AND CITY COUNCIL MEMBERS

FROM: MARVIN HILTON, CABLE ADMINISTRATOR MH 12-21-01

SUBJECT: CABLE BASIC RATE INCREASE

DATE: DECEMBER 21, 2001

The Telecommunications Board, at their October 18, 2001 meeting, voted 4-0 to not recommend to the City Council that a an audit of Cox's Basic Rate increase be done.

In a July 10, 2001 letter, Cox included FCC forms 1240 and 1205 justifying the basic rate increase. This consists of 34 pages of complex accounting. The Telecommunications board, after discussing the rate increase at three of their meetings, decided that the several thousand dollars necessary to engage a specialist in the complex and esoteric process of auditing Cox's justification would not be money well spent.

See the attached "Basic Rate and Channel Increase"

CC: Hugh Earnest, Urban Development Director
Kit Williams, City Attorney

BASIC RATE AND CHANNEL INCREASE

CURRENT PRICE OF LIMITED BASIC - $9.00 for 15 channels
REBUILT PRICE OF LIMITED BASIC - $15.85 for 23 channels

REBUILD LINE UP:

*= added channel with rebuild

***= must- carry channels

2-TBS SUPERSTATION
*3-ESPN
4-UPN/KFDF
5-KFSM/CBS***
6-KSBN/IND***
7-KHOG/ABC***
8-K15DR/FOX***
9-KFAA/NBC***
10-KOLR/CBS
*11-TV GUIDE CHANNEL
12-KTUL/ABC
13-KAFT***
14-UATV
15-WGN
16-GOVERNMENT ACCESS
17-C-SPAN
18-PUBLIC ACCESS
*19-HOME SHOPPING NET.
*20-KWBS/PAX TV
*21-K45/FAMILY NET.
*22-QVC
*53-LEASED ACCESS
*64-CABLE MART

MOSS & BARNETT

A Professional Association

BRIAN T. GROGAN
612.347.0340
GroganB@moss-barnett.com

4800 Wells Fargo Center
90 South Seventh Street
Minneapolis, MN 55402-4129
Telephone 612 347 0300
Facsimile 612.339.6686
www.moss-barnett.com

VIA FACSIMILE AND U.S. MAIL

June 26, 2001

Kit Williams, Esq.
City Attorney
113 West Mountain, Room 302
Fayetteville, AR 72701

Re: Response to June 25, 2001 Letter

Dear Kit:

I am in receipt of your letter of June 25, 2001 which encloses a memorandum prepared by Marvin Hilton, Cable Administrator for the City of Fayetteville ("City"). Mr. Hilton's memorandum addresses the following four issues:

1. Local Spanish Language Channel;
2. Cable Rate Increase;
3. PEG Channel Signal Quality; and
4. Telecommunications Board Review of Franchise Agreement.

I will address these issues in the order in which they are presented.

1. Local Spanish Language Channel.

Recently, the City's Telecom Board listened to a presentation by a representative of a local Spanish speaking channel which is seeking carriage on Cox's cable system. While Cox carries several Spanish speaking channels none of them are local. Mr. Hilton forwarded on a copy of the requirement from the Austin. Texas franchise which requires two Spanish language channels.

Obviously, there are differences between the populations of Austin, Texas and Fayetteville, Arkansas, particularly with respect to the percentage of the population which is Hispanic. However, I see no problem with a franchising authority requiring the inclusion of certain foreign language channels to meet the needs and interests of the community. The important issue is how specific the City chooses to be in imposing such a requirement. For example, if the City seeks to impose a requirement that Cox provide a "local" Spanish speaking channel, chances are there is only one channel which will meet this criteria. This in essence is specifying a particular channel which Cox must carry on the cable system which likely presents a concern. However, if the City chose to use more generic language similar to the Austin, Texas franchise, referencing the carriage of one or two Spanish language channels this should not present a problem although it would also not be likely to change the present channel lineup which already includes one or more Spanish speaking channels.

I do not believe the City has authority to specify where on the channel lineup channels should be located nor can the City specify on which tier of service such a channel should be located. Federal law allows the City to require only a basic service tier which must include the local over the air broadcast stations as well as any PEG access channels. The cable operator has discretion to add any additional channels it chooses to the basic service tier and to otherwise rearrange and retier channels at its sole discretion.

In my experience it is generally not a good policy for the City to become involved in programming disputes because there is simply no limit to the number of channels which various segments of the Fayetteville population are interested in. City's which have previously fought for WGN seeking to provide Cubs baseball and Bulls basketball programming have later found difficulty trying to explain to a minority group or religious group why the City will not take up programming issues on their behalf. By limiting the City's involvement to include certain "broad categories of video programming" the City will be establishing a reasoned public policy without becoming embroiled in a no win situation with respect to the programming lineup. In addition, the City will avoid the inevitable battle with Cox regarding Cox's first amendment right to select the programming lineup it chooses.

2. Cable Rate Increase.

As we discussed on the telephone, Cox has the right to adjust its rates to reflect inflation, cost of living and other external costs, the addition or deletion of a specific program from a service offering, the addition or deletion of specific channels from an existing service tier, the restructuring or division of existing tiers of service or the adjustment of rates as a result of the addition, deletion or substitution of channels. 47 C.F.R. § 76.922. However, 47 C.F.R. § 76.981 also provides that such changes listed above are impermissible if they constitute a fundamental corporate change in the nature of an existing service or tier of service.

One argument which the City could set forth is that the extraordinary increase in the basic service tier and the large increase in the number of channels to be now provided over the basic service tier constitutes a "negative option." While I am not aware of any reported cases by the FCC regarding this issue it is certainly possible the City could pursue such a claim. The theory would be that individuals who subscribe to only the basic service tier are not being provided a choice and certainly have never affirmatively requested the additional channels and fees. We would need to investigate further whether a subscriber has the option of canceling their service as a result of the proposed rate increase without incurring any disconnection or downgrade fees. To the extent Cox charges disconnection or downgrade fees, subscribers are clearly placed in a no win situation.

The only tier of service which remains subject to rate regulation is the basic service tier and associated equipment and installation charges. All other tiers of service and offerings provided by Cox are free from rate regulation. In order to regulate rates the City must review FCC forms submitted by Cox which are intended to provide justification for the basic service tier rate. The form generally calculates a per channel rate which when multiplied by the total number of channels provides the overall basic service tier rate.

The main question for the City is whether the cost of reviewing the basic service tier rates and/or fighting a claim regarding a negative option violation would be worth it to the City. If only a small percentage of overall cable customers are effected, it is possible the costs of undertaking such a review and challenge could outweigh the true benefits to the City and its residents.

Finally, with respect to the $214,520 refund referenced in Mr. Hilton's materials, generally such amounts are addressed in subsequent rate filings by providing an offset from otherwise permissible rate increases. Based on the information presently before me I am unable to determine the status of this issue and therefore I have instructed my assistant to contact the FCC to obtain further clarification. As soon as we received word on this matter I will forward the results to your attention.

3. PEG Channel Signal Quality.

This issue is being addressed in the franchise negotiations although final agreement has yet to be achieved. Cox has argued that the rebuild of its cable system should result in improved picture quality both on the downstream distribution portion of the system which goes from Cox's headend to subscriber's homes as well as the associated return paths which would extend from the City's administration building and the PEG center building. In the ongoing negotiations with Cox we will continue to address the return paths referenced by Mr. Hilton to ensure improved signal quality.

4. Review of Franchise Agreement by the Telecommunications Board.

As you and I have discussed, my client is the City of Fayetteville, Arkansas and you serve as my contact for the City. I recognize you are obtaining input from both staff and elected officials and I will leave to your judgment how best to weigh input from the various groups within the City. Previously, the Telecommunications Board has served as a valuable resource to City officials although I recall there has not always been complete agreement between the Telecommunications Board, City Council, Mayor, City staff and City attorney's office. I am certainly happy to assist in addressing any proposed changes which the Telecommunications Board may suggest, however, I will continue to look to your office for the final word unless otherwise instructed.

MOSS & BARNETT
A Professional Association

I hope this letter is responsive to the issues presented within your June 25, 2001 correspondence. If I can provide any additional information or assistance, please feel free to contact me. Otherwise, I look forward to discussing with you a plan of strategy to move forward in the renewal process and ultimately bring a franchise agreement before your City council for review and consideration.

Very truly yours,

Brian

Brian T. Grogan

BTG/tlh

431864/1

MOSS & BARNETT
A Professional Association

4800 Wells Fargo Center
90 South Seventh Street
Minneapolis, MN 55402-4129
Telephone 612 347 0300
Facsimile 612 339 6686
www.moss-barnett.com

BRIAN T. GROGAN
612 347 0340
GroganB@moss-barnett.com

VIA FACSIMILE AND U.S. MAIL

October 2, 2001

Kit Williams, Esq.
113 West Mountain, Room 302
Fayetteville, AR 72701

Re: Cable Television Rate Regulations – City of Fayetteville, Arkansas ("City")

Dear Kit:

Pursuant to our telephone conversation you requested that I prepare a brief letter to your attention regarding the status of the City's rate regulation efforts in 1994. At that time the City retained Moss & Barnett to review FCC forms submitted by the City's cable operator with respect to the rates for cable service. In 1994 Time Warner Cable served the City and was required by federal law to submit FCC Forms 1200, 1205 and 1215. These forms outlined the maximum permitted rates which Time Warner was authorized to charge to Fayetteville subscribers with respect to the Basic Service Tier, Cable Programming Services Tier (a/k/a Expanded Basic Cable) and the charges for remote controls, converters and installations.

Moss & Barnett submitted a report to the City on December 6, 1994 which included a recommended rate order with respect to Time Warner Cable's proposed rates. The rate form identified the maximum permitted rates to be charged. Rates charged by Time Warner Cable in excess of the maximum permitted rates were to be refunded to subscribers and/or credited in subsequent rate filings. However, it is possible Time Warner Cable's rates were at or below the maximum permitted levels and therefore no refunds or credits would be due. Our records do not include copies of Time Warner Cable's subsequent rate filings and therefore we are unable to verify whether any refunds or credits were applicable.

Since that time, franchising authorities have lost the right to regulate the rates for the Expanded Basic Tier. Therefore, the only remaining tier subject to the City's regulatory authority is the Basic Service Tier. Given that FCC regulations specify benchmark rates for the Basic Service Tier based on a per channel formula, the City has very little ability to require a reduction in Basic Service Tier rates if Cox complies with the FCC formula.

I hope this letter is responsive to the questions you have raised. If you should have any further questions or if I can provide any additional information or assistance, please feel free to contact me.

Very truly yours,

Brian T. Grogan

Brian T. Grogan

BTG/tlh/454969/1

STAFF REVIEW FORM

X **AGENDA REQUEST**
____ CONTRACT REVIEW
____ GRANT REVIEW

For the Fayetteville City Council meeting of February 5, 2002.

FROM:

Tim Conklin	Planning	Urban Development
Name	Division	Department

ACTION REQUIRED: To approve an ordinance for 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.

COST TO CITY:

$		
Cost of this Request	Category/Project Budget	Category/Project Name
Account Number	Funds Used To Date	Program Name
Project Number	Remaining Balance	Fund

BUDGET REVIEW: ____ Budgeted Item ____ Budget Adjustment Attached

Budget Manager　　　Administrative Services Director

CONTRACT/GRANT/LEASE REVIEW:　　　**GRANTING AGENCY:** ________

Accounting Manager	Date	Internal Auditor	Date
D. J. Whitaker — City Attorney	1/18/02 Date	ADA Coordinator	Date
Purchasing Officer	Date		

STAFF RECOMMENDATION: Staff recommended approval and on January 14, 2002 Planning Commission voted 5-4-0 to recommend approval subject to a Bill of Assurance limiting the maximum number of units to nine and to forward the rezoning along to the City Council.

Division Head	1-18-02 Date	Cross Reference
Hugh Earnest — Department Director	1-19-02 Date	New Item: **Yes**
Administrative Services Director	1/21/02 Date	Prev Ord/Res #: ____
Dan Coody — Mayor	1/24/02 Date	Orig Contract Date: ____
		Orig Contract Number: ____

FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

113 W. Mountain St.
Fayetteville, AR 72701
Telephone: (501) 575-8264

PLANNING DIVISION CORRESPONDENCE

TO:	Mayor Dan Coody Fayetteville City Council
THRU:	Hugh Earnest, Urban Development Director
FROM:	Tim Conklin, A.I.C.P., City Planner
DATE:	January 18, 2002

BACKGROUND

RZN 02-1.00 was submitted by Robert Schmitt for property located at 1140 Hendrix and 110 Garland. 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.

The applicant is requesting that this property be rezoned from R-1, Low Density Residential, to R-1.5, Moderate Density Residential. The property, for many years has appeared on the City's zoning map to already be R-1.5, however it has been determined that this was the result of a drafting error and the property is in fact currently zoned R-1. The applicant did rely on the City's zoning map when considering the purchase of this property. After he had closed on the property and requested a lot line adjustment, the drafting error was discovered.

This drafting error occurred during the process of converting the official City zoning map from a hand drawn graphic to a digitized document that can be edited and displayed via computer graphics, an error was made. This error was discovered by the City when a project proposal was reviewed for the subject property. Staff researched this area of the map and determined that the property was zoned R-1, Low Density Residential on the City's 1970 zoning map and that no change had occurred since that time. Planning Division as well as City Clerk files were thoroughly searched to ensure that no ordinance had been approved changing this zoning designation to R-1.5, Moderate Density Residential.

The subject property is located at the northwest corner of Garland Ave. (Hwy 112) and Hendrix Street. Garland is classified a principal arterial on the City's adopted Master Street Plan and is a heavily traveled thoroughfare.

CURRENT STATUS

The Planning Commission voted 5-4-0 to recommend the City Council approve the requested rezoning from R-1 to R-1.5 with a Bill of Assurance limiting the number of dwelling units to a maximum of nine dwelling units.

RECOMMENDATION

Staff and the Planning Commission recommend approval of the requested rezoning.

ORDINANCE NO. _____

AN ORDINANCE REZONING THAT PROPERTY DESCRIBED IN REZONING PETITION RZN 02-1.00 FOR A PARCEL CONTAINING APPROXIMATELY 1.36 ACRES AND LOCATED AT 1140 HENDRIX AND 110 GARLAND, FAYETTEVILLE, ARKANSAS, AS SUBMITTED BY ROBERT SCHMITT.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF FAYETTEVILLE, ARKANSAS:

Section 1: That the zone classification of the following described property is hereby changed as follows:

From R-1, Low Density Residential to R-1.5, Moderate Density Residential as shown in Exhibit "A" attached hereto and made a part hereof.

Section 2. That the official zoning map of the City of Fayetteville, Arkansas, is hereby amended to reflect the zoning change provided in Section 1 above.

PASSED AND APPROVED this ______ day of __________, 2002.

APPROVED:

DRAFT

By:____________________
DAN COODY, Mayor

ATTEST:

By: ________________________
Heather Woodruff, City Clerk

EXHIBIT "A"

PART OF THE NORTHEAST QUARTER OF THE NORTHEAST QUARTER, SECTION 8, TOWNSHIP 16 NORTH, RANGE 30 WEST, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS TO WIT: BEGINNING AT A POINT WHICH LIES SOUTH 765.00 FEET, WEST 30.00 FEET FROM THE NORTHEAST CORNER OF SAID 40 ACRE TRACT AND RUNNING THENCE S00°12'40"W 104.71 FEET, THENCE WEST 330.00 FEET, THENCE N00°12'38"E 104.96 FEET THENCE N89°57'22"W 59.91 FEET, THENCE N00°00'36"W 104.94 FEET, THENCE EAST 237.01 FEET, THENCE S00°02'42"W 105.09 FEET, THENCE S89°57'22"E 153.00 FEET TO THE POINT OF BEGINNING CONTAINING 1.37 ACRES MORE OR LESS.

FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

113 W. Mountain St.
Fayetteville, AR 72701
Telephone: (501) 575-8264

PLANNING DIVISION CORRESPONDENCE

TO: Fayetteville Planning Commission
FROM: Dawn T. Warrick, Senior Planner
THRU: Tim Conklin, A.I.C.P., City Planner
DATE: January 7, 2002

RZN 02-1.00 Rezoning (Schmitt, pp 404) was submitted by Robert Schmitt for property located at 1140 Hendrix and 110 Garland. 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.

RECOMMENDATION:

Staff recommends approval of the requested rezoning based on the findings included as part of this report.

PLANNING COMMISSION ACTION:	**Required**	**YES**	
	O Approved		**O Denied**
Date: January 14, 2002			
CITY COUNCIL ACTION:	**Required**	**YES**	
	O Approved		**O Denied**
Date: February 5, 2002 (1st reading)			

Comments: ______________________________

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BACKGROUND:

The applicant is requesting that this property be rezoned from R-1, Low Density Residential, to R-1.5, Moderate Density Residential. The property, for many years has appeared on the City's zoning map to already be R-1.5, however it has been determined that this was the result of a drafting error and the property is in fact currently zoned R-1. The applicant did rely on the City's zoning map when considering the purchase of this property. After he had closed on the property and requested a lot line adjustment, the drafting error was discovered.

This drafting error occurred during the process of converting the official City zoning map from a hand drawn graphic to a digitized document that can be edited and displayed via computer graphics, an error was made. This error was discovered by the City when a project proposal was reviewed for the subject property. Staff researched this area of the map and determined that the property was zoned R-1, Low Density Residential on the City's 1970 zoning map and that no change had occurred since that time. Planning Division as well as City Clerk files were thoroughly searched to ensure that no ordinance had been approved changing this zoning designation to R-1.5, Moderate Density Residential.

The subject property is located at the northwest corner of Garland Ave. (Hwy 112) and Hendrix Street. Garland is classified a principal arterial on the City's adopted Master Street Plan and is a heavily traveled thoroughfare.

SURROUNDING LAND USE AND ZONING

North:	Single family home, R-1
South:	Single family home, R-1
East:	Single family home, R-2
West:	Single family home, R-1

INFRASTRUCTURE:

Access to this site is available and constructed. The project site is located at the northwest corner of Hendrix Street and Garland Ave. Garland is classified a principal arterial on the City's adopted Master Street Plan. Utilities are available to the site currently. There are two existing small homes on the property which have been occupied. Upon redevelopment any upgrades or extension of utilities to serve this site will be the responsibility of the developer.

LAND USE PLAN: General Plan 2020 designates this site Residential. Rezoning this property to R-1.5, Moderate Density Residential is consistent with the land use plan and compatible with surrounding land uses in the area.

FINDINGS OF THE STAFF

1. A determination of the degree to which the proposed zoning is consistent with land use planning objectives, principles, and policies and with land use and zoning plans.

Finding: The proposed zoning is consistent with land use planning objectives, principles, and policies and with the land use and zoning plans. This zoning will allow for more intense development patterns downtown and will site new residential areas accessible to roadways, alternative transportation modes, community amenities, infrastructure, and retail and commercial goods and services. These are designated as guiding policies within the City's adopted General Plan 2020 which may be accomplished through this rezoning application.

2. A determination of whether the proposed zoning is justified and/or needed at the time the rezoning is proposed.

Finding: The proposed zoning is justified. This property is located on a heavily traveled principle arterial. Incorporating the R-1.5 zoning in this location will allow for a mix of housing types within the area and will also provide a transition from the R-2 zoning across Garland to the R-1 zoning west of the subject tract.

3. A determination as to whether the proposed zoning would create or appreciably increase traffic danger and congestion.

Finding: The proposed zoning will not create or appreciably increase traffic danger and congestion. There are several means of accessing this site, the most common of which will be to utilize Garland Ave. which currently carries a large volume of traffic on a daily basis.

4. A determination as to whether the proposed zoning would alter the population density and thereby undesirably increase the load on public services including schools, water, and sewer facilities.

Finding: The proposed zoning will increase population density slightly. The maximum density which would be permitted on the 1.36 acre tract would be 16 units (12 units per acre) if the property were zoned R-1.5. Current zoning of R-1 will allow a maximum of 5 units on the property. This increase in population density will not undesirably increase the load on public services

including schools, water, and sewer facilities.

5. If there are reasons why the proposed zoning should not be approved in view of considerations under b (1) through (4) above, a determination as to whether the proposed zoning is justified and/or necessitated by peculiar circumstances such as:

   a. It would be impractical to use the land for any of the uses permitted under its existing zoning classifications;

   b. There are extenuating circumstances which justify the rezoning even though there are reasons under b (1) through (4) above why the proposed zoning is not desirable.

Finding: **N/A**

§161.05 DISTRICT R-1.5 MODERATE DENSITY RESIDENTIAL.

A. Purpose. The Moderate Density Residential District is designed to permit and encourage the development of detached and attached dwellings in suitable environments, to provide a development potential between low density and medium density with less impact than medium density development, to encourage the development of areas with existing public facilities and to encourage the development of a greater variety of housing values.

B. Uses.

1. Permitted Uses..

Unit 1	City-Wide Uses by Right
Unit 2	Single-Family and Two-Family Dwellings
Unit 26	Single-Family Dwellings
Unit 29	Single-Family, Two-Family and Three-Family Dwellings

2. Uses Permissible on Appeal to the Planning Commission

Unit 2	City-Wide Uses by Conditional Use Permit
Unit 3	Public Protection and Utility Facilities
Unit 4	Cultural and Recreational Facilities

C. Density.

Families Per Acre	12 or Less

D. Bulk and Area Regulations.

	One-Family	Two-Family	Three-Family
Lot Minimum Width:	60 ft.	70 ft.	90 ft.
Lot Area Minimum:	6,000 sq. ft.	7,260 sq. ft.	10,890 sq. ft.
Land Area Per Dwelling Unit:	6,000 sq. ft.	3,630 sq. ft.	3,630 sq. ft.

E. Yard Requirements (feet).

FRONT YARD	SIDE YARD	REAR YARD
25	8	20

Cross Reference: Variance, Chapter 156.

F. Building Area. The area occupied by all buildings shall not exceed 50% of the total lot area.

G. Height Regulations. No building shall exceed a height of 30 feet.

(Code 1991, §160.032; Code 1965, App. A, Art. 5(IIA); Ord. No. 3128, 10-1-85)

RECEIVED
JAN 0 9 2002
PLANNING DIV.

TO: Janet Strain
Senior Planning Clerk
The City of Fayetteville, AR

FROM: Joyce Richards
1673 North Stephens
Fayetteville, AR 72703
521-4347

DATE: January 9, 2002

RE: Rezoning of lots at corner of Hendrix and Garland

My family and I have lived at 1673 North Stephens since we bought the property in 1974. We have also owned the property at 1231 South Maxwell since 1996 and our son and his family live there.

I would ask you not to rezone the lots at Hendrix and Garland for the following reasons:

1. A lot of traffic already travels up and down Hendrix in part because that street is used as a cutoff to get to Mt. Comfort, thus avoiding the bottleneck that exists in the Harps/Oak Plaza area. Many people walk or bicycle on Hendrix either for pleasure or to get to Garland to catch the bus; and there are no sidewalks. Increased traffic would pose a larger danger.

2. Garland has a number of apartment complexes between Oak Plaza and Agri Park including Magnolia Place, Crafton Place, Bradford Place, Starfire, Garland Gardens and Maria H, plus the huge complex by the fairgrounds and College Park a few blocks away on Mt. Comfort. Additional multiple dwellings would only increase the traffic problem that exists. I know that Garland is scheduled to be widened but I don't think an existing problem needs to be compounded.

3. The apartment complexes located on Garland are in or near the "high crime" area reported by the Arkansas Democrat Gazette on December 10, 2001. Multiple dwellings on Hendrix would increase the population in this area and thus add to the problem expanding it to the west.

4. Last fall two triplexes were built at the corner of Hendrix and Addington two blocks west from Garland. If this current rezoning request takes place, does this mean Hendrix will become an apartment strip all the way down? Will a domino effect be put in place? Will a precedent be started so that future rezoning on that street will take place with ease?

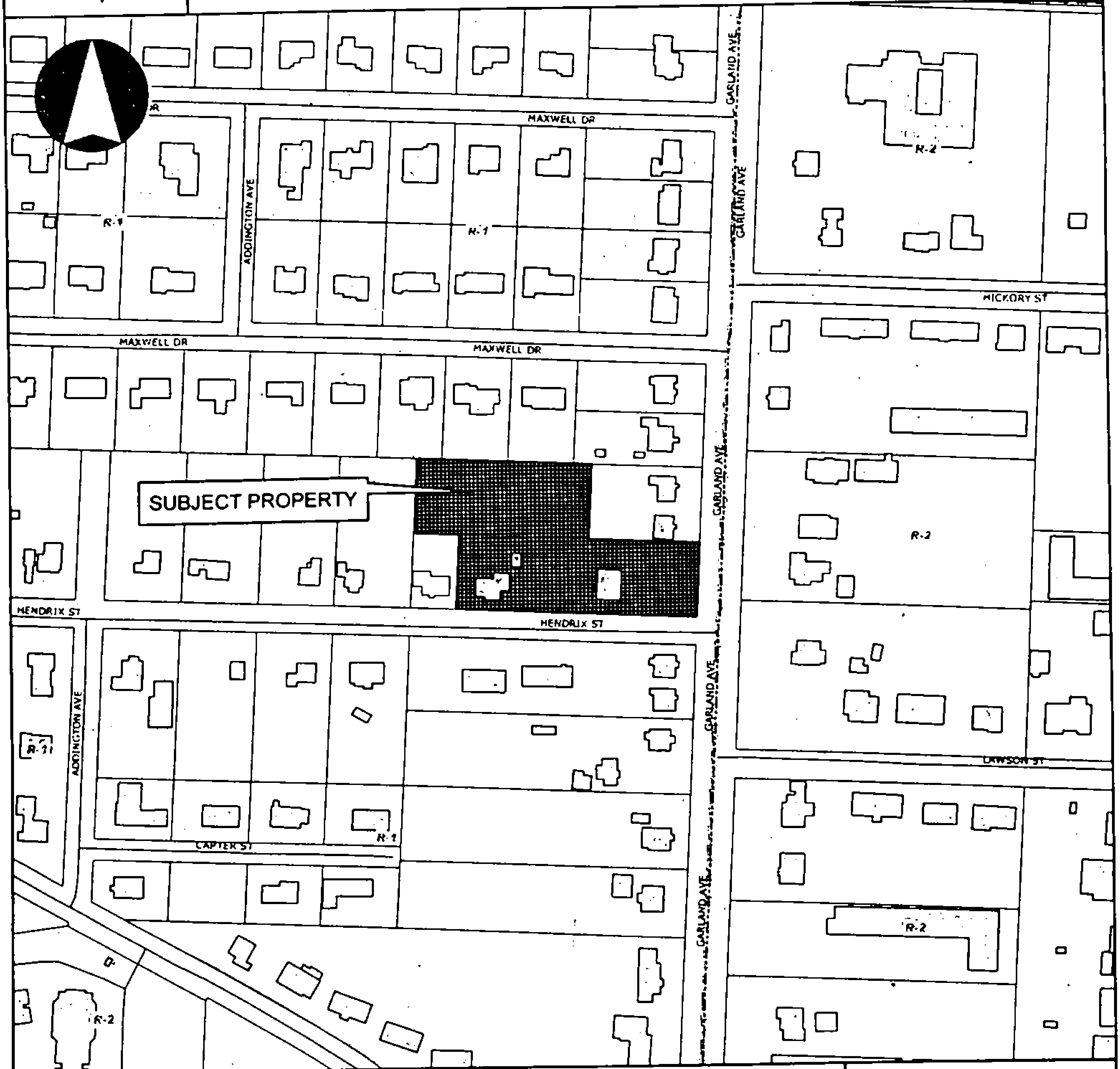
5. The area between Hendrix and Wedington has had a number of water breaks over the years. If this new development is put on that line, it seems that additional breaks will occur.

I ask you not to rezone to R-1.5 but to leave the zoning at R-1.

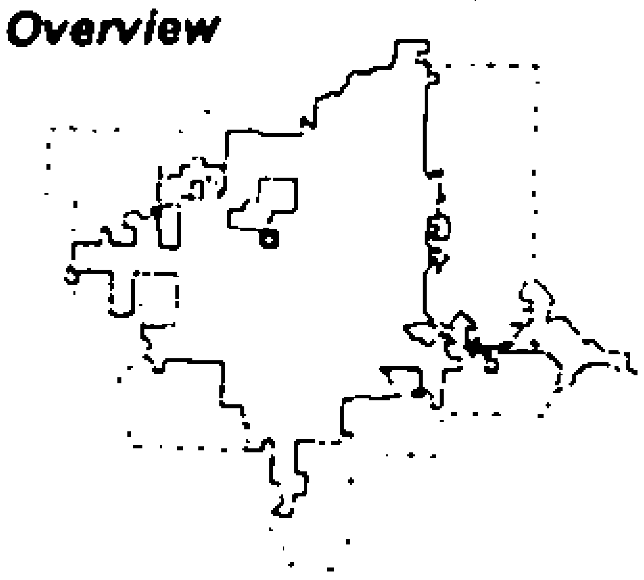
RZN02-1.00

Close Up View

SCHMITT



Overview



Legend

Subject Property
RZN02-1.00

Streets
Existing
Planned

Boundary
Planning Area
Overlay District
City Limits
Outside City

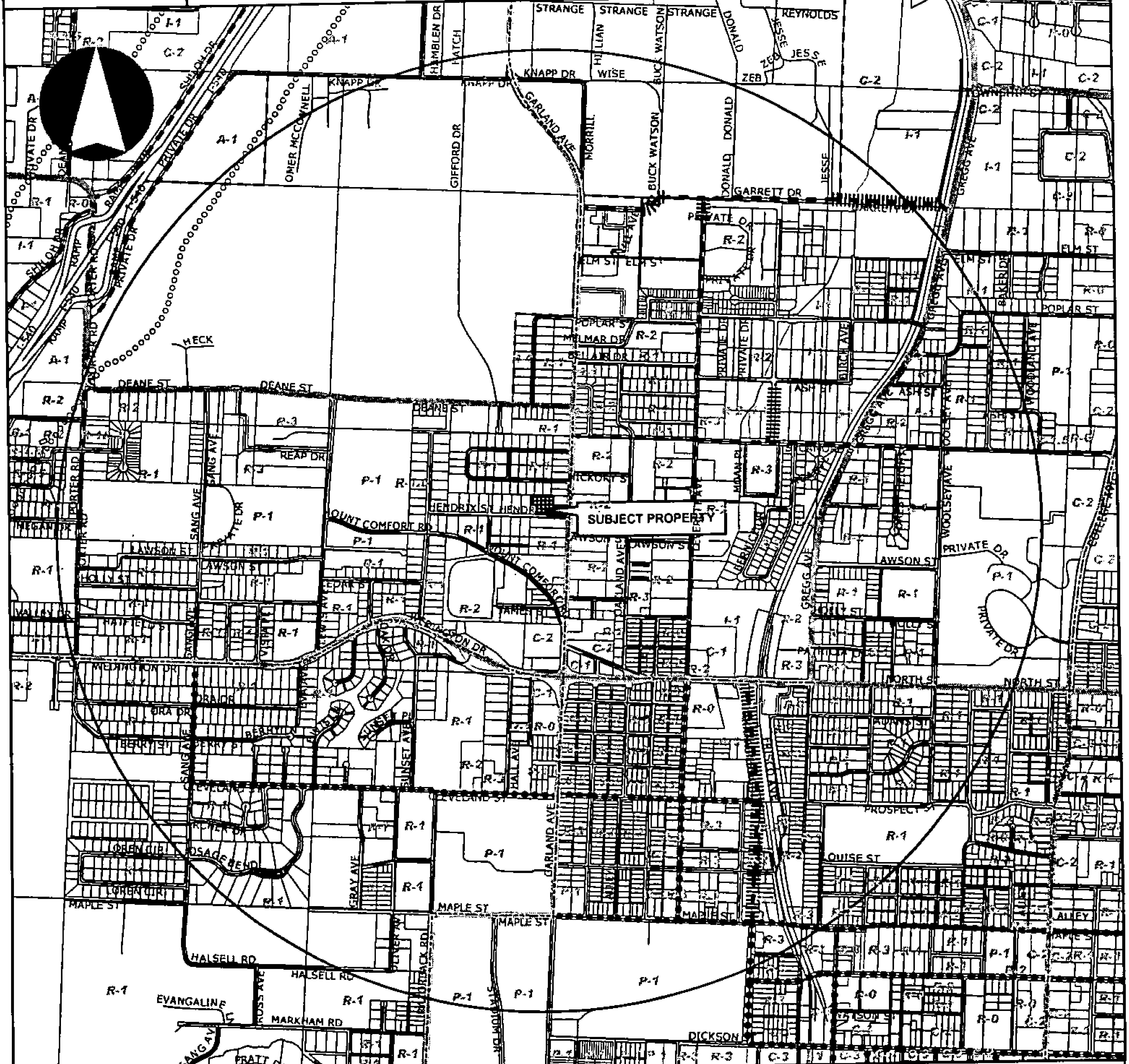
Master Street Plan
Freeway/Expressway
Principal Arterial
Minor Arterial
Collector
Historic Collector

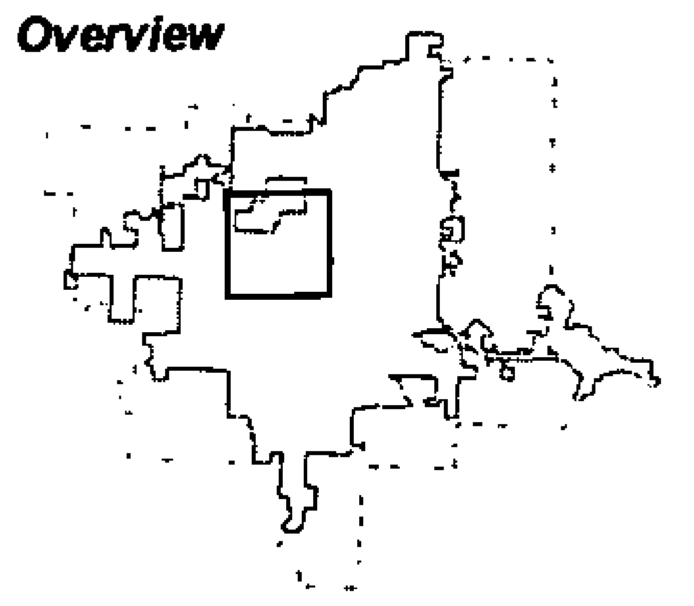
0 85 170 340 510 680 Feet

RZN02-1.00

One Mile View

SCHMITT





Legend

Subject Property

RZN02-1.00

Streets

Existing

Planned

Boundary

Planning Area

Overlay District

City Limits

Outside City

Master Street Plan

Freeway/Expressway

Principal Arterial

Minor Arterial

Collector

Historic Collector

0 0.125 0.25 0.5 0.75 1 Miles

RZN 02-1.00 Rezoning (Schmitt, pp 404) was submitted by Robert Schmitt for property located at 1140 Hendrix and 110 Garland. 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.

Estes: The next item on the agenda is item number three, this is a rezoning request submitted by Mr. Robert Schmitt for property located at 1140 Hendrix and 110 Garland. 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. Staff recommends approval of the requested rezoning based on the findings that are included as a part of your report. Is the applicant or the applicant's representative present?

Osborne: Yes Sir, we appreciate the opportunity to appear and we are very happy with the staff recommendation and we stand on it. I am Rick Osborne representing Bobby Schmitt.

Estes: Thank you Mr. Osborne.

PUBLIC COMMENT:

Estes: Is there any member of the audience who would like to provide public comment on this rezoning request 02-1.00?

Davidson: Yes Sir. My name is Sharon Davidson, I live on Rodgers Drive in Fayetteville. Actually, I would like to start with, I have heard the unfortunate news that Commissioner Estes' term is about to expire on us and I consider that a big loss to us in Fayetteville. I have watched him handle these meetings and people and projects and he has done it extremely well in my opinion. I am a little concerned that we won't have his great expertise in the years ahead dealing with the very reason why I'm standing up here right now, Mr. Schmitt. Inappropriate R-2 zoning is one of his issues. We have issues all over the place with Mr. Schmitt and actually I haven't had enough time to research this newest one myself. I notice again he is wanting a favor from us while he is costing us exorbitant amounts of money to accommodate him. His newest thing we can get to, I didn't hear much about it here. We don't usually hear much about it because they don't want to tell us much about it. Let's know that you can go to each one of his existing projects and find problems everywhere, complaints everywhere. I am only aware of four projects that this man is involved in. I guess this makes the fifth and there could be some hidden ones and I'm just coming familiar with it. The first major problem was on Markham Hill with this gentleman. He chose to insert a house in an area on a lot which he knew well was not zoned. Excuse me if some of my terminology is incorrect here. He knew what he was doing when he put this house in. We have situations from contractors that the house is already taking in water in the basement. We have those types of issues with his projects. I believe that this is the gentleman who had students sign papers stating they were domestic servants for other students so that he could make money in an area that was not supposed to be treated that way. I think that was the first I heard of him. Now we are coming up to Olive Street. He has got this hill, it is sort of like a pock mark situation.

Estes: Ms. Davidson, this is a request for rezoning property.

Davidson: Ok, bring me back in line but the whole point is it is a request for something. We are having issues with Mr. Schmitt up on the hill. I'm asking you is if we have to address this issue.

Estes: Ms Davidson, do this for me, stay focused on the agenda item that is before us. It is a request to rezone property located at 1140 Hendrix and 110 Garland. Please focus on that issue and if you have any comments that you feel would edify us or educate us in that regard please provide them.

Davidson: That is what I thought I was doing and that is our problem with this situation Sir. These are relative to this situation and the fact that our city is at capacity or almost capacity for our sewage system. The fact that there are a lot of inappropriate projects going in and the fact that this man has a track record for inappropriate projects leads me to say that I don't trust this project. I would like to know a whole lot more about his plans for this project and I would also like to see some good faith from this man in any of his actions or intentions with the city. Here is a suggestion Mr. Schmitt. You want a favor here, every project wants a favor, every project also circumvents our rules with deliberate actions. You would like this zoned up. We are fortunate that we have gotten, and I thank you for that as well, the R-1.5 zoning to try and have a little stop gap while we deal with our major issue in Fayetteville as Commissioners now need to know is inappropriate R-2 zoning. This is very indicative of how our city can be degraded within a few years as far as our neighborhoods. Here is the deal, if he wants to show good faith in what he is doing in our area, how about voluntary downgrading, downzoning that piece of property on Fletcher Mr. Schmitt? You've shown such ill will to every neighborhood you have inserted yourself in, how about that 1.5?

Estes: Mrs. Davidson...

Davidson: You can downzone right? Can I not request that be considered that he do that?

Estes: Mrs. Davidson, please keep your comments brief, keep them to the point, keep them focused on the agenda item.

Davidson: It is all on the point, it is a very big point and it is the point. I say please do this man no favors, please research what he is saying he wants to do. You well know Sir, he says he wants to do one thing and he ends up doing another. This is where we need to start addressing it. I ask you to please address the issue with the problem of this man and his developments. Do not grant him any favors, variances or waivers. Please do not grant this request for rezoning. Good day.

Estes: Thank you Mrs. Davidson. Is there anyone else who would like to provide public comment on this issue? If so, please keep your comments brief, to the point and relevant to the agenda item being considered so that everyone has a chance to speak and we may continue with the meeting. Please tell us who you are, where you live and provide us with the benefits of your comments.

Sawyer: My name is Valerie Sawyer, I live at 1224 W. Hendrix. I represent myself, my son and a couple of other property owners on my street. I have three concerns. One is that I do realize that in Fayetteville there is always going to be a housing shortage. We keep growing, we have got a college. I realize that we need more apartments but I still have some concerns. One is traffic. There is already a lot of traffic on Garland. It needs to be wider but there is just no way to make it wider. Secondly, the apartments that are already in that neighborhood bring in a lot of crime and there was an article in the paper recently about the crime in those neighborhoods but my biggest problem is drainage. The ditches that come from both directions down Garland go down at the back of this property down a ditch that is parallel and between Hendrix and Maxwell. The ditch goes and eventually ceases to be a ditch and it is just a big flood area that is behind my property. I also represent the owners of my property. They were hoping that they would be back in town in time to be at this meeting but they couldn't be here. After it rains, the yard to the side of my house is a swamp. I signed a lease because I wanted my son to have a yard to play in but after it rains for several days we can't play in that yard. I don't mind because the birds like it and I like the birds but there is a pond behind my house for days after it rains and if they pave that... some apartments were built, two triplexes were built down my street and they just paved the whole thing because drainage is so bad in that area that once they realized that they were just going to have mud for people to park in they just paved this entire lot front to back and took out a lot of trees. I just hope that someone, some of you could come look at that property site after the next rain because my son and I walk across it sometimes taking a shortcut to a friend's house and after it rains it is really swampy over there. I hope that someone will come look at it and walk on it after a rain and look at the ditch that suddenly ceases to be a ditch and becomes a pond before you allow this type of project to happen. If you could figure out a way to make it drain in a responsible way then I wouldn't be quite so against it though I would prefer that my neighborhood stay a neighborhood and not turn into apartments. That is all I have, thank you.

Estes: Thank you Ms. Sawyer.

Richards: My name is Joyce Richards and I did forward to Ms. Strain a copy of my comments. I will read them, I don't know if you got them.

Conklin: They are on page 3.6.

Richards: Ok. My family and I have lived at 1673 N. Stevens for many years, since 1974 when we bought that property at 1231 S. Maxwell which backs up to the two triplexes which were put in last fall. My son and his family live there and my concerns are number one, a lot of traffic already goes up and down Hendrix. In part because that street is used as a cutoff to get to Mount Comfort because of the bottleneck that is there at Oak Plaza if you have ever gone through there in the morning, the afternoon, anytime of day, it is bad. Many people walk up and down Hendrix or they ride their bicycles up and down there. There are no sidewalks on that street if you are going to put more traffic through there it is going to be a greater danger. Number two, Garland already has complexes up and down between Oak Plaza and Agri Park, Magnolia Place, Garland Gardens just to name a few and they are also not very far away from College Park over there on Mount Comfort. Multiple dwellings would increase that traffic problem that is already there. I know that Garland is scheduled to be widened but that doesn't help us right now. It doesn't mean that it will help us if you put more apartment buildings up and down that street. Number three, the apartment complexes on Garland are in or near that high crime area which was in the Gazette. I put December 10th but it is really December 9th. I think if you put more people in that area that you are only going to increase the possibility of more crime. The more people in an area the greater the crime rate. I just don't think we need to expand that problem anymore to the west or I would ask you not to. Number four, there were two triplexes that were built down there. I guess my question to you is if we start rezoning here does that mean that that is going to become an apartment strip all the way down Hendrix? If it is going to go all the way down, will it come down my street, turn the corner a domino effect? Does this start a precedent that means that we aren't going to be able to come back to you to say please no more of this? She talked about the drainage but there is also a problem with the sewer and water system because I know that there have been water breaks up and down Garland because we have gone and watched them with my grandsons where they come and fix it. I don't know if those even actually hook up to there but I would assume that they would have some effect on it. I just ask you please don't do this.

Estes: Thank you Mrs. Richards. Is there any other member of the audience who would like to provide public comment on this rezoning request?

Lane: Good evening, my name is Jarod Lane. I live at 1227 S. Maxwell. I am just going to ask you guys to please not pass this. I like to have my house I bought six years ago, I have two small children and I like to have that Norman Rockwell effect. I like my yard, I like to be able to go up and down my street, I like to sleep at night. If we do this and we start passing this and building these, Ms. McBroom owns a lot of property in the back of my house, she is probably going to be able to build some more back there. All the college kids like to stay up late and we have already got College Park up there and it makes a lot of noise so please don't pass this. Thank you.

Estes: Thank you Jarod, is there anyone else in the audience that would like to provide public comment on this requested rezoning?

Richards, A.: My name is Allison Richards, I live at 1231 S. Maxwell. I guess I would like to start out briefly with waking up one morning to chainsaws and bulldozers on Hendrix bulldozing the lot and putting in two triplexes in what has normally been a single family dwelling residence. I have two small children, we ride bikes, we run. There aren't any sidewalks in that neighborhood. The crime rate is high, we watch police cars go up and down the streets and I would just like to ask you not to rezone, make more apartments in a residential neighborhood.

Estes: Thank you Ms. Richards, is there anyone else that wishes to provide public comment on this requested rezoning? Seeing none, I'll bring it back to the applicant's representative, Mr. Osborne for any comments.

Osborne: Thank you Mr. Estes. The two triplexes to which they refer are Marc Crandall's project. It is west of this. It is three or four lots down Maxwell Street. This property is on Garland. The young lady had some good points, the first one or the second one I guess it was. Traffic is a problem in that area, I think we all know it. We are contributing land to widen Garland. I don't know what else we can do besides that. We have committed to that. We, of course, will have a drainage plan which the city will have an opportunity to approve. Crime, I think they are talking about College Park. We are talking about one triplex, three or four blocks from College Park. I admit, College Park is noisy and there is probably crime over there. There is probably less crime on this site with this triplex than there would have been before. This was a mechanic's garage used as a C-1 nonconforming use in an R-1 zone. Mr. Schmitt, I think you know this, Mr. Schmitt bought this having been advised by the city that it was R-1.5. Thus, he bought it having his plans for the triplex. We thought we were kind of downzoning when we bought it. We were going to put a triplex there from day one. As I said, it was a mechanic's garage and I think these people would prefer a triplex to a mechanic's garage in that place. That is about all I've got to say. If you have any questions I will be glad to try and answer them.

Estes: Thank you Mr. Osborne.

Richards: Can I respond to that?

Estes: No Ma'am, the floor is closed for public comment, thank you. Mr. Conklin, could you provide us with some background? We have our packet and have our material and have read and studied it but that is exclusive to us and of course hasn't been distributed to those people that are concerned about this rezoning request. Would you give us some background explaining to us why this item is on our agenda tonight and why it is before us?

Conklin: Sure. This item is on your agenda due to a series of events that have occurred over the past several years. Back in 1995 our zoning map was changed from a hand drawn map that was colored in with crayons to a digital zoning map. At the time that the map was digitized or put into a digital format this area was shown as R-1.5. The applicant this evening that is before you, looked at our zoning map that is on our website and on our wall in our office that was redone into a digital format and it did show R-1.5. He applied for what is called a property line adjustment. At that time I asked my staff to go back and do a zoning history of this particular piece of property to identify the ordinance that rezoned it to R-1.5. At that time it was discovered that there were no ordinances that we could find in our offices or the City Clerk's office that showed that property to be rezoned. We asked the applicant to meet with us and we discussed the situation and advised him that a rezoning request would have to be applied for and brought forward to the Planning Commission and the City Council. That is where we are at today. I do not know when exactly that drafting error occurred on our zoning map. I think it has been there for many years. However, it has now been changed. It shows as R-1 and on the internet it has been corrected as well. We took a couple of other steps a couple of years ago, we transferred all of the official mapping down to our geographic information coordinator who keeps up our zoning map. It is no longer done within the Planning Division. There are some safeguards that have been implemented. This is one of the situations where we had no idea that there was an error in the map until I had my staff go back and research this particular piece of property and they could not find that. That is the main reason why we are here tonight. It is true that the applicant did come to our office and did look at a map that showed R-1.5 on this piece of property.

Estes: Mr. Conklin, did a drafting error occur during the process of converting the official city zoning map from a hand drawn graphic to a digital document and is that the reason that this item is before us this evening is to correct that error?

Conklin: That is correct. To the best of my knowledge that is the only logical reason that I can think of why it was shown that way. The person that digitalized our map misread a hand drawn map and put R-1.5 on the map in that area. I have looked back and I have not been able to find any other ordinances or documentation with regard to that. Once we did discover that, it was our duty to make sure that the applicant was aware that that piece of property was not zoned R-1.5, as was shown on the map and that the only way that property could be rezoned is to go through this process through Planning Commission and City Council. That is where we are at today.

Estes: My memory is the same as Mr. Osborne's. Ever since I can remember for the last forty years there has been a mechanic's garage on that property, would that be a C-2 use?

Conklin: Yes, C-2.

Estes: Would R-1.5 be a downzoning from C-2? Commissioners, are there any other questions?

Marr: Mr. Chair, I guess I have a question for Tim. Tim, I apologize that I don't have my land use map with me tonight. Could you maybe at least, in looking at the property maps on 3.7 and 3.8, on our land use plan it refers in our back ground information that it is consistent with the land use plan and allows us a transition from commercial to residential or from R-2?

Conklin: We do have R-2 zoning immediately to the east. Our land use plan does show this as residential land use.

Marr: It says a mix of housing types within the area and we will provide a transition from R-2 zoning across Garland. How far back on our land use plan does the R-1.5 go?

Conklin: We do not show individual zoning districts on our land use plan.

Marr: You just show it as residential.

Conklin: We show as residential with the policy being, we encourage mixed use type developments where appropriate and allow flexibility for developers and individuals to live in communities that have an opportunity for mixed residential housing types.

Marr: Is there a typical transition geographic area that is done in planning that says R-2 is this much, R-1, R-1.5. How do you transition to that? Is it blocks, is it multiple blocks, is it sections? I am just trying to get a feel. One of the concerns I heard was in this area now becoming with this rezoning would we see this whole area develop into a multi unit as opposed to single family unit zoning?

Conklin: Typically, in newer developments you will see a transition between commercial and then you may have a block of multifamily that can step down to some townhouses and some single family. I have seen that. In these areas you typically find a mixed use type of residential housing types in some of these areas. I think you have to look at it on a case by case basis and make your recommendation based on whether or not the findings can be met and the bylaws.

Marr: One other question. On the determination of whether it would alter population density and in my mind that is an increase in traffic, etc. I drive through this area quite a bit and I certainly understand the comments about the increased traffic and the increase in potential danger. As a result of that, it says slightly. When does it become moderately or more because we are going from a five unit capacity, if I read this correctly, to twelve units per acre or sixteen in this case. That seems more than slightly to me. I guess maybe in terms of we already have just three streets up a back log of people trying to turn onto Sycamore and Deane and Garland at rush hour time periods. What I don't want to do is create another situation because of our zoning a hundred yards down.

Conklin: Garland Avenue is on our Master Street Plan as a principal arterial street. In the future it is planned to be widened to that standard. The standard is designed to carry large volumes of traffic, anywhere from 16,000 to 18,000 vehicles per day. When we look at traffic we are looking at what the streets are, our Master Street Plan classifications and what these streets are designed for. In the future what they are designed to handle. That is what we are looking at in this location.

Allen: Looking at the map on page 3.7, is basically all of the property that is visible on this map east of Garland R-2 and west of Garland R-1?

Conklin: Yes, that is pretty much true. College Park Apartments is zoned R-2. All to the east and north on Garland is zoned R-2.

Marr: Where is the triplex, the current ones? Not the one proposed with this zoning on this particular drawing we are looking at.

Conklin: If you look at Addington Avenue it goes north it would be on that lot, those two triplexes right there.

Marr: Ok, thank you.

Hoffman: I have a question for our City Attorney. In reading the background, it looks like the applicant purchased the property with the understanding from our map at the time that it was R-1.5 and I think that has been established. If for some reason the zoning were not to pass at this level or the Council level, would the city be responsible, could they be sued for this or would that be something that the title company should've picked up on and it would go to the title company?

Williams: I wouldn't want to advise an applicant whether or not he should sue the city.

Hoffman: I'm not after that, I'm just curious.

Williams: Obviously, the city does have it's statutory immunity for negligent actions that we would attempt to assert in any sort of suit if that happened. I am not telling you that that would be an absolute bar to any potential liability that we would have. The applicant also might look toward a title company or something like that that might have missed this. The title company would be saying that they relied on the official map that was put on the website and that we had. You are just making a recommendation to the City Council. City Council has to make the final decision and they will be the ones deciding the liability question also if it has to come up there. They certainly rely a lot upon your recommendations. I think they usually follow what the Planning Commission does here so it is very important to them. I think that a lot of the motivation probably from our Planning staff was the fact that we did make a mistake and we acknowledge that mistake. It was inadvertent, we did not want to make it, but it was made and it did put all of these parties in an awkward and difficult position and I think that is why they encouraged them if they wanted to go forward that they did have to come before the Planning Commission and the City Council in order to rectify this problem. Even though we did make a mistake we have to rely upon the actual ordinance and the ordinance said this is R-1.

Hoffman: Thank you. I absolutely agree that it puts everybody in a difficult situation. I have one more comment about the former use of the property having been for a mechanic's garage. In my mind that use is, although commercial in nature, not so much of an impact on the neighborhood as an additional sixteen units might be because its hours of operation are only during the daytime. I have heard a lot of concern expressed about night time activity and a lot of activity happening after hours. The last question I have is for the applicant I guess. I have heard the word triplex with regard to your proposal for this and I know that we don't have a site plan or anything other than the rezoning in front of us but did you plan on developing to the full sixteen units? If you don't mind talking about that if you could tell us how many units you are actually going to propose on this. I'm just asking, let me reiterate.

Osborne: We don't mind. We are just asking for eight additional units and there is a house that we intend to leave there which will make a total of nine units.

Hoffman: Thank you very much, that is all I had.

Estes: Are there any other questions or comments?

Bunch: Yes Mr. Chairman, I have a couple of questions. One for staff. On the widening scheduled for Garland, is that portion of Garland State Highway 112 and is that tied up in state problems or will it be on the city capital improvement program and if so when?

Conklin: It is on the transportation improvement plan for the state highway. I don't have the exact date, I think it may be ten years out.

Bunch: It will go to a four lane at some point in time and that portion of Garland is State Highway?

Conklin: Yes, it is State Highway. That is subject to change every three years as they do the transportation improvement program. For example, Garland Avenue wasn't even discussed prior to a few years ago with regard to between Maple and North Street but that can change over time.

Bunch: One other question. The term lot line adjustment has been interjected into the mix. This is 1.36 acres is that going to become two lots or what has transpired? That was an administrative decision on the lot line adjustment?

Conklin: Those are administrative decisions. It is basically moving the existing lots lines around. As long as it met the R-1 zoning we approved it based on R-1 zoning.

Bunch: What is the current status? Is it one lot, two lots, three lots?

Conklin: I'm not sure, it did not increase the number of lots. It moves the lot lines around.

Osborne: It is two.

Bunch: It would be one lot for the existing structure and then a second lot for the proposed structures?

Osborne: Yes.

Estes: Are there any other questions or comments? The existing structure is a mechanic's garage and that is a C-2 permitted use. Some of the other things. . .

Shackelford: There is also a house.

Osborne: We are leaving the house and tearing down the garage.

Estes: Right. The garage is on the corner of Garland and Hendrix and that is a C-2 use. Other C-2 uses that are permitted by right are adult live entertainment, clubs or bars. If it was my property I would much rather something other than a C-2 and would much prefer 1.5. As I look at the Commercial Thoroughfare of Garland it would seem to me that from a planning perspective the appropriate use would be C-1. Again, I would much prefer it if I was a property owner.

Richards: Wouldn't the school keep the live entertainment out?

Estes: The school could keep it from becoming a bar but it could not keep it from becoming a live adult entertainment facility. That is a permitted use as a matter of right in a C-2 zoning district.

Hoffman: It can't be within a thousand feet of the school.

Estes: I think it is to serve alcohol.

Hoffman: I don't know but I don't think we are talking about a strip bar though.

Estes: Well, just to reveal to you a little bit of my thought process, I'm going to vote in favor of the rezoning request and the reason is because I consider it a downzoning. I consider it much less intrusive and offensive than other possible zoning and the permitted uses that fall within that zoning. Are there any comments?

Motion:

Ward: My thoughts on that particular piece of property is that everything along Hwy. 112 and

Garland Avenue probably should be zoned C-1, Neighborhood Commercial. Pretty much everything that is left along there has already become everything from convenience stores to restaurants to rental properties all up and down Hwy. 112 now. It is not a highly desirable area for a single family home anymore. The traffic has become too dense out there along Garland Avenue. In some ways, the first 300 feet to the west there should be zoned commercial, C-1. This R-1.5 is a very moderate density residential which I think is a much easier thing to live with if I had residential back in there on Hendrix or any of those other streets back there. I am going to go ahead and make a motion that we forward RZN 02-1 for this 1.36 acres.

Estes: We have a motion by Commissioner Ward to recommend approval of RZN 02-1 is there a second?

Shackelford: I'll second.

Estes: We have a second by Commissioner Shackelford. Is there any other discussion?

Hoffman: I can't vote for the rezoning in the absence of a Bill of Assurance limiting the number of units to the proposed 8. I feel that 16 is too dense for the residential traffic along Hendrix Street. I am in agreement with what Commissioners Ward and Shackelford say about the traffic on Garland. However, I do believe that this will negatively impact the single family character and use to the single family neighborhood to the west. If there were something like that...

Osborne: We would make that offer, eight units plus the house that is already there.

Hoffman: For the total of nine?

Osborne: Yes.

Hoffman: I want to make it clear that I'm not asking for that, you are offering it.

Estes: We have a motion by Commissioner Ward and a second by Commissioner Shackelford to approve. . .

Ward: I'll make a motion to amend my motion.

Estes: We have an amendment by Commissioner Ward which incorporates the Bill of Assurance now offered by the applicant, does the second concur?

Shackelford: Sure.

Bunch: On this lot line adjustment, a question for the applicant. Does the 1.36 acres include both the proposed duplexes and the existing house that will remain? There has been a lot line adjustment and we don't have that before us so we don't know how many acres the existing house sits upon and whether or not this project would come through as a large scale development. That is one of the questions that would also have an effect with the neighborhood's concerns if we could see this project again. If it comes through as a large scale development there would be a little more over site on it. Could the applicant please tell me what the breakdown is on the size and whether you anticipate bringing this through as a large scale?

Conklin: These were existing lots when we looked at the lot line adjustment. Because they are existing and individually they are less than an acre we can not require them to go through large scale development.

Bunch: Now what we have presented to us is a 1.36.

Conklin: It is more than one tract.

Bunch: Just for the record, that is two tracts and would not have to go through the large scale development process.

Conklin: We've looked at it and yes, the ordinance reads that anything over an acre is required to go through large scale development.

Bunch: Thank you.

Estes: We have a motion by Commissioner Ward and a second by Commissioner Shackelford to recommend approval of this rezoning request subject to a Bill of Assurance that the project will not exceed nine units. Is there any other discussion? Renee, would you call the roll please?

Roll Call: Upon the completion of roll call the motion to forward RZN 02-1.00 was approved by a vote of 5-4-0 with Commissioners Marr, Hoover, Allen and Bunch voting against it.

Estes: The motion passes by a vote of five to four. That is a recommendation only to the Fayetteville City Council for approval of the rezoning request.

STAFF REVIEW FORM

X AGENDA REQUEST
___ CONTRACT REVIEW
___ GRANT REVIEW

For the Fayetteville City Council meeting of February 5, 2002.

FROM:

Tim Conklin	Planning	Urban Development
Name	Division	Department

ACTION REQUIRED: To approve an ordinance for RZN 02-2.00 as submitted by Craig Hull of Nickle-Hill Group, Inc. 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.

COST TO CITY:

$		
Cost of this Request	Category/Project Budget	Category/Project Name
Account Number	Funds Used To Date	Program Name
Project Number	Remaining Balance	Fund

BUDGET REVIEW: ___ Budgeted Item ___ Budget Adjustment Attached

Budget Manager

Administrative Services Director

CONTRACT/GRANT/LEASE REVIEW: **GRANTING AGENCY:**

Accounting Manager	Date	Internal Auditor	Date
City Attorney	1/18/02 Date	ADA Coordinator	Date
Purchasing Officer	Date		

STAFF RECOMMENDATION: Staff recommended approval and on January 14, 2002 Planning Commission voted 9-0-0 to recommend approval subject to a Bill of Assurance limiting the use of the property to a liquor store and uses allowed in a C-1 zoning district and to forward the rezoning to the City Council.

Division Head	1-18-02 Date
Department Director	1-19-02 Date
Administrative Services Director	1/21/02 Date
Mayor	1/21/02 Date

Cross Reference

New Item: **Yes**

Prev Ord/Res #:

Orig Contract Date:

Orig Contract Number:

FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

113 W. Mountain St.
Fayetteville, AR 72701
Telephone: (501) 575-8264

PLANNING DIVISION CORRESPONDENCE

TO:	Mayor Dan Coody
	Fayetteville City Council
THRU:	Hugh Earnest, Urban Development Director
FROM:	Tim Conklin, A.I.C.P., City Planner
DATE:	January 18, 2002

BACKGROUND

RZN 02-2.00: Rezoning was submitted by Craig Hull of Nickle-Hill Group, Inc. 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.

The subject property is currently vacant. It is surrounded on three sides by streets designated as principal arterials (Joyce Blvd. and Crossover Rd.) and a collector street (Joyce Blvd.) on the City's Master Street Plan. The Future Land Use Plan calls this area out as part of a Community Commercial node surrounding the intersection of Crossover Rd. and Joyce Blvd.

The applicant is requesting that this tract be rezoned from C-1, Neighborhood Commercial to C-2, Thoroughfare Commercial. The proposal is to develop the property to include a liquor store in addition to other uses which have not been determined at this time. A Bill of Assurance has been drafted in which the applicant proposes to limit the uses permitted on this site to those uses allowed in the C-1 district including the additional use of a liquor store.

In this area, the only C-2 zoned property is located west of the subject property and was recently rezoned with a Bill of Assurance offered by the applicant that restricts the uses of the property to those permitted in the C-1 district and a liquor store.

CURRENT STATUS

The Planning Commission voted 9-0-0 to recommend the City Council approve the requested rezoning from C-1 to C-2 subject to a Bill of Assurance limiting the use of the property to a liquor store and uses allowed in the C-1 zoning district.

RECOMMENDATION

Staff and the Planning Commission recommend approval of the requested rezoning.

ORDINANCE NO. _____

AN ORDINANCE REZONING THAT PROPERTY DESCRIBED IN REZONING PETITION RZN 02-2.00 FOR A PARCEL CONTAINING APPROXIMATELY 1.94 ACRES LOCATED AT THE NORTHEAST CORNER OF JOYCE BLVD. AND CROSSOVER ROAD, FAYETTEVILLE, ARKANSAS, AS SUBMITTED BY CRAIG HULL OF NICKLE-HILL GROUP, INC. ON BEHALF OF ANDY BETHELL.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF FAYETTEVILLE, ARKANSAS:

Section 1: That the zone classification of the following described property is hereby changed as follows:

From C-1, Neighborhood Commercial to C-2, Thoroughfare Commercial as shown in Exhibit "A" attached hereto and made a part hereof.

Section 2. That the official zoning map of the City of Fayetteville, Arkansas, is hereby amended to reflect the zoning change provided in Section 1 above.

PASSED AND APPROVED this ______ day of __________, 2002.

APPROVED:

DRAFT

By:____________________
DAN COODY, Mayor

ATTEST:

By: ________________________
Heather Woodruff, City Clerk

EXHIBIT "A"

A TRACT OF LAND IN THE S1/2 NW 1/4 OF SECTION 30, TOWNSHIP 17 NORTH, RANGE 29 WEST IN WASHINGTON COUNTY, ARKANSAS, BEING MORE FULLY DESCRIBED AS FOLLOWS: COMMENCING AT THE SOUTHEAST CORNER OF S1/2 NW 1/4 NW 1/4; THENCE N00°25'14"E ALONG THE EST LINE THEREOF, 22.0 FEET; THENCE N89°33'55"W 25.0 FEET TO THE P.O.B. THENCE S89°33'55"W 76.0 FEET TO A POINT ON THE EAST RIGHT OF WAY OF HIGHWAY "265"; THENCE N29°17'57"W ALONG SAID RIGHT OF WAY, 501.10 FEET; THENCE S89°33'55"E 324.43 FEET; THENCE S00°25'14"W, 435.13 FEET TO THE POINT OF BEGINNING. CONTAINING 2.00 ACRES, MORE OR LESS. SUBJECT TO AN EXISTING RIGHT OF WAY FOR JOYCE 25.0 FEET IN WIDTH, AS MEASURED FROM THE EXISTING CENTER LINE, ALONG THE EAST AND SOUTH BOUNDARIES THEREOF.

FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

113 W. Mountain St.
Fayetteville, AR 72701
Telephone: (501) 575-8264

PLANNING DIVISION CORRESPONDENCE

TO: Fayetteville Planning Commission
FROM: Dawn T. Warrick, Senior Planner
THRU: Tim Conklin, A.I.C.P., City Planner
DATE: January 7, 2002

RZN 02-2.00: Rezoning (Bethell, pp 177) was submitted by Craig Hull of Nickle-Hill Group, Inc. 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.

RECOMMENDATION:

Staff recommends approval of the requested rezoning subject to the Bill of Assurance offered by the applicant which restricts the uses allowed on this property to those permitted in the C-1 zoning district and including the use of the property for a liquor store, based on the findings included as part of this report.

PLANNING COMMISSION ACTION:	**Required**	**YES**	
	O Approved		**O Denied**
Date: January 14, 2002			
CITY COUNCIL ACTION:	**Required**	**YES**	
	O Approved		**O Denied**
Date: February 5, 2002			

Comments: ____

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BACKGROUND:

The subject property is currently vacant. It is surrounded on three sides by streets designated as principal arterials (Joyce Blvd. and Crossover Rd.) and a collector street (Joyce Blvd.) on the City's Master Street Plan. The Future Land Use Plan calls this area out as part of a Community Commercial node surrounding the intersection of Crossover Rd. and Joyce Blvd.

The applicant is requesting that this tract be rezoned from C-1, Neighborhood Commercial to C-2, Thoroughfare Commercial. The proposal is to develop the property to include a liquor store in addition to other uses which have not been determined at this time. A Bill of Assurance has been drafted in which the proposes to limit the uses permitted on this site to those uses allowed in the C-1 district including the additional use of a liquor store.

In this area, the only C-2 zoned property is located west of the subject property and was recently rezoned with a Bill of Assurance offered by the applicant that restricts the uses of the property to those permitted in the C-1 district and a liquor store.

SURROUNDING LAND USE AND ZONING

North:	Vacant, A-1
South:	Vacant, R-O
East:	Vacant, A-1
West:	Gas Station / C-store / Car wash, C-1

INFRASTRUCTURE:

This site is served by several streets designated on the City's adopted Master Street Plan as higher level traffic-ways. Joyce Blvd. west of the property is classified as a principal arterial and has recently been improved through a City CIP project. Crossover Road which runs north-south along the western property line is a state highway (Hwy 265) and is classified on the City's Master Street Plan as a principal arterial. Joyce Blvd. is proposed on the City's plan to be extended to the east in the future. Currently, the section of Joyce Blvd. which runs north along the east side of the subject property, is not improved and will need to be reviewed at the time of development of this site.

Water and sewer are both located along Crossover Rd. Extension of utilities to serve this site will be the responsibility of the developer.

LAND USE PLAN: General Plan 2020 designates this site Community Commercial. Rezoning this property to C-2, Thoroughfare Commercial is consistent with the land use plan and compatible with surrounding land uses in the area.

FINDINGS OF THE STAFF

1. A determination of the degree to which the proposed zoning is consistent with land use planning objectives, principles, and policies and with land use and zoning plans.

Finding: **The proposed zoning is consistent with land use planning objectives, principles, and policies and with land use and zoning plans. This area is a designated commercial node on the City's adopted Future Land Use Plan. The request for C-2 zoning is consistent with that plan which shows this area to develop with Community Commercial land uses.**

2. A determination of whether the proposed zoning is justified and/or needed at the time the rezoning is proposed.

Finding: **The proposed zoning is justified at this time in that the proposed change is in keeping with the City's adopted Future Land Use Plan. Aside from a small tract immediately west of the subject property, which was recently rezoned with a Bill of Assurance offered by the applicant to limit the use of the property to a liquor store and all uses allowed in the C-1 district, there is no C-2 zoning in this part of the City. The closest C-2 zoned property is located approximately one mile west on Joyce Blvd. While the existing C-1 zoning on this property allows for a variety of neighborhood commercial services, a liquor store specifically requires C-2 zoning.**

3. A determination as to whether the proposed zoning would create or appreciably increase traffic danger and congestion.

Finding: **The proposed zoning will not create or appreciably increase traffic danger and congestion. This property is located at the intersection of two streets designated on the City's Master Street Plan to carry large volumes of traffic. The intersection is signalized which will aid in the traffic movements to and from this site.**

4. A determination as to whether the proposed zoning would alter the population density and thereby undesirably increase the load on public services including schools, water, and sewer facilities.

Finding: **The proposed zoning will not alter population density.**

5. If there are reasons why the proposed zoning should not be approved in view of considerations under b (1) through (4) above, a determination as to whether the proposed zoning is justified and/or necessitated by peculiar circumstances such as:

   a. It would be impractical to use the land for any of the uses permitted under its existing zoning classifications;

   b. There are extenuating circumstances which justify the rezoning even though there are reasons under b (1) through (4) above why the proposed zoning is not desirable.

Finding: **N/A**

§161.14 DISTRICT C-2 THOROUGH-FARE COMMERCIAL.

A. Purpose. The Thoroughfare Commercial District is designed especially to encourage the functional grouping of these commercial enterprises catering primarily to highway travelers.

B. Uses.

1. Permitted Uses.

Unit 1	City-Wide Uses by Right
Unit 4	Cultural and Recreational Facilities
Unit 12	Offices, Studios and Related Services
Unit 13	Eating Places
Unit 14	Hotel, Motel and Amusement Facilities
Unit 15	Neighborhood Shopping Goods
Unit 16	Shopping Goods
Unit 17	Trades and Services
Unit 18	Gasoline Service Stations and Drive-In Restaurants
Unit 19	Commercial Recreation
Unit 20	Commercial Recreation, Large Sites
Unit 24	Outdoor Advertising
Unit 33	Adult Live Entertainment Club or Bar

2. Uses Permissible on Appeal to the Planning Commission.

Unit 2	City-Wide Uses by Conditional Use Permit
Unit 3	Public Protection and Utility Facilities
Unit 21	Warehousing and Wholesale
Unit 28	Center for Collecting Recyclable Materials
Unit 32	Sexually Oriented Business

C. Bulk and Area Regulations. Setback lines shall meet the following minimum requirements:

From Street ROW	50 ft.
From Side Property Line	None
From Side Property Line When Contiguous to a Residential District	15 ft.
From Back Property Line	20 ft.

D. Building Area. On any lot the area occupied by all buildings shall not exceed 60% of the total area of such lot.

E. Height Regulations. In District C-2 any building which exceeds the height of 20 feet shall be set back from any boundary line of any residential district a distance of one foot for each foot of height in excess of 20 feet. No building shall exceed six stories or 75 feet in height.

(Code 1991, §160.036; Code 1965, App. A, Art. 5(VI); Ord. No. 1747, 6-29-89; Ord. No. 1833, 11-1-71; Ord. No. 2351, 6-2-177; Ord. No. 2603, 2-19-80; Ord. No. 4034, §§3,4, 4-15-97)

§161.13 DISTRICT C-1 NEIGHBOR-HOOD COMMERCIAL.

A. Purpose. The Neighborhood Commercial District is designed primarily to provide convenience goods and personal services for persons living in the surrounding residential areas.

B. Uses.

1. Permitted Uses.

Unit 1	City-Wide Uses by Right
Unit 12	Offices, Studios and Related Services
Unit 13	Eating Places
Unit 15	Neighborhood Shopping
Unit 18	Gasoline Service Stations and Drive-In Restaurants
Unit 25	Professional Offices

2. Uses Permissible on Appeal to the Planning Commission.

Unit 2	City-Wide Uses by Conditional Use Permit
Unit 3	Public Protection and Utility Facilities
Unit 4	Cultural and Recreational Facilities

C. Bulk and Area Regulations/Setbacks. Setback lines shall meet the following minimum requirements:

From Street ROW	50 ft.
From Side Property Line	None
From Side Property Line When Contiguous to a Residential District	10 ft.
From Back Property Line	20 ft.

D. Building Area. On any lot the area occupied by all buildings shall not exceed 40% of the total area of such lot.

E. Height Regulations. There shall be no maximum height limits in C-1 District, provided, however, that any building which exceeds the height of ten feet shall be set back from any boundary line of any residential district a distance of one foot for each foot of height in excess of ten feet.

(Code 1991, §160.035; Code 1965, App. A, Art. 5(V); Ord. No. 1747, 6-29-89; Ord. No. 2603, 2-19-80)

NICKLE-HILL GROUP, INC.
Commercial Real Estate Services
202 Sunbridge Drive, Fayetteville, Arkansas 72703 Bus: 501-571-1111 Fax: 501-571-2931

December 19, 2001

Mr. Tim Conklin, Planning Director
City of Fayetteville
113 West Mountain
Fayetteville, AR 72701

RE: Joyce & Crossover (NE Corner) Tax Parcel # 765-13242-001
Part of SW 1/2 of the NW 1/4 of the NW 1/4 of Section 30 Township 17 N, Range 29 West, Fayetteville, Washington County, Arkansas

Current Owner: Mitchell Oil Company, Inc. Applicant and Prospective Owner: Andy Bethell
Authorized Agent / Representative: Craig Hull, CCIM, AICP Nickle-Hill Group, Inc.

Dear Mr. Conklin:

Please accept this letter and attachments as our request to rezone the property located at the northeast corner of Joyce and Crossover (State Highway 265) from C-1 to C-2. The subject corner is particularly well suited for highway commercial establishments that would benefit from such conveniences as drive through windows as allowed in the higher zoning classification.

Traffic flow on Highway 265 at this intersection is quite high, with total movements through the intersection recorded at some 30,000 vehicles per day according to a recent count by the City's Traffic Department. Peak traffic at rush hours does not lend itself to "neighborhood commercial" uses, as the current zoning designation would allow. More intense commercial uses should be congregated at major intersections in accordance with the City's Future Land Use Plan, and this re-zoning would be in general compliance with that plan.

Commercial uses to the west will not be adversely impacted by the proposed development, and the current owners have required a deed restriction as a condition of sale that would prevent the installation of a gas station / convenience store at this corner for at least seven years. The applicant will submit a copy of the deed with the restrictions to the City Planning Department promptly upon closing the transaction. Undeveloped land to the north, south, and east has yet to become urbanized. No single family residences are within close proximity of the subject site.

Questions related to signage and commercial design standards will be dealt with at the time of a Large Scale Development application, and are deemed not to be applicable at this time. City utilities are available across the road in the Crossover right of way, and some directional boring may be necessary for access to water and sewer. A 36 inch water line lies along Joyce and angles NE along crossover. Taps are not allowed into the main, so service will likely come from a 12 inch line on the west right of way. An 8 inch sewer line and a manhole is available at the intersection of Millenium Drive and the west side of Crossover. Boring beneath Highway 265 is required for this connection as well. These issues will likewise be dealt with at the appropriate time, and in full compliance with all applicable city and State Health Department requirements.

My client recognizes the factors involved in further development of the site, including the right of way dedications necessary to comply with the Master Street Plan and the issues generally decided in a Large Scale Development application. Although final development plans are not yet in place, the need for certainty regarding the C-2 zoning designation is required in order for the real estate transaction to be completed. Curb cuts along either road, Arkansas Highway and Transportation Department permits, commercial design standards, compliance with the Tree Preservation Ordinance, Landscaping, Sidewalks and Trails requirements and stormwater detention / drainage issues are all matters that will be strictly attended to in the Large Scale Development application.

We appreciate the cooperation and assistance of the City of Fayetteville in making this project a success.

Sincerely,

Craig Hull

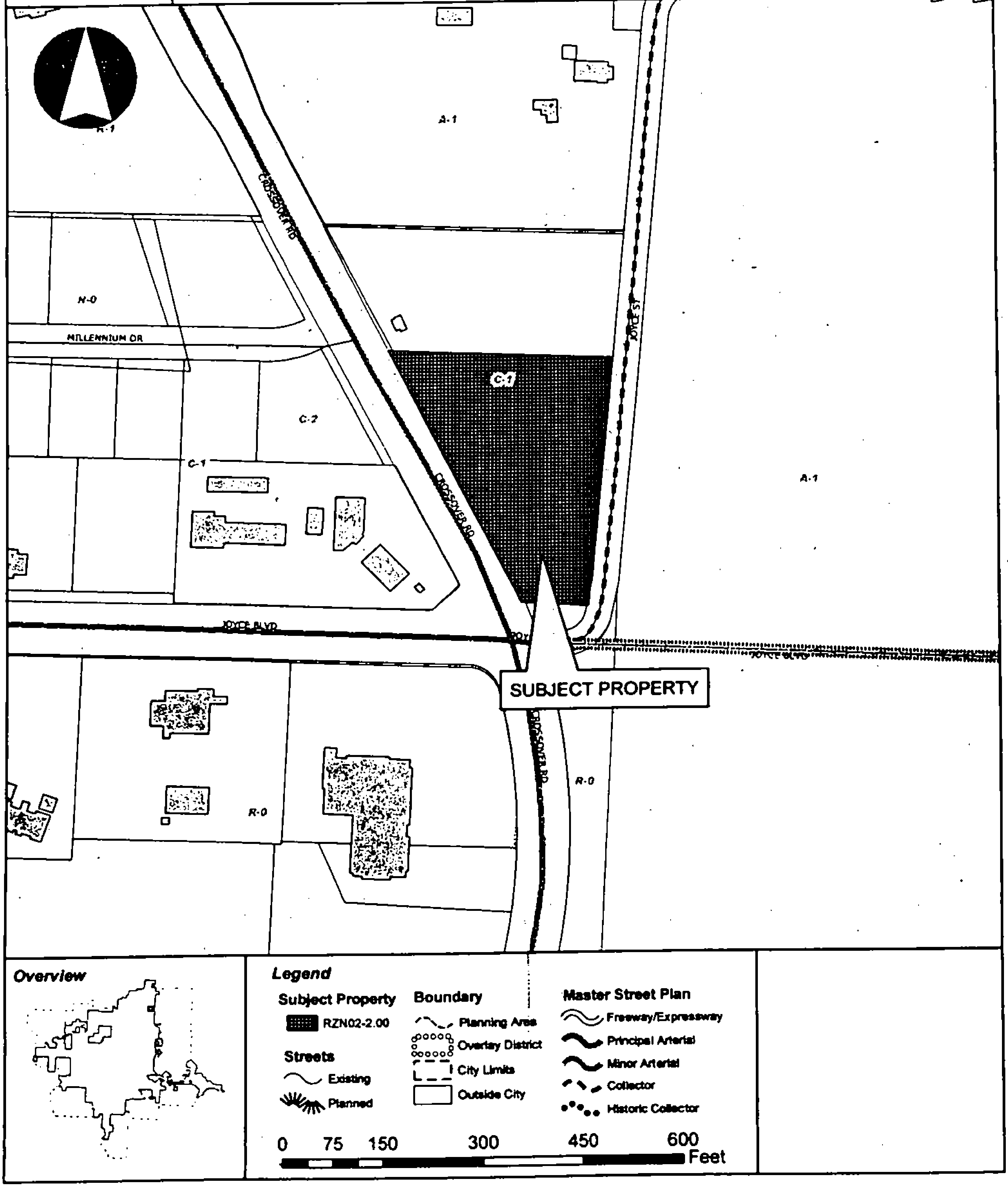
Craig Hull, AICP, CCIM

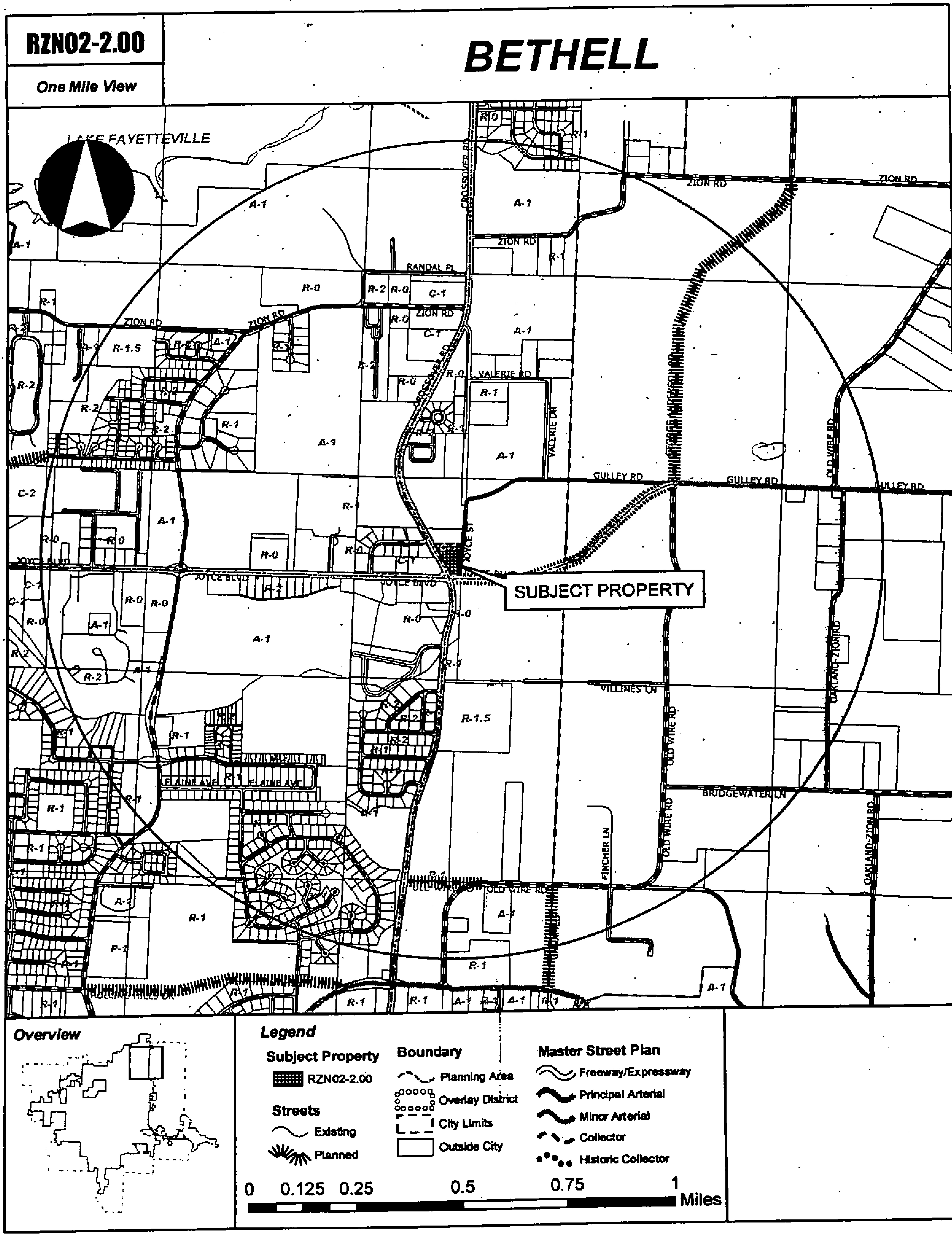
CC: Andy Bethell
Conway Massey

RZN02-2.00

Close Up View

BETHELL




RZN02-2.00
One Mile View
BETHELL
LAKE FAYETTEVILLE
ZION RD
RANDAL PL
CROSSOVER RD
VALERIE RD
VALERIE DR
GEORGE ANDERSON RD
GULLEY RD
OLD WIRE RD
JOYCE BLVD
JOYCE ST
SUBJECT PROPERTY
VILLINES LN
OAKLAND-ZION RD
BRIDGEWATER LN
FINCHER LN
ELAINE AVE
ROLLING HILLS DR
Overview
Legend
Subject Property
RZN02-2.00
Streets
Existing
Planned
Boundary
Planning Area
Overlay District
City Limits
Outside City
Master Street Plan
Freeway/Expressway
Principal Arterial
Minor Arterial
Collector
Historic Collector
0 0.125 0.25 0.5 0.75 1
Miles

RZN 02-2.00: Rezoning (Bethell, pp 177) was submitted by Craig Hull of Nickle-Hill Group, Inc. 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.

Estes: The next item on the agenda is item number four RZN 02-2 a rezoning submitted by Craig Hull of Nickle-Hill Group, Inc. 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. Staff recommends approval of the requested rezoning subject to the Bill of Assurance offered by the applicant which restricts the uses allowed on this property to those permitted in the C-1 zoning district and including the use of the property for a liquor store and based on the findings that are included in your report. Is the applicant present?

Hull: Yes.

Estes: Would you state your name and give us the benefit of your presentation please?

Hull: Mr. Chairman, my name is Craig Hull with the Nickle Hill Group. I am representing Andy Bethell where he has applied for a liquor permit for this site. The subject property is a triangular shaped piece of ground just to the east of Crossover Road at Joyce Street and a high traffic area. The C-2 designation requested would allow the applicant to do the drive in window necessary for his business. We do not at this time have a full definition of the other uses but they would conform with the C-1 zoning district for the remainder of the project and is certainly subject to all of the large scale development process ahead of it. The surrounding property to the west is all turned commercial. There is no doubt that this is a commercial corridor so if there are other questions I will be glad to answer them.

Estes: Thank you Mr. Hull. Is there any member of the audience that would like to offer public comment on this rezoning request 02-2.00? Seeing none, I'll bring it back to the Commission for discussions, comments and motions.

Motion:

Marr: I will recommend approval for RZN 02-2.00 because this is the only method today under which we can deal with this. I do want to reiterate, I think at agenda session one of the things that I asked and I think that you actually formally requested it that we address this as an agenda item tonight to have the ability to draft something to present to the City

Council with our City Attorney that allows us to do conditional use liquor stores in a C-1 so we don't have to change the zoning to be able to do that. Since this is our remedy today and I certainly think it is appropriate in this corner I will move for approval.

Estes: We have a motion by Commissioner Marr to recommend approval of RZN 02-2.00 is there a second?

Hoffman: I'll second.

Estes: We have a second by Commissioner Hoffman is there any discussion? We have a motion by Commissioner Marr and a second by Commissioner Hoffman to recommend approval of RZN 02-2 are there any comments, questions for the applicant or any further discussion? Renee, would you call the roll please?

Roll Call: Upon the completion of roll call the motion to forward RZN 02-2.00 was approved by a vote of 9-0-0.

Estes: The motion passes by a unanimous vote and will be forwarded onto the Fayetteville City Council for its determination and consideration. Thank you Mr. Hull.

Williams: I will say that when this does go before the City Council I will also pass on your recommendation that this can be done by a conditional use and if the City Council seems to be of the mind to do that then we will present an ordinance to that effect.

Estes: Thank you Mr. Williams.

RZN 02-3.00
C. 3. Page 1

STAFF REVIEW FORM

X AGENDA REQUEST
___ CONTRACT REVIEW
___ GRANT REVIEW

For the Fayetteville City Council meeting of February 5, 2002.

FROM:

Tim Conklin	Planning	Urban Development
Name	Division	Department

ACTION REQUIRED: To approve an ordinance for RZN 02-3.00 as submitted by Bob Hill of Nickle-Hill Group, Inc. on behalf of Al & 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.

COST TO CITY:

$		
Cost of this Request	Category/Project Budget	Category/Project Name
Account Number	Funds Used To Date	Program Name
Project Number	Remaining Balance	Fund

BUDGET REVIEW: ___ Budgeted Item ___ Budget Adjustment Attached

Budget Manager

Administrative Services Director

CONTRACT/GRANT/LEASE REVIEW: **GRANTING AGENCY:**

Accounting Manager	Date	Internal Auditor	Date
City Attorney	1/18/02 Date	ADA Coordinator	Date
Purchasing Officer	Date		

STAFF RECOMMENDATION: Staff recommended approval and on January 14, 2002 Planning Commission voted 9-0-0 to recommend approval and to forward the rezoning along to the City Council.

Division Head	1-18-02 Date	Cross Reference
Department Director	1-19-02 Date	New Item: **Yes**
Administrative Services Director	1/21/02 Date	Prev Ord/Res #:
Mayor	1/21/02 Date	Orig Contract Date:
		Orig Contract Number:

FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

113 W. Mountain St.
Fayetteville, AR 72701
Telephone: (501) 575-8264

PLANNING DIVISION CORRESPONDENCE

TO: Mayor Dan Coody
Fayetteville City Council
THRU: Hugh Earnest, Urban Development Director
FROM: Tim Conklin, A.I.C.P., City Planner
DATE: January 18, 2002

BACKGROUND

RZN 02-3.00: Rezoning was submitted by Bob Hill of Nickle-Hill Group on behalf of Al & Lucile Cathcart and Cecil & 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.

The subject property is located west of the Westgate Shopping Center (formerly included Marvin's IGA) which is at the northwest corner of the intersection of Hwy 62W and I-540. Property to the east is developed as AAA Mini-storage and to the north, Centurytel has installed a telecommunications equipment facility. To the south, across Hwy 62W is a small house which is located in a C-2 zoning district and will likely redevelop commercially.

The vast majority of this property is located within the Design Overlay District. The only exception is a very small triangle of property at the southwest corner of the tract.

The applicant is requesting that the entire tract be zoned C-2. Currently, the northwest corner of the property (approximately 1/3 of the overall tract) is zoned R-O, Residential Office, the remaining 2/3 of the property is already zoned C-2. Current plans include the redevelopment of the Westgate Shopping Center along with additional development on this site. Access to Shiloh Drive is important as it is a one-way outer road to I-540 and easements are proposed as a part of the overall development of these projects.

At the time of development, City requirements for development within the Design Overlay District as well as Commercial Design Standards, tree protection and preservation and all other applicable ordinances will be reviewed.

CURRENT STATUS

The Planning Commission voted 9-0-0 to recommend the City Council approve the requested rezoning from R-O to C-2.

RECOMMENDATION

Staff and the Planning Commission recommend approval of the requested rezoning.

ORDINANCE NO. _____

AN ORDINANCE REZONING THAT PROPERTY DESCRIBED IN REZONING PETITION RZN 02-3.00 FOR A PARCEL CONTAINING APPROXIMATELY 4.75 ACRES LOCATED AT 2684 W. SIXTH STREET, FAYETTEVILLE, ARKANSAS, AS SUBMITTED BY BOB HILL OF NICKLE-HILL GROUP, INC. ON BEHALF OF AL AND LUCILE CATHCART AND ANNE ENGLAND.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF FAYETTEVILLE, ARKANSAS:

Section 1: That the zone classification of the following described property is hereby changed as follows:

From R-O, Residential Office to C-2, Thoroughfare Commercial as shown in Exhibit "A" attached hereto and made a part hereof.

Section 2. That the official zoning map of the City of Fayetteville, Arkansas, is hereby amended to reflect the zoning change provided in Section 1 above.

PASSED AND APPROVED this ______ day of __________, 2002.

APPROVED:

DRAFT

By:____________________
DAN COODY, Mayor

ATTEST:

By: ______________________
Heather Woodruff, City Clerk

EXHIBIT "A"

A PART OF THE NORTHEAST QUARTER (NE1/4) OF THE NORTHEAST QUARTER (NE1/4) OF SECTION NINETEEN (19), TOWNSHIP SIXTEEN (16) NORTH, RANGE THIRTY (30) WEST, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS: COMMENCING AT THE NORTHWEST CORNER OF SAID 40 ACRE TRACT; THENCE SOUTH 991.00 FEET ALONG THE WEST LINE OF SAID 40 ACRE TRACT TO A SET IRON FOR THE TRUE POINT OF BEGINNING; THENCE NORTH 601.20 FEET TO A SET IRON; THENCE N85°30'00"E 278.30 FEET TO A SET IRON;; THENCE SOUTH 723.67 FEET TO A SET IRON ON THE NORTHERLY RIGHT OF WAY OF U.S. HIGHWAY 62; THENCE ALONG SAID RIGHT OF WAY, THE FOLLOWING BEARINGS AND DISTANCES: S75°03'47"W 64.62 FEET TO AN EXISTING AHTD MONUMENT; S69°11'04"W 158.36 FEET TO AN EXISTING AHTD MONUMENT; S56°28'04"W 24.20 FEET TO A SET IRON; S68°22'44"W 3.57 FEET TO A SET IRON; THENCE LEAVING SAID RIGHT OF WAY N13°01'15"W 194.34 FEET TO THE TRUE POINT OF BEGINNING, CONTAINING 4.75 ACRES, MORE OR LESS, WASHINGTON COUNTY, ARKANSAS.

FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

113 W. Mountain St.
Fayetteville, AR 72701
Telephone: (501) 575-8264

PLANNING DIVISION CORRESPONDENCE

TO:	Fayetteville Planning Commission
FROM:	Dawn T. Warrick, Senior Planner
THRU:	Tim Conklin, A.I.C.P., City Planner
DATE:	January 7, 2002

RZN 02-3.00: Rezoning (Cathcart/England, pp 558) was submitted by Bob Hill of Nickle-Hill Group on behalf of Al & Lucile Cathcart and Cecil & 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.

RECOMMENDATION:

Staff recommends approval of the requested rezoning based on the findings included as part of this report.

PLANNING COMMISSION ACTION:	**Required**	**YES**	
	○ Approved		**○ Denied**
Date: January 14, 2002			
CITY COUNCIL ACTION:	**Required**	**YES**	
	○ Approved		**○ Denied**
Date: February 5, 2002			

Comments: ______________________________

____

____

BACKGROUND:

The subject property is located west of the Westgate Shopping Center (formerly included Marvin's IGA) which is at the northwest corner of the intersection of Hwy 62W and I-540. Property to the ~~east~~ west is developed as AAA Mini-storage and to the north, Centurytel has installed a telecommunications equipment facility. To the south, across Hwy 62W is a small house which is located in a C-2 zoning district and will likely redevelop commercially.

The vast majority of this property is located within the Design Overlay District. The only exception is a very small triangle of property at the southwest corner of the tract.

The applicant is requesting that the entire tract be zoned C-2. Currently, the north~~west~~ part corner of the property (approximately 1/3 of the overall tract) is zoned R-O, Residential Office, the remaining 2/3 of the property is already zoned C-2. Current plans include the redevelopment of the Westgate Shopping Center along with additional development on this site. Access to Shiloh Drive is important as it is a one-way outer road to I-540 and easements are proposed as a part of the overall development of these projects.

At the time of development, City requirements for development within the Design Overlay District as well as Commercial Design Standards, tree protection and preservation and all other applicable ordinances will be reviewed.

SURROUNDING LAND USE AND ZONING

North:	Telecommunications equipment facility (Centurytel), R-O
South:	Single family home, C-2
East:	Westgate Shopping Center, C-2
West:	AAA Mini-storage, C-2

INFRASTRUCTURE:

Access for this site is provided by Hwy 62W, a principal arterial on the City's adopted Master Street Plan. This site is located just west of the intersection of I-540 and Hwy 62W. This is a major interchange on the bypass.

Water and sewer are both available in the area of this property. There are water lines located along Hwy 62W and along Old Farmington Road (to the north). Sewer is also located along these streets as well as along Shiloh Drive.

LAND USE PLAN: General Plan 2020 designates this site Regional Commercial. Rezoning this property to C-2, Thoroughfare Commercial is consistent with the land use plan and compatible with surrounding land uses in the area.

FINDINGS OF THE STAFF

1. A determination of the degree to which the proposed zoning is consistent with land use planning objectives, principles, and policies and with land use and zoning plans.

Finding: **The proposed zoning is consistent with land use planning objectives, principles, and policies and with land use and zoning plans. This property is designated on the City's adopted Future Land Use Plan as a part of a Regional Commercial node around the intersection of I-540 and Hwy 62W. Some of the subject property is already zoned C-2 and the remainder is currently designated R-O. Rezoning the entire tract to C-2 is consistent with the City's adopted Future Land Use Plan and it will provide continuity of zoning for the entire subject property.**

2. A determination of whether the proposed zoning is justified and/or needed at the time the rezoning is proposed.

Finding: **The proposed zoning is justified at this time and is needed in order to develop the entire tract with one unified project.**

3. A determination as to whether the proposed zoning would create or appreciably increase traffic danger and congestion.

Finding: **The proposed zoning will not create or appreciably increase traffic danger and congestion.**

4. A determination as to whether the proposed zoning would alter the population density and thereby undesirably increase the load on public services including schools, water, and sewer facilities.

Finding: **The proposed zoning will not alter population density.**

5. If there are reasons why the proposed zoning should not be approved in view of considerations under b (1) through (4) above, a determination as to whether the proposed zoning is justified and/or necessitated by peculiar circumstances such as:

    a. It would be impractical to use the land for any of the uses permitted under its existing zoning classifications;

b. There are extenuating circumstances which justify the rezoning even though there are reasons under b (1) through (4) above why the proposed zoning is not desirable.

Finding: **N/A**

§161.14 DISTRICT C-2 THOROUGH-FARE COMMERCIAL.

A. Purpose. The Thoroughfare Commercial District is designed especially to encourage the functional grouping of these commercial enterprises catering primarily to highway travelers.

B. Uses.

1. Permitted Uses.

Unit 1	City-Wide Uses by Right
Unit 4	Cultural and Recreational Facilities
Unit 12	Offices, Studios and Related Services
Unit 13	Eating Places
Unit 14	Hotel, Motel and Amusement Facilities
Unit 15	Neighborhood Shopping Goods
Unit 16	Shopping Goods
Unit 17	Trades and Services
Unit 18	Gasoline Service Stations and Drive-In Restaurants
Unit 19	Commercial Recreation
Unit 20	Commercial Recreation, Large Sites
Unit 24	Outdoor Advertising
Unit 33	Adult Live Entertainment Club or Bar

2. Uses Permissible on Appeal to the Planning Commission.

Unit 2	City-Wide Uses by Conditional Use Permit
Unit 3	Public Protection and Utility Facilities
Unit 21	Warehousing and Wholesale
Unit 28	Center for Collecting Recyclable Materials
Unit 32	Sexually Oriented Business

C. Bulk and Area Regulations. Setback lines shall meet the following minimum requirements:

From Street ROW	50 ft.
From Side Property Line	None
From Side Property Line When Contiguous to a Residential District	15 ft.
From Back Property Line	20 ft.

D. Building Area. On any lot the area occupied by all buildings shall not exceed 60% of the total area of such lot.

E. Height Regulations. In District C-2 any building which exceeds the height of 20 feet shall be set back from any boundary line of any residential district a distance of one foot for each foot of height in excess of 20 feet. No building shall exceed six stories or 75 feet in height.

(Code 1991, §160.036; Code 1965, App. A, Art. 5(VI); Ord. No. 1747, 6-29-89; Ord. No. 1833, 11-1-71; Ord. No. 2351, 6-2-177; Ord. No. 2603, 2-19-80; Ord. No. 4034, §§3,4, 4-15-97)

REZONE R-O TO C-2
DESCRIPTION OF REQUEST

The applicants are requesting that the R-O portion of the 4.75 acre tract be rezoned to C-2, the same as the remainder of the property, and a zoning that is compatible with the surrounding neighborhood. Discussions with city planning staff concerning the original C-2/R-O zoning of the property indicate that in the early 1970's the City did a citywide zoning without legal descriptions or ordinances. The City of Fayetteville has been unable to provide the applicants with an ordinance showing the legal description and size of the property that is zoned R-O. The applicants propose that, in order to correct this inadequate way of designating zoning to undefined parcels of land, the City of Fayetteville "rezone" the entire 4.75 acre tract to C-2.

a. Current ownership of the property consists of the Cecil F England Revocable Trust (Cecil and Anne England, Trustees) and Alfred L. and Lucile Cathcart. The property that we are requesting to be rezoned is a part of a 4.75 acre tract that is currently under contract to sell to Narendra Krushiker.

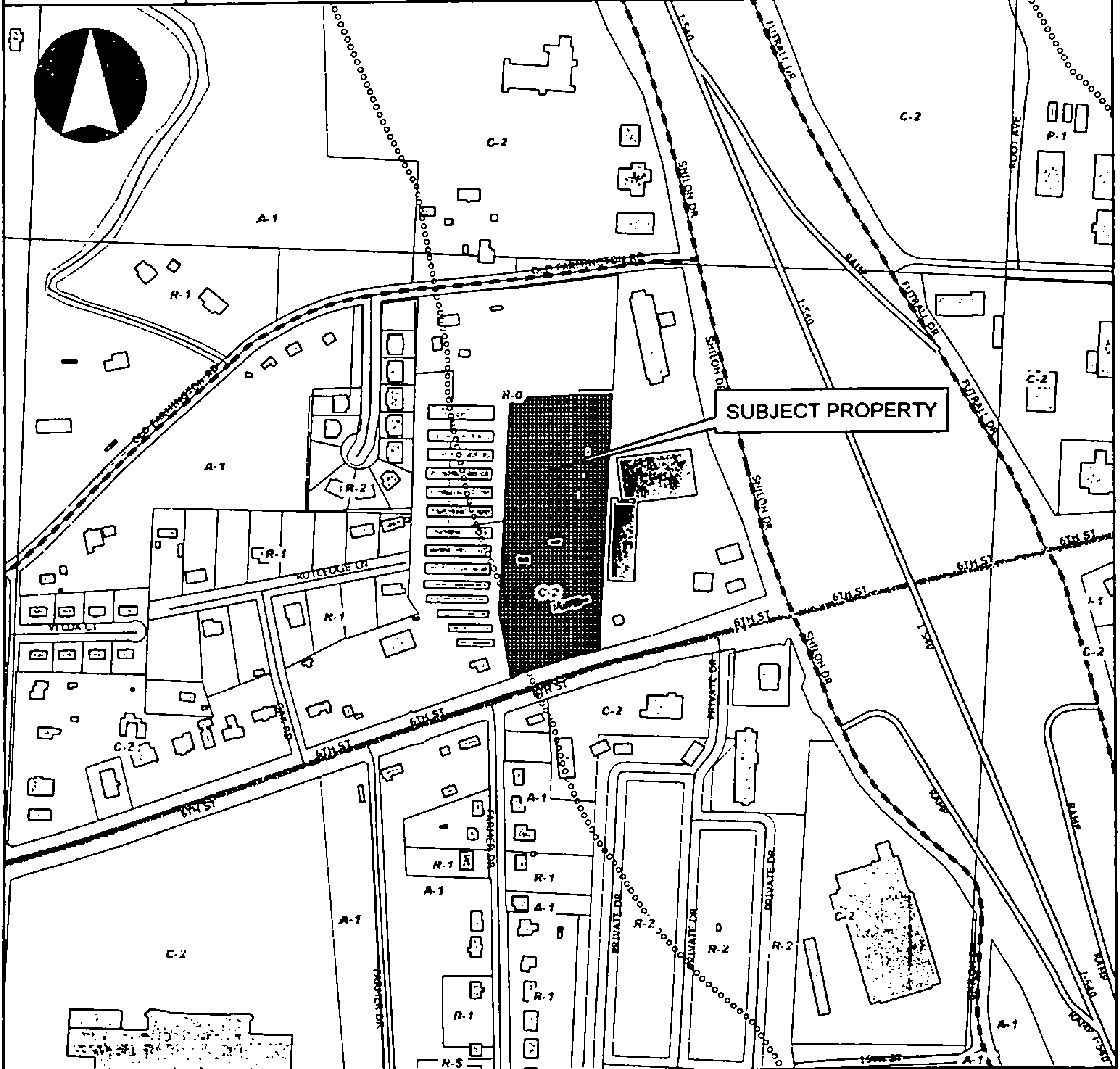
b. The 4.75 acre tract has frontage on Highway 62 West (Sixth Street), is bordered on the east by the Westgate Shopping Center, on the west by AAA Storage and on the north by Centurytel of Northwest Arkansas, a telecommunications equipment facility. The subject site is surrounded by hotels, restaurants, a shopping center and a storage facility. Somewhere between 1/2 and 2/3 of the 4.75 acres that fronts on Highway 62 is zoned C-2. The remainder of the property to the north of the C-2 property, does not have frontage on any street and is currently zoned R-O. The portion of the property zoned R-O is not in a location or environment that lends itself to residential office zoning. The property zoned R-O is surrounded by C-2 property and is in a location and environment that dictates C-2 zoning.

c. The property to the north of the subject property consists of an equipment building for a telecommunications company. The property to the east of the property is the Westgate Shopping Center. Current plans are to totally renovate the center. The property to the south is a rental house, but will probably be a retail or restaurant site. The property to the west is a mini-warehouse facility. The subject site will be a part of the development of the northwest corner of the intersection of I-540 and Hwy. 62W that will include the renovation of the Westgate Shopping Center and construction of other commercial properties on the undeveloped land. The subject property will have an access easement across the C-2 portion that fronts on Hwy. 62W, which will also have ingress/egress easements across the Westgate Shopping Center, giving this property access to Shiloh Drive.
Anything that is built on the subject site will comply with all existing development ordinances of the City. A 12" water line is available on Highway 62 and a 6" water line is available on Old Farmington Road. A 15" sewer line is available on Highway 62, an 8" sewer line is available on Old Farmington Road and an 8" sewer line is available on Shiloh Road.

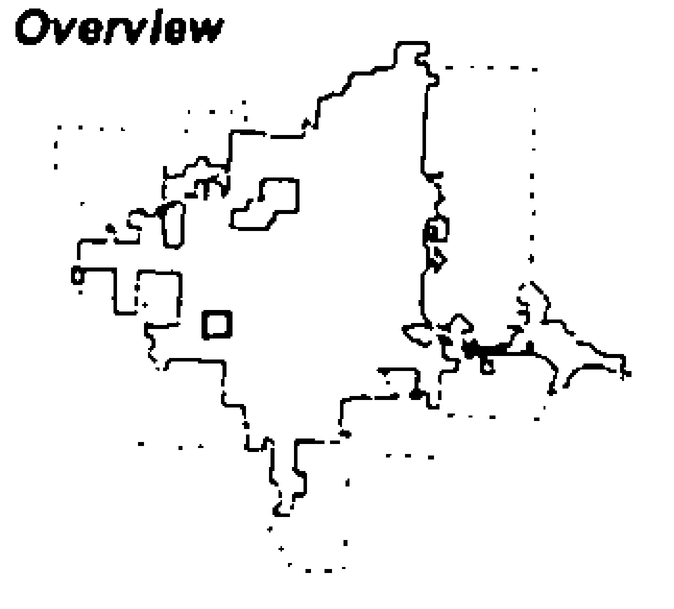
RZN02-1.00

Close Up View

CATHCART/ ENGLAND



Overview



Legend

Subject Property
RZN02-3.00

Streets
Existing
Planned

Boundary
Planning Area
Overlay District
City Limits
Outside City

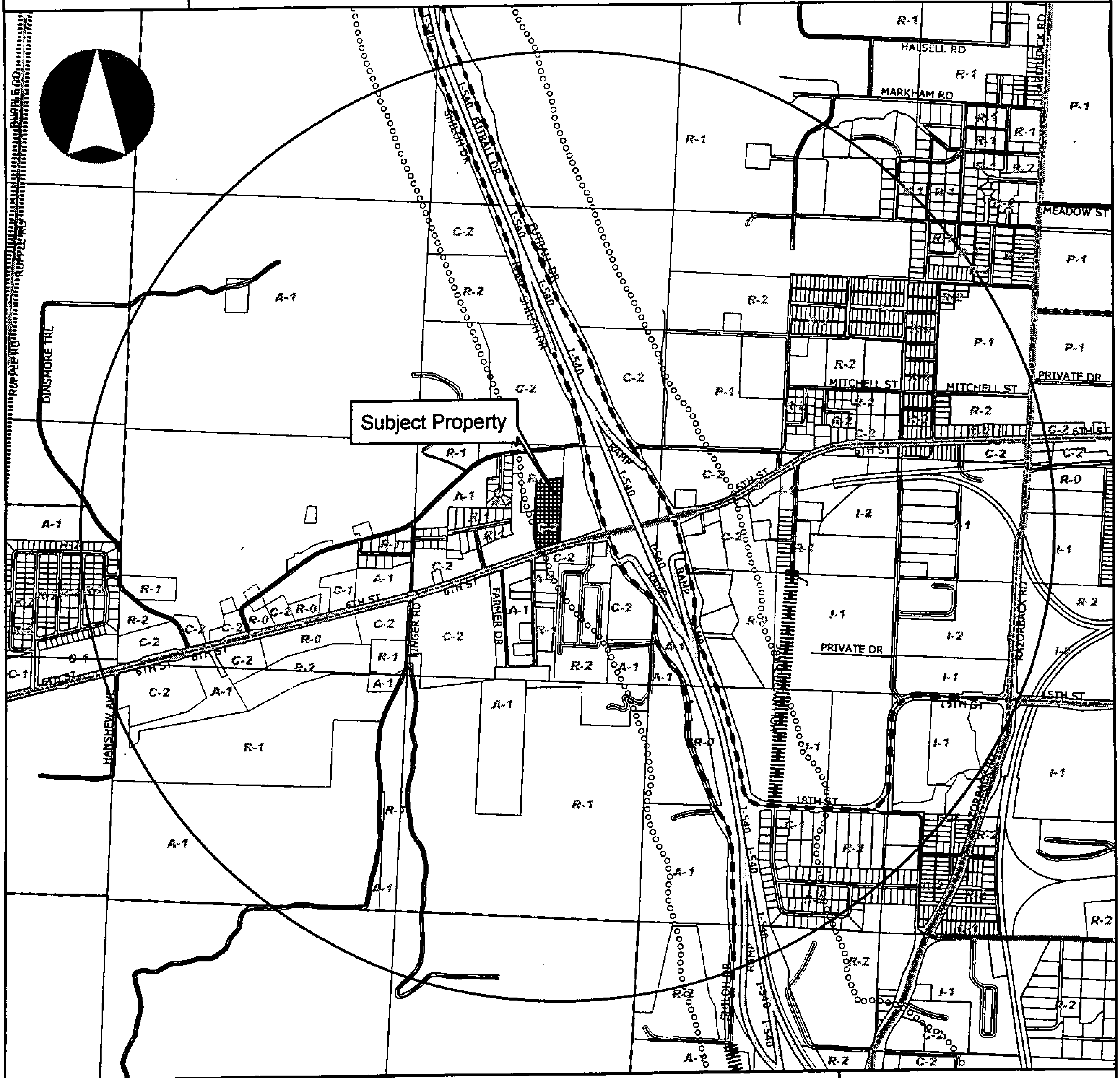
Master Street Plan
Freeway/Expressway
Principal Arterial
Minor Arterial
Collector
Historic Collector

0 175 350 700 1,050 1,400 Feet

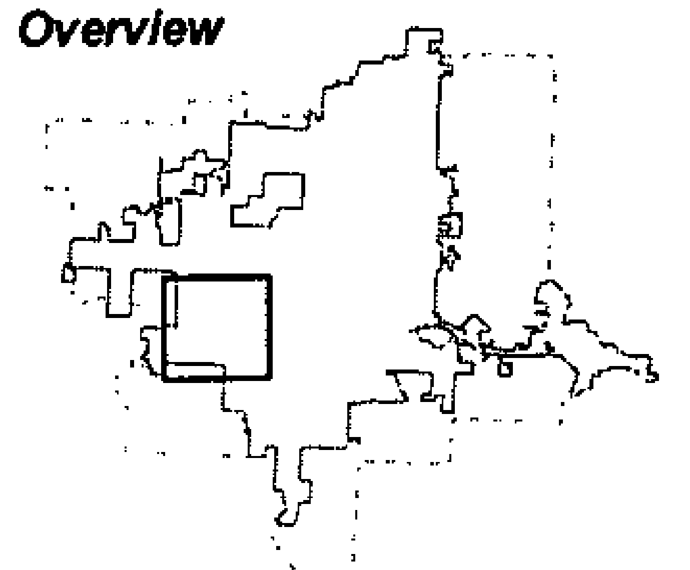
RZN02-3.00

One Mile View

CATHCART/ ENGLAND



Overview



Legend

Subject Property
RZN02-3.00

Streets
Existing
Planned

Boundary
Planning Area
Overlay District
City Limits
Outside City

Master Street Plan
Freeway/Expressway
Principal Arterial
Minor Arterial
Collector
Historic Collector

0 0.125 0.25 0.5 0.75 1 Miles

RZN 02-3.00: Rezoning (Cathcart/England, pp 558) was submitted by Bob Hill ofNickle-Hill Group on behalf of Al & Lucile Cathcart and Cecil & 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.

Estes: Item number five was submitted by Bob Hill ofNickle-Hill Group on behalf of Al & Lucile Cathcart and Cecil & 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. Staff recommends approval of this rezoning request based on the findings included as a part of your report. Is the applicant or applicant's representative present?

Hill: Yes, I am Bob Hill with the Nickle Hill Group.

Estes: Mr. Hill do you have a presentation that you would like to make?

Hill: No I really don't. I will be here if anyone has any questions. I believe staff recommended approval so if you have any questions I'm here.

Estes: Thank you Mr. Hill. Is there any member of the audience who would like to provide public comment on this rezoning request? Seeing none, I'll bring it back to the Commission for motions, comments and discussion.

Motion:

Marr: I would like to move for approval of RZN 02-3.00. I believe that this is consistent for regional commercial at this location with our 2020 Master Plan. It is certainly consistent with our adopted future land use plan. I also think it allows the opportunity for this area to refurbish I think is the word that is used in our document and I certainly want to support that in the city so I will move for approval.

Estes: We have a motion by Commissioner Marr to recommend approval of RZN 02-3.00 is there a second?

Bunch: I'll second.

Estes: We have a motion by Commissioner Marr and a second by Commissioner Bunch to recommend approval of RZN 02-3.00 is there any discussion, any comments or any questions for the applicant? Renee, would you call the roll please?

Roll Call: Upon the completion of roll call the motion to recommend approval to the City Council for RZN 02-3.00 was approved by a vote of 9-0-0.

Estes: The motion to recommend RZN 02-3.00 to the Fayetteville City Council passes by a unanimous vote. Thank you Mr. Hill.

Hill: Thank you.

STAFF REVIEW FORM

X **AGENDA REQUEST**
____ CONTRACT REVIEW
____ GRANT REVIEW

For the Fayetteville City Council meeting of February 5, 2002.

FROM:

Tim Conklin	Planning	Urban Development
Name	Division	Department

ACTION REQUIRED: To approve an ordinance for 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. The proposal is to change the setback from a stream where a floodplain has not been delineated from 5 times the width of the stream channel or 20 feet to 2.5 times the width of the stream channel or 25 feet whichever is greater. The second proposal is to establish a setback of 2.5 times the width of the stream channel or 25 feet whichever is greater from a stream bank in a Zone A floodplain where a detailed study has not been provided.

COST TO CITY:

$		
Cost of this Request	Category/Project Budget	Category/Project Name
Account Number	Funds Used To Date	Program Name
Project Number	Remaining Balance	Fund

BUDGET REVIEW: ____ Budgeted Item ____ Budget Adjustment Attached

Budget Manager ____ Administrative Services Director ____

CONTRACT/GRANT/LEASE REVIEW: **GRANTING AGENCY:** ____

Accounting Manager	Date	Internal Auditor	Date
[signature] City Attorney	1/18/02 Date	ADA Coordinator	Date
Purchasing Officer	Date		

STAFF RECOMMENDATION: Staff recommended approval and on October 22, 2001 the Fayetteville Planning Commission voted 8-0-0 for approval.

[signature] Division Head	1-18-02 Date	Cross Reference
[signature] Department Director	1-19-02 Date	New Item: **Yes**
[signature] Administrative Services Director	1/21/02 Date	Prev Ord/Res #: ____
[signature] Mayor	1/21/02 Date	Orig Contract Date: ____
		Orig Contract Number: ____

FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

113 W. Mountain St.
Fayetteville, AR 72701
Telephone: (501) 575-8264

PLANNING DIVISION CORRESPONDENCE

TO:	Fayetteville Planning Commission
FROM:	Sara Edwards, Associate Planner
THRU:	Tim Conklin, City Planner
DATE:	October 18, 2001

ADM 01-39.00 Administrative Item to revise the Flood Damage Prevention Code by adding/revising the setback from a stream bank in Zone A and Zone X flood zones. The proposal is to change the setback from a stream where a floodplain has been delineated from 5 times the width of the stream channel or 20 feet to 2.5 times the width of the stream channel or 25 feet whichever is greater. The second proposal is to establish a setback from a stream bank in a floodplain where a detailed study has not been provided (Zone A) at 2.5 times the width of the stream channel measured from top of bank to top of bank.

BACKGROUND:

Staff has discovered in the Flood Damage Prevention Code inconsistencies which result in inadequate flood protection for new development. The current Flood Damage Prevention Code requires a setback of five times the width of the stream channel or 20 feet, whichever is greater where no floodplain exists. However, in a Zone A where floodplain is present but a floodway has not been delineated, there is no setback from the stream channel. Staff is proposing to establish a setback of 2.5 times the width of the channel or 25 feet whichever is greater in a Zone A. Typically, the average width of the floodway in a Zone AE at the upper reaches of the stream channel is approximately 50 feet. Therefore, the requirement is for a 25 foot setback from each side. In a Zone AE where a detailed study does exist, development cannot occur in the floodway without obtaining specific approval from FEMA through a Letter of Map Revision. Staff is proposing establishing a setback from streams where no floodway exists.

STATEMENT OF PURPOSE

It is the purpose of this ordinance to promote the public health, safety and general welfare and to minimize public and private losses due to flood conditions in specific areas as designated by the latest adopted Flood Insurance Rate Maps.

PURPOSE OF CHANGE

The Flood Damage Prevention Code requires the use of a Flood Insurance Rate Map (FIRM) when determining if property is affected by floodplain. This FIRM delineates two types of floodplains within the City. The first, Zone AE has the regulatory floodway, or channel determined. In a regulatory floodway no encroachments, including fill, new construction, substantial improvements, and other development is permitted unless demonstrated through hydrologic and hydraulic analyses that the proposed encroachment would not result in any increase in flood levels. In a Zone A, the regulatory floodway has not been determined, and therefore no regulations against developing in the stream channel exist. Therefore, staff is recommending an addition to the Flood Damage Prevention Code in which a setback from the banks of a stream channel be enforced. In the event a developer would like to develop within the prescribed setback, they must determine a floodway and base flood elevations.

Options in Zone A with new setback:

1. **Comply with the 2.5 times the width of the stream channel or 25 foot setback whichever is greater.**
2. **If applicant believes the FIRM is inaccurate, apply for a LOMA (Letter of Map Amendment) through FEMA in which the boundaries of the floodplain may be changed.**
3. **Hire a professional engineer to provide a detailed hydrologic and hydraulic study which delineates the floodway, 100 year floodplain, and base flood elevations. The new floodway that is determined will become the setback from the stream.**
4. **The applicant may modify the stream channel by submitting to FEMA a LOMR (letter of map revision) pursuant to §G(7)(a) of the Flood Damage Prevention Code.**
5. **The applicant may seek a variance from the Planning Commission pursuant to §I of the Flood Damage Prevention Code.**

Currently, a setback is required from streams that are not in a special flood hazard Zone A or AE, at five times the stream width or 20 feet, whichever is greater. Staff is purposing a change in the setback to two and one half times the stream width or 25 feet whichever is greater. All of the major streams within the city have been studied by the Corps of Engineers, and appear as a special flood hazard zone on the FIRM. Therefore, any streams which do not have a corresponding flood zone, which are affected by this change, are smaller, minor streams. It is for this reason, that staff is recommending the setback be reduced to be consistent with the setback proposed for a Zone A and the grading ordinance.

DEFINITIONS

Floodway (Regulatory floodway). The channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than 1 foot. Also referred to as "Regulatory floodway."

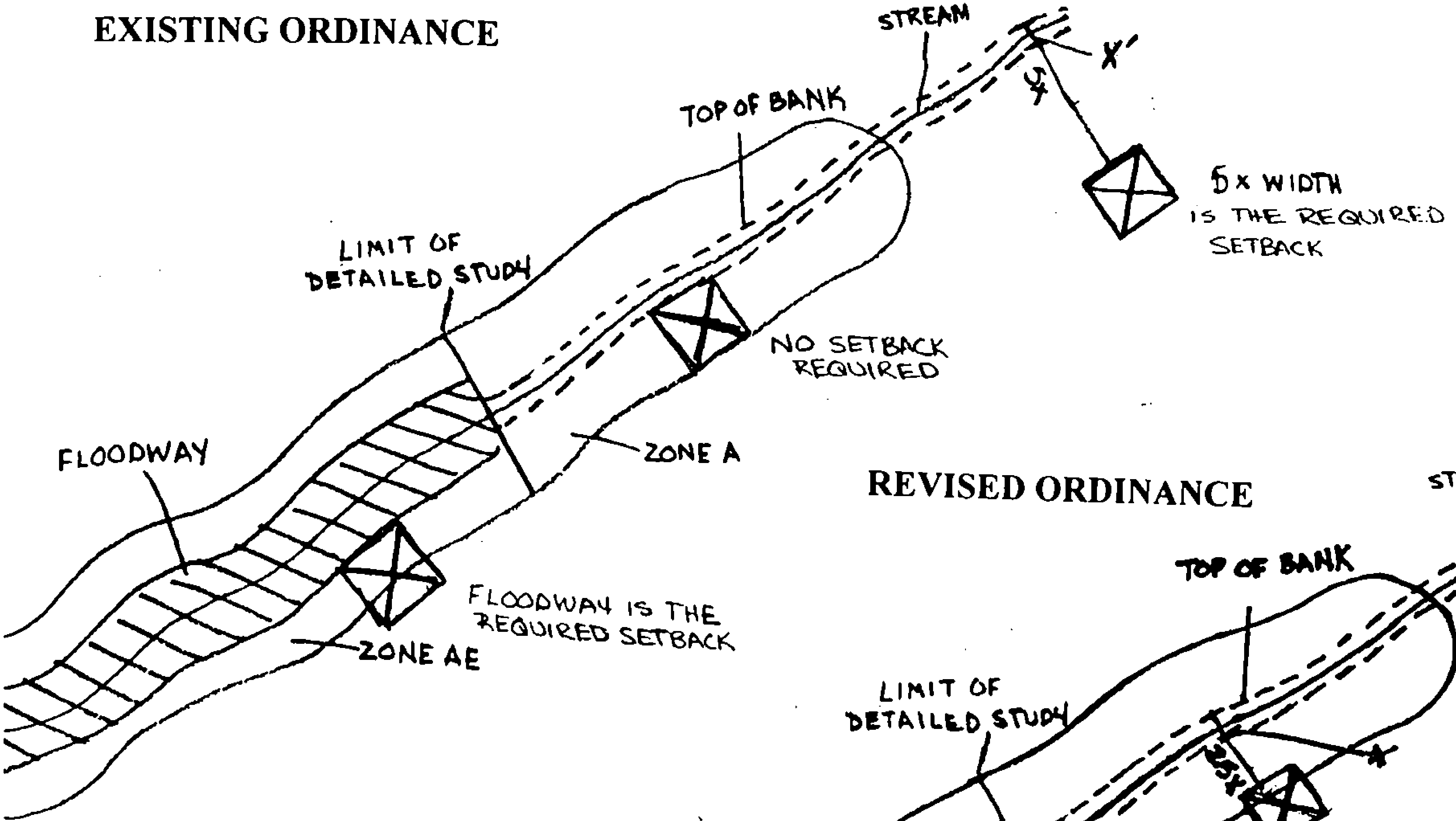
Stream. A watercourse having a source and terminus, banks, and channel through which waters flow at least periodically. Streams do not lose their character as a watercourse even though the water may dry up. For the purposes of this ordinance, streams are defined on the Flood Insurance Rate Maps as single lines with no floodplain or floodway defined.

Zone A — Special flood hazard areas inundated by the 100 year flood, determined by approximate methods.

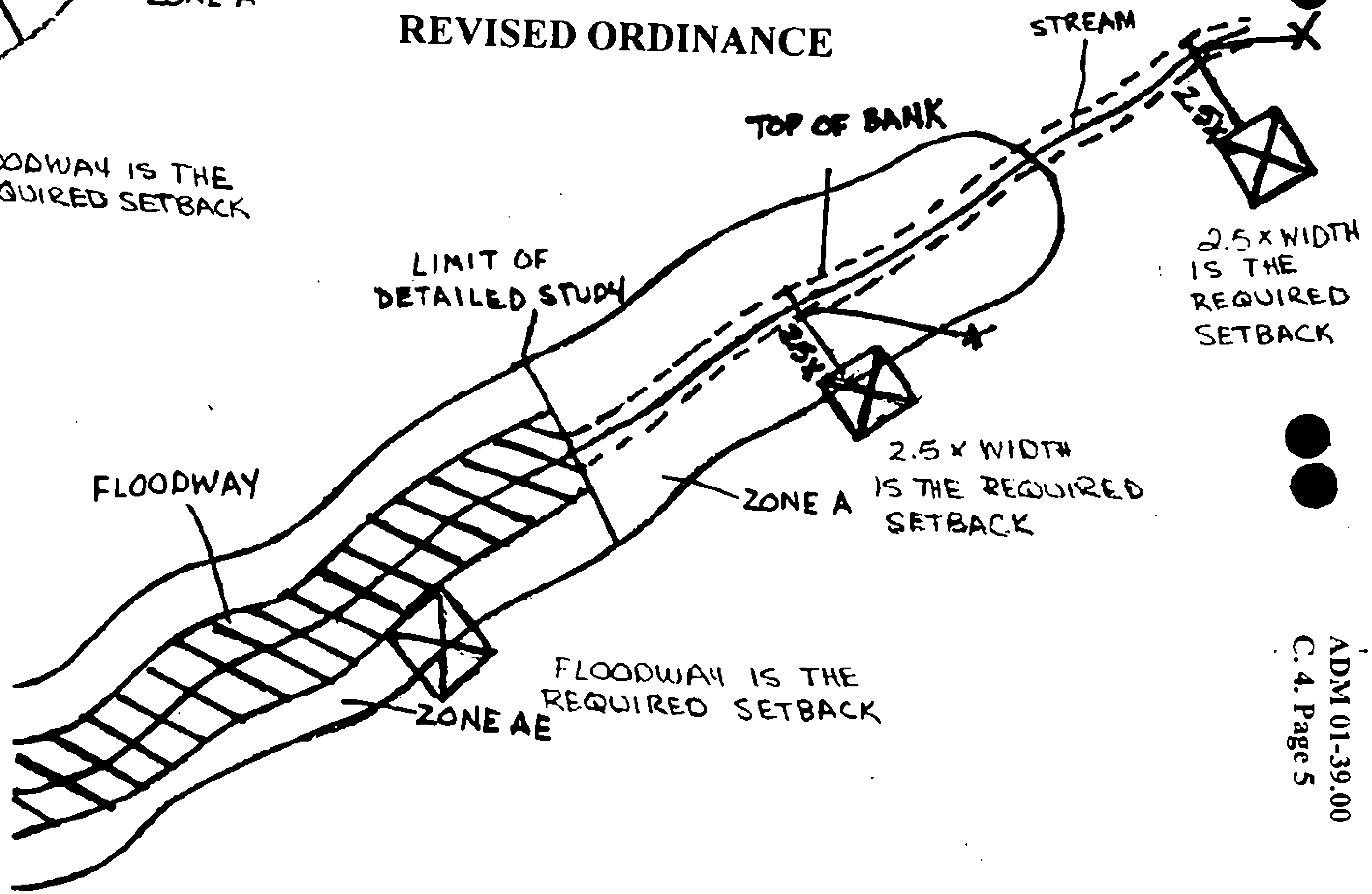
Zone AE — Special flood areas inundated by the 100 year flood with base flood elevations shown.

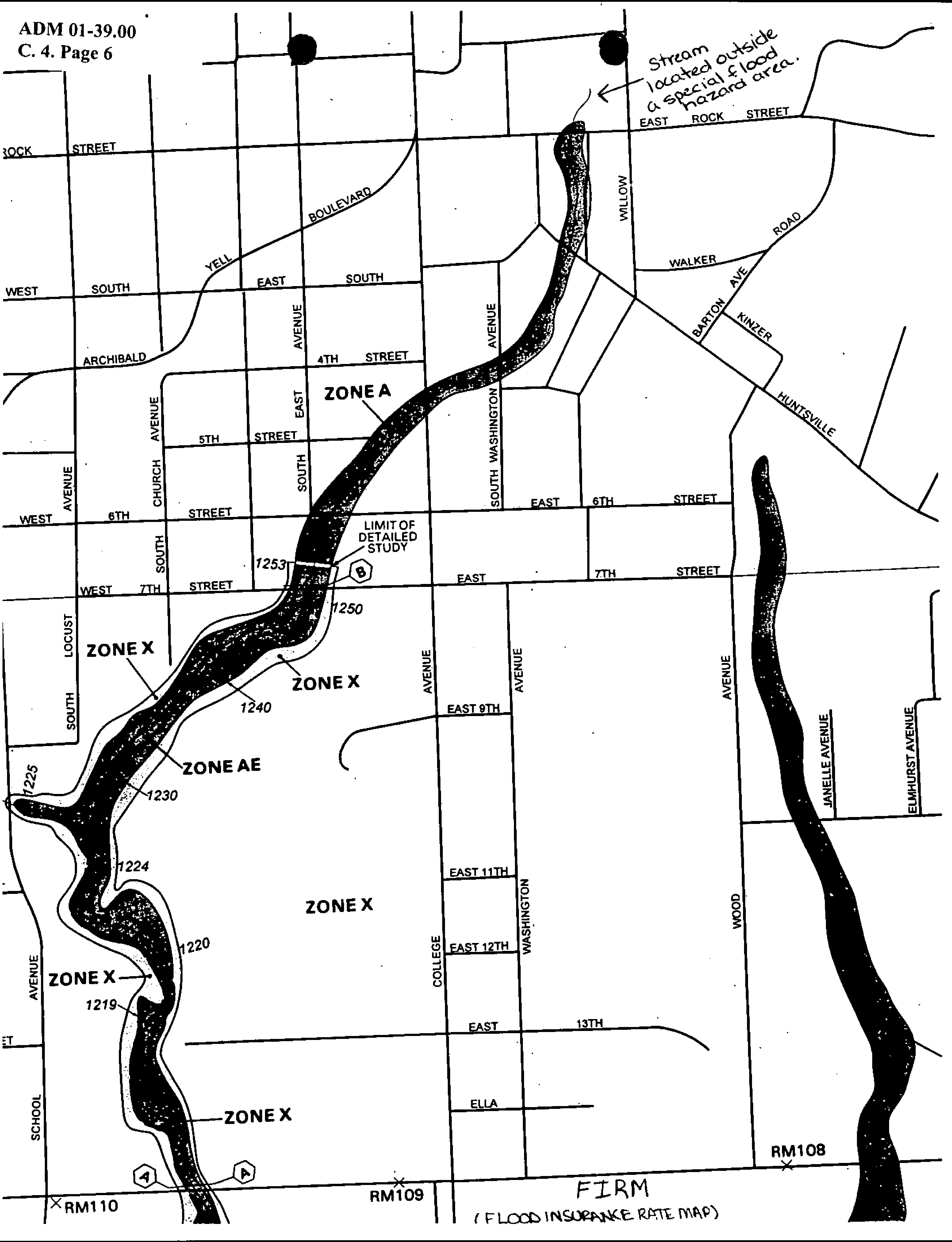
RECOMMENDED MOTION Recommend that City Council approve the attached ordinance amendments which include the reduction in setback required from a stream in a Zone X and the addition of a setback from the stream channel in a Zone A as specified on the Flood Insurance Rate Map.*(See pages 18 and 19 of the Flood Damage Prevention Code)*

EXISTING ORDINANCE



REVISED ORDINANCE




Stream located outside a special flood hazard area.
EAST ROCK STREET
ROCK STREET
YELL BOULEVARD
WILLOW
WALKER
ROAD
BARTON AVE
KINZER
HUNTSVILLE
WEST SOUTH
EAST SOUTH
ARCHIBALD
4TH STREET
EAST AVENUE
SOUTH WASHINGTON AVENUE
ZONE A
CHURCH AVENUE
5TH STREET
SOUTH
SOUTH
WEST 6TH STREET
EAST 6TH STREET
LIMIT OF DETAILED STUDY
1253
B
WEST 7TH STREET
EAST 7TH STREET
1250
SOUTH LOCUST AVENUE
ZONE X
ZONE X
1240
COLLEGE AVENUE
WASHINGTON AVENUE
WOOD AVENUE
EAST 9TH
ZONE AE
1225
1230
JANELLE AVENUE
ELMHURST AVENUE
1224
EAST 11TH
ZONE X
EAST 12TH
1220
ZONE X
1219
SCHOOL AVENUE
EAST 13TH
ELLA
ZONE X
A
A
RM110
RM109
RM108
FIRM
(FLOOD INSURANCE RATE MAP)

OMI
C. 5. Page 1

STAFF REVIEW FORM

X AGENDA REQUEST
___ CONTRACT REVIEW
___ GRANT REVIEW

For the Fayetteville City Council meeting of February 5, 2002

FROM:

Greg Boettcher	Public Works	Public Works
Name	Division	Department

ACTION REQUIRED: Approval of 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.

COST TO CITY:

$3,845,957.00	$3,732,107.00	Water/Sewer Imp'ts Wastewater Treatment
Cost of this Request	Category/Project Budget	Category/Project Name
5400-5100-5328-00 (OPERATIONS) 5400-5700-5315-00 (SCADA)	-0-	
Account Number	Funds Used To Date	Program Name
99031-1 (SCADA)		Water and Sewer
Project Number	Remaining Balance	Fund Category

BUDGET REVIEW: X Budgeted Item X Budget Adjustment Attached

Budget Coordinator

Administrative Services Director

CONTRACT/GRANT/LEASE REVIEW: **GRANTING AGENCY:** ______

Accounting Manager	Date	ADA Coordinator	Date
City Attorney	Date	Internal Auditor	Date
Purchasing Officer	Date	Grant Officer	Date

STAFF RECOMMENDATION: It is recommended that the City Council approve OMI Contract Amendment No.7 to authorize contract operations from January 1, 2002 to December 31, 2002 for $3,845,957.00.

Division Head Date

Cross Reference

Department Director Date

New Item: Yes No

Admin. Svcs Director Date 1/25/02

Prev Ord/Res #: 94-9

Mayor Date

Orig Contract Date: ______

FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

DEPARTMENTAL CORRESPONDENCE

TO: Mayor Dan Coody and Fayetteville City Council

FROM: Greg Boettcher, P.E.,
Public Works Director

Date: January 23 2002

RE: **Amendment No. 7 to OMI Contract**
Operation, Maintenance, and Management Service

Attached for review and approval is a proposed Amendment No. 7 to the "Agreement for Operation, Maintenance, and Management Services for the City of Fayetteville's Wastewater Treatment Plant" dated August 16, 1994. The scope of services includes the operation, maintenance and management of:

1) Noland Wastewater Treatment
2) all wastewater pumping stations
3) biosolids management program
4) SCADA System
5) industrial pretreatment program
6) permit reporting/compliance program

This contract amendment is part of the long-term operating agreement that provides continuity of services through calendar year _______________.

Amendment No. 7 to OMI Contract
Operation, Maintenance, and Management Service
Page 2

A general breakdown of the proposed costs is included as part of Amendment No. 7, with the data being summarized as follows:

	Annual Costs - 2002
Basic Operation and Maintenance	$3,590,829.00
Fixed Management Fee	91,128.00
Sub-total (Operation, Maintenance, and Management)	3,681,957.00
Expanded Odor Control	120,000.00
Budgeted Operation's Costs	$3,801,957.00
Capital Cost for Phase IV SCADA	$ 44,000.00
Total Capital, Operation, Maintenance and Management Cost for Fiscal Year 2002	**$3,845,957.00**

The budgeted operation, maintenance and management costs for fiscal year 2001 (including capital cost component) was $3,605,901.00 compared to a proposed fiscal year 2002 cost of $3,681,957.00. This represents an increase in costs of 2.1%, which is deemed approvable. In the past operating year, OMI has reported significant and unpredicted increases in electrical energy charges due to fuel cost adjustment; however, these have been absorbed by other operational economics. The increase in total cost is representative of normal cost escalations outside the control of OMI. The approval of the costs set out in Amendment No 7 is recommended.

This matter is deemed an urgent issue due to the fact that Amendment No. 6 (for fiscal year 2001) has expired, and no further payments for contract operating services can be made until a contract amendment is approved. It is to be further noted that the contract is structured to encourage operating cost reductions by OMI, with all annual cost savings to be distributed on a ratio of 12 ½ % to OMI and 87 ½ % to City of Fayetteville.

1001

RESOLUTION NO. 172-00

A RESOLUTION APPROVING AMENDMENT NO. 6 TO THE OMI CONTRACT FOR THE OPERATION AND MANAGEMENT SERVICES OF THE FAYETTEVILLE WASTEWATER TREATMENT PLANT IN THE AMOUNT OF $3,715,901.

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

Section 1. That the City Council hereby approves Amendment No. 6 to the OMI contract for the operation and management services of the Fayetteville Wastewater Treatment Plant in the amount of $3,715,901. A copy of the agreement amendment is attached hereto marked Exhibit "A" and made a part hereof.

PASSED AND APPROVED this 19th day of December, 2000.

APPROVED:

By: Fred Hanna

Fred Hanna, Mayor

ATTEST:

By: Heather Woodruff

Heather Woodruff, City Clerk

OMI
C. 5. Page 6

FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

RECEIVED

JAN 04 2001

ACCTG. DEPT.

DEPARTMENTAL CORRESPONDENCE

To: Don Bunn, Assistant Public Works Director
From: Heather Woodruff, City Clerk
Date: January 3, 2001

Contract #442
[illegible] for renewal
for 1/1/01 - 12/31/01

Attached is a copy of the resolution approving Amendment No. 6. To the OMI Contract for operation and management services for the wastewater treatment plant. I am also returning two originals for you to distribute. The original will be microfilmed and filed with the City Clerk.

cc: Nancy Smith, Internal Audit

AMENDMENT NO. 6
TO THE
AGREEMENT FOR OPERATIONS, MAINTENANCE, AND MANAGEMENT SERVICES FOR THE CITY OF FAYETTEVILLE, ARKANSAS WASTEWATER TREATMENT PLANT

THIS AMENDMENT, entered into this 19 day of December, 2000, by and between the City of Fayetteville, Arkansas (hereinafter "Owner"), whose address for any formal notice is 113 W. Mountain St, Fayetteville, Arkansas 72701 and Operations Management International, Inc., (hereinafter "OMI") with offices at 6060 S. Willow Drive, Suite 200, Greenwood Village, Colorado 80111-5142 is made and entered into for purposes of amending certain provisions of the "Agreement for Operations, Maintenance, and Management Services for the City of Fayetteville's Wastewater Treatment Plant," dated August 16, 1994 (the "Agreement") to prevent the facilities covered by the Agreement from being deemed to be used in the trade or business of OMI pursuant to Section 141 (b) of the Internal Revenue Code of 1986, as amended.

This is Amendment No. 6 to the Agreement dated the 16th day of August, 1994, between Owner and OMI.

NOW THEREFORE, Owner and OMI agree to amend the Agreement as follows:

1. Article 4.1 is hereby deleted in its entirety and replaced with the following Article 4.1:

   4.1 For services rendered during the seventh year of this agreement owner shall pay to OMI the actual cost of services performed plus a management fee of Ninety One Thousand One Hundred and Twenty Eight Dollars ($91,128). Said fee and estimated cost (base fee) shall be paid in twelve (12) equal monthly installments. The management fee for subsequent years will be determined proportional to the increase in estimated cost.

2. Article 4.3 is hereby deleted in its entirety and replaced with the following Article 4.3:

   4.3 OMI estimates that cost for services for calendar year 2001 shall be Three Million Seven Hundred Fifteen Thousand, Nine Hundred and One Dollars ($3,715,901) annually. Details of said cost are shown in Appendix J. The base fee shall be negotiated each year in September, beginning in 2001 for calendar year 2002. Should Owners and OMI fail to agree, the base fee will be determined by the application of the base fee adjustment formula shown in Appendix F. Should the actual expenditures exceed estimated expenditures by more than Twenty Thousand Dollars ($20,000), in any year of this agreement, specific approval will be obtained from the owner.

3. Appendix J is hereby deleted in its entirety and replaced with the attached Appendix J.

4. Appendix K is hereby deleted in its entirety and replaced with the attached Appendix K.

All other terms and conditions remain in effect in accordance with the Agreement referenced in this Amendment.

Both parties indicate their approval of this Amendment to the Agreement by their signatures below as of the date shown above.

Authorized Signature:	Authorized Signature:
FOR Bernard A. Miller	Fred Hanna, Jr.
Title: Chief Operating Officer	Title: Mayor
OPERATIONS MANAGEMENT INTERNATIONAL, INC.	CITY OF FAYETTEVILLE
Date: ____________	Date: ____________

Appendix J

COST DETAIL

The proposed annual estimated costs for 2001 were calculated as follows:

	Projected 2000	Budgeted 2000	Proposed 2001
Direct labor and benefits	$1,385,000	$1,381,183	$1,434,176
Labor overhead @ 35%	$ 484,750	$ 483,414	$ 501,962
Electricity	$ 670,000	$ 715,000	$ 700,000
Electric overhead @ 5%	$ 33,500	$ 37,750	$ 35,000
All other direct costs	$ 775,000	$ 737,909	$ 766,941
Other direct costs overhead 10%	$ 77,500	$ 73,791	$ 76,694
Sub-Total	$3,425,750	$3,427,047	$3,514,773
Fixed Fee	$ 88,854	$ 88,854	$ 91,128
Total Operating Budget	$3,514,604	$3,515,901	$3,605,901
SCADA Upgrade - Phase 1	$ 156,546 (Phase II)	$ 200,000 (Phase III)	$ 110,000
Total 2000 Budget	$3,671,150	$3,715,901	$3,715,901

The following are some of the major reasons for cost circumstances:

1. Projected decrease in electrical usage and demand due to the expectation that part-time utilization of the second aeration basin will be limited.

2. Continued increase in the cost of providing skilled professional labor in Northwest Arkansas' highly competitive job market.

3. Expense associated with maintenance of UV disinfection system after warranty period expires.

Appendix K

SCADA UPGRADE - PHASE 3 - SCOPE OF WORK

The following SCADA upgrade tasks will be performed by OMI during the calendar year 2001.

1. Installation of SCADA monitoring equipment (purchased and constructed in 2000) at 15 remote valve sites in the water distribution system, specific sites to be determined by the City, to be compatible with the OMI-developed SCADA system. Note that this item specifically excludes responsibility for providing the actual sensing or control devices, any road boring or road cutting required for access, installation of electrical service, or purchase/installation of mechanical equipment at these locations.

2. Upgrade of all original (1991 model) Motorola radios at previously existing SCADA installations, to radios completely compatible with new system. (Parts are no longer available for the old Motorola units)

3. Purchase and installation of a second repeater, antenna, and transmission line at the Mt. Robinson tower site, to enable true redundancy for the repeater system at this location. (This step will be taken with the assumption that the City will continue to maintain the Mt. Robinson tower site as the repeater location for the entire SCADA installation, even after any general radio system upgrades that may occur)

AGENDA REQUEST FORM

Council Meeting of December 19, 2000

FROM Don Bunn — Name | Public Works Admin — Division | Public Works — Department

ACTION REQUIRED Approval of Amendment No.6 to the OMI Contract for operation and management services, Fayetteville Wastewater Treatment Plant at a total cost of $3,715,901.00, inclusive of a management fee of $91,128 and the Phase III of the SCADA upgrade cost of $110,000.00.

COST TO CITY

110,000.00 $ 3,605,601.00	150,000.00 $ 3,605,901.00	Water/Sewer Imp'ts Wastewater Treatment
Cost of this Request	Category/Project Budget	Category/Project Name
5400 5100 5328 00 (OPERATIONS) 5400 5700 5315 00 (SCADA)	-0-	
Account Number	Funds Used to Date	Program Name
99031-1 (SCADA)	150,000.00 $ 3,605,901.00	Water and Sewer
Project Number	Funds Remaining	Fund Category

BUDGET/CONTRACT REVIEW XX Budgeted Item ____ Budget Adj. Attached

Budget Coordinator	Date	Admin Services Director	Date
Accounting Manager	11-28-00 Date	ADA Coordinator	Date
City Attorney	11-28-00 Date	Internal Auditor	11/28/00 Date
Purchasing Officer	11-28-00 Date		

STAFF RECOMMENDATION It is the recommendation of the Staff that the Council approve Amendment No. 6 to the OMI Contract for operation of the Wastewater Treatment Plant for 2001, at a cost of $3,715,901.00, inclusive of a management fee of $91,128.00 and the SCADA upgrade cost of $110,000.00.

Ass't Public Works Director	11/27/00 Date
Department Director	11-28-00 Date
Admin Services Director	11/28/00 Date
Mayor	11/28/00 Date

Cross Reference

New Item: Yes No

Prev Ord/Res # 94-94

Orig. Contract # ______

Orig. Contract Date 8-16-94

COMMENT SHEET

Project: Amendment No. 6, OMI Operations and Management Agreement
Engineer/Contractor: Operations Management International (OMI)
Notes to Reviewers: None

CITY of FAYETTEVILLE

DEPARTMENTAL CORRESPONDENCE DATE: November 27, 2000

To: Fayetteville City Council

From: Don Bunn, Ass't Public Works Director
Thru: Charles Venable, Public Works Director
Fred Hanna, Mayor

Subject: Amendment No. 6, OMI Contract
Wastewater Treatment Plant Services

Attached for your review and approval is a proposed Amendment No. 6 to the existing OMI contract for operations and management services at the Noland Wastewater Treatment Plant. The amendment covers the estimated cost of providing operation and management of the wastewater treatment plant (including sewage pump stations and SCADA maintenance) and Phase III of the upgrade to our SCADA system.

Attached is a copy of the proposed Amendment No. 6. The purpose of the amendment is to set the estimated cost of services and the fixed fee for 2000. The cost for this year breaks down as follows:

Item	Budgeted Amount	Requested Amount
Operations/Management Estimated Cost		$ 3,514,773.00
Fixed Fee		91,128.00
Total, Operations and Management	$ 3,605,901.00	3,605,901.00
SCADA Upgrade	150,000.00	110,000.00
TOTALS	**$ 3,755,901.00**	**$ 3,715,901.00**

The increase in the operations and management estimated cost from 2000 to 2001 is 2.56 percent. Some of the factors involved in the cost of operations for 2001 are:

1. Projected demand in power costs is due to the expectation that part time use of the second aeration basin will be limited in 2001.

2. Increased maintenance on the UV Disinfection system as the warranty period expires.

3. Competition for skilled professional labor in the Northwest Arkansas area.

4. Continued replacement and upgrade of our SCADA System.

The SCADA upgrade is a continuation of the program started in 1999. The $110,000.00 given in the Amendment for that purpose will come from the capital portion of the 2001 Water and Sewer Budget.

It is the recommendation of the Staff that the Council approve the proposed Amendment No. 6.

AMENDMENT NO. 7
TO THE
AGREEMENT FOR OPERATIONS,
MAINTENANCE, AND MANAGEMENT SERVICES
FOR THE CITY OF FAYETTEVILLE, ARKANSAS
WASTEWATER TREATMENT PLANT

THIS AMENDMENT, entered into this _____ day of ____________, 200_, by and between the City of Fayetteville, Arkansas (hereinafter "Owner"), whose address for any formal notice is 113 W. Mountain St, Fayetteville, Arkansas 72701 and Operations Management International, Inc., (hereinafter "OMI") with offices at 6060 S. Willow Drive, Suite 200, Greenwood Village, Colorado 80111-5142 is made and entered into for purposes of amending certain provisions of the "Agreement for Operations, Maintenance, and Management Services for the City of Fayetteville's Wastewater Treatment Plant," dated August 16, 1994 (the "Agreement") to prevent the facilities covered by the Agreement from being deemed to be used in the trade or business of OMI pursuant to Section 141 (b) of the Internal Revenue Code of 1986, as amended.

This is Amendment No. 7 to the Agreement dated the 16th day of August, 1994, between Owner and OMI.

NOW THEREFORE, Owner and OMI agree to amend the Agreement as follows:

1. Article 4.1 is hereby deleted in its entirety and replaced with the following Article 4.1:

   4.1 For services rendered during the seventh year of this agreement owner shall pay to OMI the actual cost of services performed plus a management fee of Ninety One Thousand One Hundred and Twenty Eight Dollars ($91,128). Said fee and estimated cost (base fee) shall be paid in twelve (12) equal monthly installments. The management fee for subsequent years will be determined proportional to the increase in estimated cost.

2. Article 4.2 is hereby deleted in its entirety and replaced with the following Article 4.3:

   4.2 OMI and owner agree that at the end of the contract year, OMI will perform a reconciliation of estimated to actual cost and submit the reconciliation within one hundred twenty (120) days of the end of the contract year. Any difference due to Owner or OMI will be paid within thirty (30) days of acceptance of the reconciliation by both parties.

3. Article 4.3 is hereby deleted in its entirety and replaced with the following Article 4.3:

   4.3 OMI estimates that cost for services for calendar year 2002 shall be Three Million Eight Hundred Fourty-Five Thousand, Eight Hundred Eighty-Three Dollars

($3,845,883) annually. Details of said cost are shown in Appendix J. The base fee shall be negotiated each year in September, beginning in 2002 for calendar year 2003. Should Owners and OMI fail to agree, the base fee will be determined by the application of the base fee adjustment formula shown in Appendix F. Should the actual expenditures exceed estimated expenditures by more than Twenty Thousand Dollars ($20,000), in any year of this agreement, specific approval will be obtained from the owner.

3. Article 4.8 is hereby added in its entirety.

4.8 OMI agrees to incur up to $196,080 per year in lift station odor control direct expenses, including costs for necessary chemicals, pumps, tanks, related equipment and such outside services as needed. These expenses will not include labor and benefits for OMI personnel. OMI will rebate to the City the entire amount that actual lift station odor control expenses are less than $196,080 in any year of this Agreement.

5. Article 2.11 is hereby deleted in its entirety.
6. Appendices B, C, D, E, H, J, and K are hereby deleted in their entirety and replaced with the attached Appendices B, C, D, E, H, J, and K.
7. Appendix I is hereby deleted in its entirety.

All other terms and conditions remain in effect in accordance with the Agreement referenced in this Amendment.

Both parties indicate their approval of this Amendment to the Agreement by their signatures below as of the date shown above.

Authorized Signature:	Authorized Signature:
______________________	______________________
Bernard A. Miller Title: Chief Operating Officer	Dan Coody Title: Mayor
OPERATIONS MANAGEMENT INTERNATIONAL, INC.	CITY OF FAYETTEVILLE
Date: ______________	Date: ______________

Appendix B

LOCATION OF PROJECT

B.1 OMI agrees to provide the services necessary for the management, operation and maintenance of the following:

a) All equipment, vehicles, grounds and facilities now existing within the present property boundaries of or being used to operate Owner's Wastewater Treatment Plant located at:

1500 North Fox Hunter Road
Fayetteville, Arkansas

b) All equipment, grounds, and facilities now existing within the present property boundaries of pump stations described as follows:

WW1	978 E. Zion Road
WW2	4938 Mission Blvd. (Timbercrest)
WW3	Crystal Springs/Salem Road
WW4	691 W. Poplar
WW5	3896 N. Gregg
WW6	3021 N. Old Wire Road
WW7	2034 N. County Road 877
WW8	729 W. North Street
WW9	1336 N. Porter
WW10	716 Futrall Drive
WW11	4412 W. 6th Street
WW12	398 N. Double Springs Road
WW13	878 S. Stonebridge Road
WW14	1820 S. Armstrong
WW15	203 E. 29th Circle
WW16	3917 S. McCollum Road
WW17	4394 S. School
WW18	202 N. Sandy (Greenland)
WW19	988 S. Mallywagnon Road
WW 20	3212 N. Highway 112
WW21	1687 S. Happy Hollow Road
WW22	630 N. Double Springs Road
WW23	Masters Addition (Country Club – 2)
WW24	4071 South McCollum (Airport East)
WW25	Willow West (Farmington)
WW26	74 S. Kestrel (Sequoyah Preserve)
WW27	1031 River Meadows Drive (Stonebridge Meadow)

WW28	1603 Plantation Avenue (Heritage Village)
WW29	Greenland (Todd Bohannan)
WW30	2324 Rupple Road
WW31	2318 Internet (Research Park)
WW32	478 N. Durango Place (Silverthorne)

c) All equipment, grounds, and facilities now existing within the present property boundaries of or being used to operate the Owner's Sludge Management Site located east of the wastewater treatment facility across the White River:

d) The potable water SCADA system at the following locations:

W1	215 W. 24th Street	Pump Station
W2	844 N. Crossover Road	Pump Station
W3	4938 E. Mission Boulevard	Pump Station
W4	1016 E. Ash Street	Pump Station
W5	707 E. Rogers Drive	Pump Station
W6	456 E. Baxter Lane	Ground Storage Tank
W7	707 E. Rogers Drive	Ground Storage Tank
W8	113 N. Sang	Elevated Storage Tank
W9	1170 E. South Skyline	Elevated Storage Tank
W10	1044 E. Township Road	Elevated Storage Tank
W11	Mt. Kessler	Elevated Storage Tank
W12	Highway 45 Valve Station	Pressure-reducing Valve
W13	Fire Tower Avenue (Goshen)	Ground Storage Tank
W14	Fire Tower Avenue (Goshen)	Pump Station
W15	Co. Road # 55 (Round Mountain)	Ground Storage Tank
W16	Co. Road # 4343 (Benson Mountain)	Ground Storage Tank
W17	Gulley Road Tank	Elevated Storage Tank
W18	Gulley Road Station	Pump Station
	1475 Cato Springs Road	Water & Sewer Ops Center
	12141 Ed Edwards Road	Mt. Robinson Tower Site

Appendix C

NPDES PERMIT AND PROJECT CHARACTERISTICS

C.1 OMI will operate Project so that effluent will meet the requirement of NDPES permit No AR0020010. OMI shall be responsible for meeting the effluent quality requirements of Owner's NPDES permit unless one or more of the following occurs: (1) the Project influent does not contain Adequate Nutrients to support operation of Project biological processes and/or contains Biologically Toxic Substances which cannot be remove by the existing process and facilities; (2) the flow, influent BOD_5, and/or suspended solids exceeds the Project design parameters which are: 30 Million Gallons Per Day (MGD) maximum; 17 MDG average weekly maximum flow; 12 MGD average monthly maximum; 25,700 pound of BOD_5 per day; 21300 pounds of suspended solids per day.

C.2 In the event any one of the Project influent characteristics, suspended solids, BOD5, or flow, exceeds the parameters listed above, OMI shall return the plant effluent to the characteristics required by the NPDES permit in accordance with the following schedule after Project influent characteristics return to within design parameters:

Characteristics Exceeding Listed Parameters By:	Recovery Period Maximum
10% or Less	5 days
Above 10% But Less Than 20%	10 days
20% and Above	30 days

Notwithstanding the above schedule, if the failure to meet effluent quality limitations is caused by the presence of Biologically Toxic Substances or the lack of Adequate Nutrients in the influent, then OMI will have a thirty (30) day recovery period after the influent is free from said substances or contains Adequate Nutrients.

C.3 OMI shall not be responsible for fines or legal action as a result of discharge violations within the period that influent exceeds design parameters, does not contain Adequate Nutrients, contains Biologically Toxic Substances (that exceed process inhibiting levels or creates concentrations exceeding application or discharge limitations), and the subsequent recovery period.

C.4 The estimated Costs for services under this Agreement are bases upon the following Project Characteristics:

Flow	12.27 MGD
BOD5	19,805 lbs/day
TSS	18,775 lbs/day
Phosphorus	805 lbs/day

The above characteristics are the actual average for the twelve (12) months ending November of 2001. Any change of ten percent (10%) or more in any of these characteristics, based upon a twelve (12) month moving average, will constitute a change in scope.

Appendix D

INDUSTRIAL PRETREATMENT PROGRAM

D.1 a) Conduct a survey of the industrial user base 1 time per 3 years. Update, as required, the list of significant industrial users (SIUs) as described in Appendix D according to the definition of SIU in 40 CFR 403 or the definition in the approved pretreatment program (Program), whichever is more stringent.

b) Carry out inspection, surveillance, and monitoring procedures to determine if the SIUs are in compliance with the Pretreatment Standards and the approved Program. Each SIU shall be sampled and inspected at the frequency established in 40 CFR 403 or the approved Program, whichever is more stringent. Maintain adequate records.

c) Maintain the laboratory analysis program for each SIU as described in Appendix D. Results of all industrial sampling and testing shall be reported to Owner, as required, in a timely manner.

d) Implement the approved industrial permitting system. Prepare for renewal all necessary industrial user control mechanisms within 45 days of the expiration date or within 180 days after the industry has been determined to be an SIU.

e) Prepare notices of violation for noncompliance with 40 CFR 403 or the approved Program, whichever is more stringent, and initiate other enforcement actions by notifying Owner of the appropriate enforcement action according to the approved enforcement response plan.

f) Prepare for submission to the Approval Authority (EPA and/or the appropriate State agency) an annual report describing the Program activities over the previous Program year in accordance with 40 CFR 403 or the approved Program, whichever is more stringent. Assist Owner with annual public notice of dischargers in significant noncompliance as required by 40 CFR 403.

g) Advise Owner of changes in federal and State Pretreatment Standards and regulations and how the changes affect the local Program. Request approval from Owner and the Approval Authority prior to implementing significant changes to the approved Program in accordance with 40 CFR 403.18(c).

h) Local limits evaluation, if requested, may be provided as an out of scope service. The costs of such evaluation will be determined and negotiated at the time of the request.

D.2 Industrial Waste Dischargers and Monitoring Program City of Fayetteville

Industry	Parameters Analyzed
Ayrshire Electronics, LLC 1101 S. Beechwood Fayetteville, AR 72701 Mr. Tim Pearce 442-5356 ext. 2113	Cadmium, chromium, copper, lead, nickel, silver, zinc
Cooper Power Systems/Kearney Operation 3660 S. School Avenue Fayetteville, AR 72701 Mr. James Raynor 587-6335	Cadmium, chromium, copper, lead, nickel, silver, zinc, cyanide
Elkhart Products Corporation PO Box 1129 Fayetteville, AR 72702 Mr. Jerry Whiteside 443-2367	Chromium, copper, lead, nickel, zinc, oil & grease
Hiland Dairy Company PO Box 3478 Fayetteville, AR 72702 Mr. Ray Arnold 521-1707	Biochemical oxygen demand, total suspended solids, phosphorus, pH, oil & grease
Danaher Tool Group/K-D Tools 2900 City Lake Road Fayetteville, AR 72701 Mr. Dwight Canfield 442-7779 ext. 316	Cadmium, chromium, copper, lead, nickel, silver, zinc, cyanide
Marshalltown Tools 2200 Industrial Drive Fayetteville, AR 72701 Mr. Jim Glass 521-4306 ext. 163	Cadmium, chromium, copper, lead, nickel, silver, zinc, cyanide
Mexican Original (East) PO Box 1368 Fayetteville, AR 72702 Mr. J. D. Doshier 521-4306 ext. 417	Biochemical oxygen demand, total suspended solids, phosphorus, pH, oil & grease

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Pinnacle Foods Corporation PO Box G Fayetteville, AR 72702 Mr. Fred McLane 443-3451 ext. 216	Biochemical oxygen demand, total suspended solids, phosphorus, pH, oil & grease
Superior Industries International, Inc. 1901 Borick Drive Fayetteville, AR 72701 Mr. Robert Bracy 443-7870	Cadmium, chromium, copper, lead, nickel, silver, zinc, cyanide
Tyson Foods, Inc. 2615 S. School Fayetteville, AR 72701 Mr. Richard Stockton 521-0677	Biochemical oxygen demand, total suspended solids, phosphorus, pH, oil & grease
Waste Management PO Box 1310 Springdale, AR 72765-1310 Mr. Jimmy Hendrix 361-1111	Cadmium, chromium, copper, lead, nickel, zinc, pH

Appendix E

VEHICLE AND MOBILE EQUIPMENT DESCRIPTION

Unit #	Unit Description	Year
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203	GMC Jimmy 4WD	1987
227	Ford F-250 4 X 4	1994
251	Ford Ranger	1994
266	GMC V-Jimmy	1990
284	Ford Ranger 4 X 4	1992
310	Ford F-350 3-Way Dump	1990
320	Ford F-350 Crew Cab	1999
324	Ford F-350 w/crane	1999
539	Ford CM224 Mower	1994
550	Ford 5640 Tractor w/Loader	1995
551	Ford 3930 Tractor	1995
556	Ford/New Holland 8160 Tractor w/Loader	1997
562	New Holland 8160 Tractor	1999
563	New Holland Tractor	1999
564	New Holland Tractor w/Loader	1999
566	Ford LS55 Lawn Tractor	1999
570	New Holland 95 hp Tractor	2000
644	New Holland Backhoe/Loader	2000
701	Ford 8000 Dump	1983
712	Ford 8000 (Gooseneck)	1983
734	Freight Liner	1987
76	Caterpillar Articulated Tanker	1988
77	Caterpillar Articulated Tanker	1988
806	Case 1150G Bulldozer	1995
82	Sykes 6" Pump/Trailer	1995
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9002	New Holland 648 Round Baler	1999
9003	New Holland 1411 Mower	1999
9004	John Deere 348-C Square Baler	1999
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927	24' Parker Gooseneck Trailer	1991
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988	Hesston Wheel Rake	1998
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Appendix H

THIRTY-DAY CHEMICAL INVENTORY

Chemical	Purpose	30-Day Supply
Liquid Alum	Phosphorus Removal	2,200 Gallons
Ferrous Sulfate	Lift Station Odor Control	10,000 Gallons
Sodium Hydroxide	Digester Odor Control	4,000 Gallons
Sodium Hypochlorite	Digester Odor Control	4,500 Gallons
Sulfuric Acid	Digester Odor Control	3,200 Gallons
Liquid Oxygen	Effluent Dissolved Oxygen	50,000 Cubic Ft

Appendix J

COST DETAIL

The proposed annual estimated costs for 2002 were calculated as follows:

	Projected 2001	Budgeted 2001	Proposed 2002
Direct labor and benefits	$1,443,833	$1,434,176	$1,436,331
Labor overhead @ 35%	$ 505,342	$ 501,962	$ 502,716
Electricity	$ 743,586	$ 700,000	$ 744,000
Electric overhead @ 5%	$ 37,179	$ 35,000	$ 37,200
All other direct costs	$ 710,908	$ 766,941	$ 722,275
Other direct costs overhead 10%	$ 71,091	$ 76,694	$ 72,227
Sub-Total	$3,511,939	$3,514,773	$3,514,749
Fixed Fee	$ 91,128	$ 91,128	$ 91,128
Lift Station Odor Control			$ 196,080
Total Operating Budget	$3,603,067	$3,605,901	$3,801,957
SCADA Upgrade - Phase 1	$ 99,424(Phase III)	$ 110,000 (Phase IV)	$ 44,000
Total Budget	$3,702,491	$3,715,901	$3,845,957

The following are some of the major reasons for cost circumstances:

1. Projected increase in electrical costs due to the experience of 2001 with full utilization of the second aeration basin, as well as the experience of enormous increases in 'fuel cost adjustments' to the electrical costs in 2001, which cannot be ruled out in 2002.

2. Continued increase in the cost of providing skilled professional labor in Northwest Arkansas' highly competitive job market.

3. Projected increase in spending to control odors in the collection system of approximately $130,000.

Appendix K

SCADA UPGRADE - PHASE 3 - SCOPE OF WORK

The following SCADA upgrade tasks will be performed by OMI during the calendar year 2002.

1. Installation of SCADA monitoring equipment (purchased and constructed in 2000) at 15 remote valve sites in the water distribution system, specific sites to be determined by the City, to be compatible with the OMI-developed SCADA system. This work was originally scheduled to be performed in 2000, but was delayed due to delays in construction of the specific water distribution components that will be monitored. Note that this item specifically excludes responsibility for providing the actual sensing or control devices, any road boring or road cutting required for access, installation of electrical service, or purchase/installation of mechanical equipment at these locations.

AMENDMENT NO. 7
TO THE
AGREEMENT FOR OPERATIONS,
MAINTENANCE, AND MANAGEMENT SERVICES
FOR THE CITY OF FAYETTEVILLE, ARKANSAS
WASTEWATER TREATMENT PLANT

THIS AMENDMENT, entered into this _____ day of ____________, 200_, by and between the City of Fayetteville, Arkansas (hereinafter "Owner"), whose address for any formal notice is 113 W. Mountain St, Fayetteville, Arkansas 72701 and Operations Management International, Inc., (hereinafter "OMI") with offices at 6060 S. Willow Drive, Suite 200, Greenwood Village, Colorado 80111-5142 is made and entered into for purposes of amending certain provisions of the "Agreement for Operations, Maintenance, and Management Services for the City of Fayetteville's Wastewater Treatment Plant," dated August 16, 1994 (the "Agreement") to prevent the facilities covered by the Agreement from being deemed to be used in the trade or business of OMI pursuant to Section 141 (b) of the Internal Revenue Code of 1986, as amended.

This is Amendment No. 7 to the Agreement dated the 16th day of August, 1994, between Owner and OMI.

NOW THEREFORE, Owner and OMI agree to amend the Agreement as follows:

1. Article 4.1 is hereby deleted in its entirety and replaced with the following Article 4.1:

   4.1 For services rendered during the seventh year of this agreement owner shall pay to OMI the actual cost of services performed plus a management fee of Ninety One Thousand One Hundred and Twenty Eight Dollars ($91,128). Said fee and estimated cost (base fee) shall be paid in twelve (12) equal monthly installments. The management fee for subsequent years will be determined proportional to the increase in estimated cost.

2. Article 4.2 is hereby deleted in its entirety and replaced with the following Article 4.3:

   4.2 OMI and owner agree that at the end of the contract year, OMI will perform a reconciliation of estimated to actual cost and submit the reconciliation within one hundred twenty (120) days of the end of the contract year. Any difference due to Owner or OMI will be paid within thirty (30) days of acceptance of the reconciliation by both parties.

3. Article 4.3 is hereby deleted in its entirety and replaced with the following Article 4.3:

   4.3 OMI estimates that cost for services for calendar year 2002 shall be Three Million Eight Hundred Fourty-Five Thousand, Eight Hundred Eighty-Three Dollars

($3,845,883) annually. Details of said cost are shown in Appendix J. The base fee shall be negotiated each year in September, beginning in 2002 for calendar year 2003. Should Owners and OMI fail to agree, the base fee will be determined by the application of the base fee adjustment formula shown in Appendix F. Should the actual expenditures exceed estimated expenditures by more than Twenty Thousand Dollars ($20,000), in any year of this agreement, specific approval will be obtained from the owner.

3. Article 4.8 is hereby added in its entirety.

4.8 OMI agrees to incur up to $196,080 per year in lift station odor control direct expenses, including costs for necessary chemicals, pumps, tanks, related equipment and such outside services as needed. These expenses will not include labor and benefits for OMI personnel. OMI will rebate to the City the entire amount that actual lift station odor control expenses are less than $196,080 in any year of this Agreement.

5. Article 2.11 is hereby deleted in its entirety.
6. Appendices B, C, D, E, H, J, and K are hereby deleted in their entirety and replaced with the attached Appendices B, C, D, E, H, J, and K.
7. Appendix I is hereby deleted in its entirety.

All other terms and conditions remain in effect in accordance with the Agreement referenced in this Amendment.

Both parties indicate their approval of this Amendment to the Agreement by their signatures below as of the date shown above.

Authorized Signature:	Authorized Signature:
______________________	______________________
Bernard A. Miller Title: Chief Operating Officer	Dan Coody Title: Mayor
OPERATIONS MANAGEMENT INTERNATIONAL, INC.	CITY OF FAYETTEVILLE
Date: ____________________	Date: ____________________

Appendix B

LOCATION OF PROJECT

B.1 OMI agrees to provide the services necessary for the management, operation and maintenance of the following:

a) All equipment, vehicles, grounds and facilities now existing within the present property boundaries of or being used to operate Owner's Wastewater Treatment Plant located at:

1500 North Fox Hunter Road
Fayetteville, Arkansas

b) All equipment, grounds, and facilities now existing within the present property boundaries of pump stations described as follows:

WW1	978 E. Zion Road
WW2	4938 Mission Blvd. (Timbercrest)
WW3	Crystal Springs/Salem Road
WW4	691 W. Poplar
WW5	3896 N. Gregg
WW6	3021 N. Old Wire Road
WW7	2034 N. County Road 877
WW8	729 W. North Street
WW9	1336 N. Porter
WW10	716 Futrall Drive
WW11	4412 W. 6th Street
WW12	398 N. Double Springs Road
WW13	878 S. Stonebridge Road
WW14	1820 S. Armstrong
WW15	203 E. 29th Circle
WW16	3917 S. McCollum Road
WW17	4394 S. School
WW18	202 N. Sandy (Greenland)
WW19	988 S. Mallywagnon Road
WW 20	3212 N. Highway 112
WW21	1687 S. Happy Hollow Road
WW22	630 N. Double Springs Road
WW23	Masters Addition (Country Club – 2)
WW24	4071 South McCollum (Airport East)
WW25	Willow West (Farmington)
WW26	74 S. Kestrel (Sequoyah Preserve)
WW27	1031 River Meadows Drive (Stonebridge Meadow)

WW28	1603 Plantation Avenue (Heritage Village)
WW29	Greenland (Todd Bohannan)
WW30	2324 Rupple Road
WW31	2318 Internet (Research Park)
WW32	478 N. Durango Place (Silverthorne)

c) All equipment, grounds, and facilities now existing within the present property boundaries of or being used to operate the Owner's Sludge Management Site located east of the wastewater treatment facility across the White River:

d) The potable water SCADA system at the following locations:

W1	215 W. 24th Street	Pump Station
W2	844 N. Crossover Road	Pump Station
W3	4938 E. Mission Boulevard	Pump Station
W4	1016 E. Ash Street	Pump Station
W5	707 E. Rogers Drive	Pump Station
W6	456 E. Baxter Lane	Ground Storage Tank
W7	707 E. Rogers Drive	Ground Storage Tank
W8	113 N. Sang	Elevated Storage Tank
W9	1170 E. South Skyline	Elevated Storage Tank
W10	1044 E. Township Road	Elevated Storage Tank
W11	Mt. Kessler	Elevated Storage Tank
W12	Highway 45 Valve Station	Pressure-reducing Valve
W13	Fire Tower Avenue (Goshen)	Ground Storage Tank
W14	Fire Tower Avenue (Goshen)	Pump Station
W15	Co. Road # 55 (Round Mountain)	Ground Storage Tank
W16	Co. Road # 4343 (Benson Mountain)	Ground Storage Tank
W17	Gulley Road Tank	Elevated Storage Tank
W18	Gulley Road Station	Pump Station
	1475 Cato Springs Road	Water & Sewer Ops Center
	12141 Ed Edwards Road	Mt. Robinson Tower Site

Appendix C

NPDES PERMIT AND PROJECT CHARACTERISTICS

C.1 OMI will operate Project so that effluent will meet the requirement of NDPES permit No AR0020010. OMI shall be responsible for meeting the effluent quality requirements of Owner's NPDES permit unless one or more of the following occurs: (1) the Project influent does not contain Adequate Nutrients to support operation of Project biological processes and/or contains Biologically Toxic Substances which cannot be remove by the existing process and facilities; (2) the flow, influent BOD_5, and/or suspended solids exceeds the Project design parameters which are: 30 Million Gallons Per Day (MGD) maximum; 17 MDG average weekly maximum flow; 12 MGD average monthly maximum; 25,700 pound of BOD_5 per day; 21300 pounds of suspended solids per day.

C.2 In the event any one of the Project influent characteristics, suspended solids, BOD5, or flow, exceeds the parameters listed above, OMI shall return the plant effluent to the characteristics required by the NPDES permit in accordance with the following schedule after Project influent characteristics return to within design parameters:

Characteristics Exceeding Listed Parameters By:	Recovery Period Maximum
10% or Less	5 days
Above 10% But Less Than 20%	10 days
20% and Above	30 days

Notwithstanding the above schedule, if the failure to meet effluent quality limitations is caused by the presence of Biologically Toxic Substances or the lack of Adequate Nutrients in the influent, then OMI will have a thirty (30) day recovery period after the influent is free from said substances or contains Adequate Nutrients.

C.3 OMI shall not be responsible for fines or legal action as a result of discharge violations within the period that influent exceeds design parameters, does not contain Adequate Nutrients, contains Biologically Toxic Substances (that exceed process inhibiting levels or creates concentrations exceeding application or discharge limitations), and the subsequent recovery period.

C.4 The estimated Costs for services under this Agreement are bases upon the following Project Characteristics:

Flow	12.27 MGD
BOD5	19,805 lbs/day
TSS	18,775 lbs/day
Phosphorus	805 lbs/day

The above characteristics are the actual average for the twelve (12) months ending November of 2001. Any change of ten percent (10%) or more in any of these characteristics, based upon a twelve (12) month moving average, will constitute a change in scope.

Appendix D

INDUSTRIAL PRETREATMENT PROGRAM

D.1 a) Conduct a survey of the industrial user base 1 time per 3 years. Update, as required, the list of significant industrial users (SIUs) as described in Appendix D according to the definition of SIU in 40 CFR 403 or the definition in the approved pretreatment program (Program), whichever is more stringent.

b) Carry out inspection, surveillance, and monitoring procedures to determine if the SIUs are in compliance with the Pretreatment Standards and the approved Program. Each SIU shall be sampled and inspected at the frequency established in 40 CFR 403 or the approved Program, whichever is more stringent. Maintain adequate records.

c) Maintain the laboratory analysis program for each SIU as described in Appendix D. Results of all industrial sampling and testing shall be reported to Owner, as required, in a timely manner.

d) Implement the approved industrial permitting system. Prepare for renewal all necessary industrial user control mechanisms within 45 days of the expiration date or within 180 days after the industry has been determined to be an SIU.

e) Prepare notices of violation for noncompliance with 40 CFR 403 or the approved Program, whichever is more stringent, and initiate other enforcement actions by notifying Owner of the appropriate enforcement action according to the approved enforcement response plan.

f) Prepare for submission to the Approval Authority (EPA and/or the appropriate State agency) an annual report describing the Program activities over the previous Program year in accordance with 40 CFR 403 or the approved Program, whichever is more stringent. Assist Owner with annual public notice of dischargers in significant noncompliance as required by 40 CFR 403.

g) Advise Owner of changes in federal and State Pretreatment Standards and regulations and how the changes affect the local Program. Request approval from Owner and the Approval Authority prior to implementing significant changes to the approved Program in accordance with 40 CFR 403.18(c).

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Appendix H

THIRTY-DAY CHEMICAL INVENTORY

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Appendix J

COST DETAIL

The proposed annual estimated costs for 2002 were calculated as follows:

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9-26-01
3732107
+ 44,000
120,000 - ODOR
20,000 - RADIO

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Appendix K

SCADA UPGRADE - PHASE 3 - SCOPE OF WORK

The following SCADA upgrade tasks will be performed by OMI during the calendar year 2002.

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City of Fayetteville, Arkansas
Budget Adjustment Form

Budget Year	Department: Public Works	Date Requested	Adjustment #
2002	Division: WWTP	01/25/2002	
	Program:		

Project or Item Requested:
Additional funding is requested to continue the SCADA System Upgrade and enhancement of odor control efforts for the existing sewer collection and treatment system.

Project or Item Deleted:
None. Use of Fund Balance is proposed for this adjustment.

Justification of this Increase:
The additional funding is needed to continue the upgrade of the City's existing SCADA System in an effort to better monitor and control flows within the system. The funding for odor control will provide the opportunity to further minimize odor issues until all of the WSIP improvements are full implemented.

Justification of this Decrease:
Sufficient cash & investments exist to fund this request.

Increase Expense (Decrease Revenue)

Account Name	Amount	Account Number					Project Number	
Direct Purchases	69,850	5400	5100		5328	01		
Contract Services	44,000	5400	5700		5315	00	99031	1

Decrease Expense (Increase Revenue)

Account Name	Amount	Account Number					Project Number	
Use of Fund Balance	113,850	5400	0940		4999	99		

Approval Signatures

Requested By — Date

Budget Manager — Date

Department Director — Date

Admin. Services Director — Date 1/25/02

Mayor — Date

Budget Office Use Only

Type: A B C D E

Date of Approval

Posted to General Ledger

Posted to Project Accounting

Entered in Category Log

Blue Copy: Budget & Research / Yellow Copy: Requester

H:\BUDGET\PROJECTS\BUD_ADJ\BA_2002\OMI_02BA.WK

STAFF REVIEW FORM

X Agenda Request
__ Contract Review
__ Grant Review

For the Fayetteville City Council meeting of Feb 5, 2002

FROM:

Greg Boettcher	Water and Sewer	Public Works
Name	Division	Department

ACTION REQUIRED:
Approval of a Consultant Contract Amendment No. 1 (original contract dated March 21, 2000) for Wastewater System Improvement Project in the amount of not more than $578,918.24 to address: (1) Additional engineering services, outside original contract scope, by McGoodwin, Williams and Yates, Inc. - $115,100.06, (2) Expanded sub-consultant services by Environmental Consulting Operations for environmental permitting for the Project - $326,782.05, (3) Additional technical services by Hanifin Associates for public involvement program for the Project - $88,836.13, (4) Land appraisal services by Reed and Associates, not included in the original Project scope, to assess the Project's potential impacts upon neighboring land values - $2,600.00, (5) Cultural Resource Survey by Sponsored Research, not included in the original Project scope, to assess the Project's potential impacts upon historical and archaeological resources - $45,000.00 and (6) Flood elevation analysis services, not included in the original Project scope, to define 100-year flood elevation for the West Side Treatment Plant site - $600.00. Current contract amount is $955,302.00, with the requested increase raising the contract value to $1,534,220.24. Approval of a budget adjustment is requested. The funding of a budget adjustment for the approved contract increase is from the proceeds of the Series 2000 Water and Sewer Revenue Bond Issue.

COST TO CITY:
(Subject to Negotiations)

$578,517.52	$73,099	Professional
Cost of this Request	Category/Project Budget	Category/Project Name
5400-5700-5314-00	$73,099	Wastewater Improvements
Account Number	Funds Used to Date	Program Name
98047-10	$ -0-	Water and Sewer Bonds- Series 2000
Project Number	Remaining Balance	Fund

BUDGET REVIEW: X Budgeted Item X Budget Adjustment Attached

Budget Manager ______ Administrative Services Director

CONTRACT/GRANT/LEASE REVIEW: **GRANTING AGENCY:** ______

Accounting Manager	Date 1/8/02	ADA Coordinator	Date
City Attorney (See Comments)	Date 1/9/02	Internal Auditor	Date 1/8/02
Purchasing Officer	Date 1/8/02		

STAFF REVIEW: Costs subject to City Council approval

Division Head	Date 1/10/02	Cross Reference
Department Director	Date 1/11/02	New Item: Yes No
Administrative Services Director	Date 1/14/02	Prev Ord/Res #: 39-00 #750
Mayor	Date	Orig Contract Date: 3/2000

STAFF REVIEW FORM

X Agenda Request
__ Contract Review
__ Grant Review

For the Fayetteville City Council meeting of January 5, 2002

FROM:

Greg Boettcher	**Water and Sewer**	**Public Works**
Name	Division	Department

ACTION REQUIRED:

Approval of a Consultant Contract Amendment No. 1 (original contract dated March 21, 2000) for Wastewater System Improvement Project in the amount of not more than $578,918.24 to address: (1) Additional engineering services, outside original contract scope, by McGoodwin, Williams and Yates, Inc. - $115,100.06, (2) Expanded sub-consultant services by Environmental Consulting Operations for environmental permitting for the Project - $326,782.05, (3) Additional technical services by Hanifin Associates for public involvement program for the Project - $88,836.13, (4) Land appraisal services by Reed and Associates, not included in the original Project scope, to assess the Project's potential impacts upon neighboring land values - $2,600.00, (5) Cultural Resource Survey by Sponsored Research, not included in the original Project scope, to assess the Project's potential impacts upon historical and archaeological resources - $45,000.00 and (6) Flood elevation analysis services, not included in the original Project scope, to define 100-year flood elevation for the West Side Treatment Plant site - $600.00. Current contract amount is $955,302.00, with the requested increase raising the contract value to $1,534,220.24. Approval of a budget adjustment is requested. The funding of a budget adjustment for the approved contract increase is from the proceeds of the Series 2000 Water and Sewer Revenue Bond Issue

COST TO CITY:
(Subject to Negotiations)

$578,517.52	$73,099	Professional
Cost of this Request	Category/Project Budget	Category/Project Name
5400-5700-5314-00	$73,099	Wastewater Improvements
Account Number	Funds Used to Date	Program Name
98047-10	$ -0-	Water and Sewer Bonds- Series 2000
Project Number	Remaining Balance	Fund

BUDGET REVIEW: X Budgeted Item __ Budget Adjustment Attached

Budget Manager ______ Administrative Services Director ______

CONTRACT/GRANT/LEASE REVIEW: **GRANTING AGENCY:** ______

Accounting Manager	Date	ADA Coordinator	Date
City Attorney	Date	Internal Auditor	Date
Purchasing Officer	Date		

STAFF REVIEW: Costs subject to City Council approval

Division Head	Date	Cross Reference
Department Director	Date	New Item: **Yes** **No**
Administrative Services Director	Date	Prev Ord/Res#: 39-00 #250
Mayor	Date	Orig Contract Date: 3/2000

FAYETTEVILLE, ARKANSAS
PUBLIC WORKS DEPARTMENT

ADMINISTRATIVE CORRESPONDENCE

TO: **Mayor Dan Coody and City Council**
City of Fayetteville, Arkansas

FROM: Greg Boettcher, Public Works Director

DATE: January 3, 2002

RE: **Wastewater System Improvement Project**
McGoodwin, Williams and Yates, Inc.
Engineering Contract Amendment

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BACKGROUND

The City of Fayetteville (OWNER) and McGoodwin, Williams and Yates, Inc. (ENGINEER) entered into an agreement for engineering services (New Westside Treatment Facility -Study, Preliminary Design and Report) on March 21, 2000, the contract's total compensation for authorized services being $955,302.00. This contract covers two phases of Engineering Services, the first being the aforementioned "Study, Preliminary Design and Report-Section IV. (A) and the second phase being the "Detailed Design and Preparation of Construction Plans and Specifications-Section IV. (B). Only the first phase services were negotiated and authorized by the City of Fayetteville. The engineering contract terms specifically noted that the compensation set forth in the agreement did not include costs for services associated with the requirements of the State Revolving Loan Funding Program. In addition, the agreement's terms specifically required all changes, modifications or amendments in scope, price or fees to be addressed by a formal contract amendment that is approved by the Mayor and City Council in advance of the change in scope, cost or fees.

The ENGINEER, in the performance of the authorized services, subcontracted with other engineering and technical consultants to fulfill the scope of work. The listing of subcontract parties and their subcontract values are as follows:

Boyle Engineering	$ 99,985.00
Webster Environmental	$ 83,820.00
Hanifin Associates	$ 98,252.00
Environmental Consulting	$ 17,086.00
Grubs and Hoskyn	$ 14,000.00
M.J. Harden	$10,980.00
Environmental Services	$33,170.00

A copy of the Engineering Cost Summary and the Detailed Scope of Work, as set out with the engineering

STAFF REVIEW FORM

Description______________________________ Meeting Date

Comments: Reference Comments:

Budget Coordinator

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Accounting Manager

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City Attorney

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Purchasing Officer

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ADA Coordinator

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Internal Auditor

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agreement of March 21, 2000 are included as Exhibit "A".

This engineering services contract was one of four contracts covering a comprehensive wastewater system improvement project (PROJECT) for the City of Fayetteville. Other consultants and PROJECT sub-elements included: RJN Engineers-West Side Collection System, Black and Veatch Engineers-Paul Noland Wastewater Treatment Plant and Garver Engineers- East Side Collection System. The City of Fayetteville did elect to finance the Wastewater System Improvement Project using the State Revolving Loan Fund as administered by the Arkansas Soil and Water Conservation Commission. This funding program does impose additional engineering, environmental and administrative burdens upon both the OWNER and ENGINEER. The ENGINEER has recently submitted a request for a contract amendment to cover the alleged changes, modifications and amendments in scope, price and fees. The requested contract amendment represents an increase of $578,517.52, changing the contract amount from $955,302.00 to $1,533,819.52.

DISCUSSION

The information submitted by the ENGINEER has been summarized in the spreadsheet included herewith as Exhibit "B". This spreadsheet includes the original contract budget amounts, the current costs in each category as of December 2001 and the anticipated final costs to complete the facility planning/permitting/administrative tasks now underway or needed to complete the facility planning process. Following is a brief description of each cost category as to (1). nature of services provided, (2). scope of original services and (3). alleged additional services for which extra compensation is requested

1. <u>McGoodwin, Williams and Yates, Inc.</u>-The authorized scope of engineering services related to the development of a preliminary design report for a new west side wastewater treatment plant, coordinating the plant's preliminary design with the other engineering consultants already retained by the OWNER for associated elements of the PROJECT. The engineering services scope was detailed in the agreement (Exhibit "C") and consisted of preliminary design activities including submission of a preliminary design report. The scope of services was reportedly expanded to include the following items, greatly increasing the level of effort: (a) Served as central coordinator for the PROJECT, (b) Expanded scope of engineering report from only the West Side Treatment Plant to include all four elements of the PROJECT including conformance with the requirements set by the Arkansas Soil and Water Conservation Commission for a (Wastewater Facility Plan, Preliminary Design Report, and Environmental Informational Document), (c) Assisted in the coordination of and preparation of applications for funding from the State Revolving Loan Fund, (d) Developed and implemented planning for the Broyles Road Extension, (e) Administration of the expanded environmental permitting for the PROJECT, (f) Expanded investigations into the biosolids management planning for the PROJECT, including investigation of additional alternatives and coordination of recommended strategy, and (g) Special investigations into West Side Industrial loadings. The costs for those services are above the approved amount.
2. <u>Boyle Engineering</u>- The services of this sub-consultant related to the provision of specialized technical assistance of wastewater process evaluations, (selection and preliminary design). Due to the increased use of in-house resources of McGoodwin, Williams and Yates, Inc. the costs for sub-consultant services was below budgeted levels, with the unused budget amount being transferred to the services of the prime consultant.
3. <u>Webster Environmental</u>-The services of this sub-consultant related to the provision of

specialized technical assistance for odor control at the proposed West Side Treatment Plant, including assessment of odor potentials, evaluation of odor control alternatives and furnishing preliminary design recommendations for the selected odor control system. The costs for these sub-consultant services were below budgeted levels, with the unused budget amount being transferred to the services of the prime consultant.

4. Environmental Consulting Operations (ECO)-The original scope of services of this sub-consultant related to the provision of specialized environmental assistance for the permitting of the proposed West Side Wastewater Treatment Plant. The scope of this sub-consultant's work was reportedly expanded, greatly increasing the level of effort, including the following activities: (a) Expanded environmental permitting scope from the West Side Treatment Plant to include all four elements of the PROJECT, (b) Increased the scope of the Corps of Engineers 404 permitting from only the West Side Treatment Plant to include permitting for all four elements of the PROJECT, allowing continuity of activities and eliminating duplicated efforts by the other consultants, (c) Initiated work on the NPDES Storm Water Permit for the PROJECT, (d) Added the development of an Environmental Information Document (EID) to the scope of work, said EID addressing the entire PROJECT; the development of the EID being a specific requirement of the Revolving Loan Fund under the Arkansas Soil and Water Conservation Commission, (e) Participated in the public information program for the PROJECT funding, including attendance at public meetings, providing environmental information and justifications for the PROJECT and assisting in the dissemination of accurate environmental information about the PROJECT, (f) Assisted in the evaluation of and development of Candidate Conservation Agreement (CCA) for the PROJECT, to address prospective endangered species concerns, (g) Provided specialized environmental guidance regarding the environmental issues surrounding the planned construction at the former Research and Technology Park along Highway 540, including preliminary evaluations of site conditions, site issues and possible mitigation measures. A more detailed description of the services provided by ECO is detailed in the correspondence dated November 27, 2001, a copy of which is included as Exhibit "D". The costs for these sub-consultant services are above the approved amount.

5. M.J. Harden-The services of this sub-consultant related to the provision of current aerial photography for the West Side Treatment Plant Site, to support the preliminary engineering activities. The costs for these sub-consultant services were at budgeted level.

6. Grubbs-Hoskyn- The original scope services of this sub-consultant related to the performance of geotechnical services associated with the preliminary design of the West Side Wastewater Treatment Plant. The costs for these sub-consultant services were below budgeted levels, with the unused budget amount being transferred to the services of the prime consultant

7. Hanifin Associates- The services of this sub-consultant related to the provision of professional guidance in the development of a public information program for the proposed West Side Wastewater Treatment Plant, including development of a methodology for the public involvement, arranging three public meetings to discuss the proposed new treatment plant and coordination of the program with others concerned. The scope of work by this sub-consultant was allegedly expanded to include such areas of additional work as: (a) Expansion of the public information scope from the West Side Wastewater Treatment Plant to include the entire PROJECT, (b) Increasing the extent of public informational meetings from the initially planned three meetings to approximately sixteen public information meetings, (c) Expanding and formalizing the public involvement program to meet the specific requirements for Facility Planning/State Revolving Loan under the regulations of the Arkansas Soil and Water Conservation Commission, (d) Expanding the scope of the

public information program to include the provision of written information/graphics/handouts to inform the public on the proposed Sales Tax Bond Issue held in November of 2001, (e) Expanding the scope of the public information program to include the use of video and web site mediums, and (f) Development of communication resources/tools/criterion to improve the effectiveness and clarity of the information presented to the public on the PROJECT. A more detailed description of the services provided by Hanifin Associates is detailed in the correspondence dated October 15, 2001, a copy of which is included as Exhibit "E".

8. Environmental Services Company-The services of this sub-consultant relate to the laboratory testing to provide background data for the preliminary design of the West Side Wastewater Treatment Plant. This work included water testing, sludge testing and sub-system raw wastewater testing. The costs for these sub-consultant services were below budgeted levels, with the unused budget amount being transferred to the services of the prime consultant.
9. Reed and Associates-The services of this sub-consultant were not included in the original scope of work of engineering consultant. This sub-consultant provided a detailed land appraisal report that evaluated the effects of wastewater treatment plants upon the values of surrounding properties. The appraisal firm researched the values of specific properties, comparing their value prior to and after the construction of a wastewater treatment plant in their immediate vicinity. The analysis found no loss of land value when a wastewater plant was constructed near a private property. This analysis was not included in the original scope of work.
10. Sponsored Research (Arkansas Archaeological Survey)-The services of this sub-consultant were not included in the original scope of work of engineering consultant. This sub-consultant's services are now needed to survey the PROJECT construction areas for the presence of historical and archaeological resources. The Arkansas State Historic Preservation Officer has required that the PROJECT include a Cultural Resources Survey, hence, the need for this sub-consultant. This sub-consultant utilizes local resources from the University of Arkansas and is an approved provider of Cultural Resource Survey Services. This survey was not included in the original scope of work.
11. TWH-The services of this sub-consultant were required to assess the flooding potentials of the proposed West Side Wastewater Treatment Plant. The flood mapping for the proposed plant site did not have specific 100-year flood elevations, as required for the design of wastewater treatment facilities. The new facilities must be able to withstand a 100-year flood without damages to equipment and structures. This sub-consultant performed a detailed hydrologic study of the site and established the design 100-year flood elevation. This analysis was not included in the original scope of work.

ASSESSMENT

The final decision regarding any proposed contract amendment rests with the Fayetteville City Council. The terms and conditions of the agreement obligated the ENGINEER to secure prior approval from the OWNER for all changes in scope, costs or fees, said approval being issued by the Mayor and City Council. From a more liberal perspective, however, it is recognized that the scope of the PROJECT has changed including the decision to use the Revolving Loan Fund to finance the PROJECT, increasing the levels of effort by the ENGINEER. It is also noted that the agreement specifically exempted the work associated with the Revolving Loan Fund as a component of the original scope, said condition being further confirmed in the letter of transmittal for the contracts dated February 29. 2000 (enclosed as Exhibit "F"). Certain elements for which additional compensation are requested do relate to the exemption for Revolving Loan Funding, however, other elements of the requested additional compensation relate only to changes in scope for which no authorization was granted by the Mayor and City Council. This deviation from contract terms eliminated the OWNER's opportunity to review the changes in scope, fees and costs prior to their performance, and prevented negotiation of approvable terms, conditions and compensations. Actions of the ENGINEER have compromised the OWNER's ability to evaluate scope, assess costs, to investigate alternative methods and to adhere to proper procedures for the expenditure of public funds. The fault lies with the ENGINEER, who had sole control over his work and that of the sub-consultants.

The ENGINEER's contract administration is not acceptable performance and should not be rewarded. In the request for a contract amendment, the ENGINEER has requested additional compensation to cover additional past and future costs associated with the PROJECT. The costs being claimed are at normal billing rates and include fixed fees (profit). In the agreement, the fixed fee for the prime consultant was established at 10.15%, said fixed fee being applied to the services of sub-consultants, direct labor, indirect labor and expenses. As a beginning point for the negotiation of the contract amendment, the OWNER may consider the removal of profit (10.15% fixed fee) from all claimed costs performed without prior approval, said discounting of the requested additional compensation being computed as follows:

A. McGoodwin, Williams and Yates, Inc. - For actual services provided by the staff of the ENGINEER, an increase in costs of $140,819.19 has been requested, which is offset in part by a $81,819.85 under run of certain sub-consultants (Boyle (-$66,494.43), Webster (-$6,835.07), Grubbs (-$5,795.50), and ESC (-$2,694.85). Accordingly, the net increase requested becomes $58,999.34, of which, $42,500.00 represents work yet to be performed. In addition to the direct labor, indirect labor and expenses requested under the proposed contract amendment, the ENGINEER is requesting that the fixed fee (profit at 10.15%) also be increased by $55,700.00, raising the current agreement's fixed fee from $88,105.00 to $143,805.00. It is proposed that the fixed fee (profit at 10.15%) be limited only to the actual increase in the ENGINEER's costs, or 10.15% of the $58,999.34 or a fixed fee increase of $6,000.00. Accordingly, the $196,919.91 increase request is proposed to be reduced to $64,999.34 ($58,999.34 for direct labor, indirect labor and expenses plus $6,000.00 for fixed fee increase).

B. Environmental Consulting Operations - For environmental consulting services, ECO is requesting a total contract amount of $343,868.05, increasing the original $17,086.00 contract by $326,782.05. While this sub-consultant has identified certain tasks that were not in the original scope of services and has attributed cost to each category, the resultant costs are deemed excessive. Of the $326,782.05 contract increase, approximately $58,000.00 relates to work that remains to be completed and $251,696.05 represents work already performed without authorization. It is recommended that the OWNER consider discounting the invoice for work performed without prior authorization by a factor of 10.15%, reducing the contract increase by $25,500.00. Accordingly, the $326,782.05 increase request is proposed to be reduced to an increase of $301,282.05, bringing the total contract value to $318,368.05 for all work. This approach to the cost overrun should address the hard costs of the consultant, but will remove profit from the work performed without prior authorization.

C. Hanifin and Associates - For development of a public information program for the PROJECT, Hanifin and Associates is requesting a total contract amount of $187,088.13, increasing the original $98,252.00 contract by $88,836.13. While this sub-consultant has identified certain tasks and services that were not in the original scope of services, and has identified certain activities that exceeded the original levels of involvement, the resultant costs are deemed excessive. All of the requested $88,836.13 in increased contract compensations relates to activities already completed without prior authorization. It is recommended that the OWNER consider discounting the invoice for services performed without prior authorization by a factor of 10.15%, reducing the increase by $9,000.00. Accordingly, the $88,836.13 increase request is proposed to be reduced to an increase of $79,836.13, bringing the total contract value to $178,088.13 for all work performed.

D. Reed and Associates - For the land appraisal services, not included in the prime consultant's original contract scope, it is recommended that the engineering contract be increased by $2,600.00. Since this work was not approved in advance, the 10.15% fixed fee should be denied, making the increase a total of $2,600.00.

E. Sponsored Research - For the performance of a Cultural Resource Survey, not included in the prime consultant's original contract scope, it is recommended that the engineering contract be increased by $49,567.00. Since this work is to be approved in advance of the authorization, the increase to the contract should include the cost of the cultural resources survey ($45,000.00) and a 10.15% fixed fee ($4,567.00), making the increase a total of $49,567.00.

F. TWH - For the performance of a 100-year flood level analysis, not included in the prime consultant's original contract scope, it is recommended that the engineering contract be increased by $600.00. Since this work was not approved in advance, the 10.15% fixed fee should be denied, making the increase a total of $600.00.

The following table includes a comparison of the original contract values, the contract values proposed by the ENGINEER, and the contract values that would result from the discounting of all work performed without prior approval by the OWNER:

COST CATEGORY	ORIGINAL VALUE	REQUESTED VALUE	ALTERNATE VALUE
PRIME/SUBS	$ 839,964.00	$ 954,663.34	$ 904,963.34
ECO	$ 17,086.00	$ 343,868.05	$ 318,368.05
HANNIFIN ASSOC.	$ 98,252.00	$ 187,088.13	$ 178,088.13
REED AND ASSOC.	$ 0.00	$ 2,600.00	$ 2,600.00
SPONSORED RESEARCH	$ 0.00	$ 45,000.00	$ 49,567.00
TWH	$ 0.00	$ 600.00	$ 600.00
TOTAL	**$ 955,302.00**	**$1,533,819.52**	**$1,454,186.52**

It was the responsibility of the ENGINEER to communicate the need for a contract amendment to the OWNER, affording an opportunity for review and evaluation in advance of the work. The decision regarding this contract amendment does rest with the Mayor and City Council, with the range of actions possible including approval, denial or negotiation.

"PRELIMINARY DRAFT COPY"

AMENDMENT NO 1
TO
THE AGREEMENT FOR CONSULTING SERVICES
WEST SIDE WASTEWATER TREATMENT PLANT

PROJECT:	West Side Wastewater Treatment Plant
CONSULTANT:	McGoodwin, Williams and Yates, Inc., 909 Rolling Hills Drive Fayetteville, Arkansas 72701
OWNER:	City of Fayetteville, 113 West Mountain, Fayetteville, AR 72701

WHEREAS, McGoodwin, Williams and Yates, Inc. (ENGINEER) and the City of Fayetteville, Arkansas (CLIENT) entered into an agreement for Consulting Services dated March 21, 2000, and,

WHEREAS, the scope of the March 21, 2000 agreement set out a specific scope of services, and additional items of work, outside the initial scope of services have been required to complete the study, preliminary design and report phase of the West Side Wastewater Treatment Plant (PROJECT), including the following items by the prime consultant, McGoodwin, Williams and Yates, Inc.:

- Served as central coordinator for the PROJECT
- Expanded scope of engineering report from only the West Side Treatment Plant to include all four elements of the PROJECT including conformance with the requirements set by the Arkansas Soil and Water Conservation Commission for a Wastewater Facility Plan, Preliminary Design Report, and Environmental Informational Document
- Assisted in the coordination of and preparation of applications for funding from the State Revolving Loan Fund
- Developed and implemented planning for the Broyles Road Extension
- Administration of the expanded environmental permitting for the PROJECT
- Expanded investigations into the biosolids management planning for the PROJECT, including investigation of additional alternatives and coordination of recommended strategy
- Special investigations into West Side Industrial loadings and,

WHEREAS, the scope of the March 21, 2000 agreement set out a specific scope of services for the various sub-consultants and additional items of work, outside the initial scope of services have been required to complete the study, preliminary design and report phase of the West Side Wastewater Treatment Plant (PROJECT), including the following items of work by designated sub-consultants:

12. Boyle Engineering-No change in scope
13. Webster Environmental-No Change in scope
14. Environmental Consulting Operations (ECO)-

*Expanded environmental permitting scope from the West Side Treatment Plant to include all four elements of the PROJECT
*Increased the scope of the Corps of Engineers 404 permitting from only the West Side Treatment Plant to include permitting for all four elements of the PROJECT, allowing continuity of activities and eliminating duplicated efforts by the other consultants
*Initiated work on the NPDES Storm Water Permit for the PROJECT
*Added the development of an Environmental Information Document (EID) to the scope of work, said EID addressing the entire PROJECT; the development of the EID being a specific requirement of the Revolving Loan Fund under the Arkansas Soil and Water Conservation Commission
*Participated in the public information program for the PROJECT funding, including attendance at public meetings, providing environmental information and justifications for the PROJECT and assisting in the dissemination of accurate environmental information about the PROJECT
*Assisted in the evaluation of and development of Candidate Conservation Agreement (CCA) for the PROJECT, to address prospective endangered species concerns
*Provided specialized environmental guidance regarding the environmental issues surrounding the planned construction at the former Research and Technology Park along Highway 540, including preliminary evaluations of site conditions, site issues and possible mitigation measures

15. M.J. Harden-No change in scope
16. Grubbs-Hoskyn-No Change in scope
17. Hanifin Associates-

*Expansion of the public information scope from the West Side Wastewater Treatment Plant to include the entire PROJECT
*Increasing the extent of public informational meetings from the initially planned three meetings to approximately sixteen public information meetings
*Expanding and formalizing the public involvement program to meet the specific requirements for Facility Planning/State Revolving Loan under the regulations of the Arkansas Soil and Water Conservation Commission
*Expanding the scope of the public information program to include the provision of written information/graphics/handouts to inform the public on the proposed Sales Tax Bond Issue held in November of 2001
*Expanding the scope of the public information program to include the use of video and web site mediums
*Development of communication resources/tools/criterion to improve the effectiveness and clarity of the information presented to the public on the PROJECT

18. Environmental Services Company-No change in scope

19. Reed and Associates-
    *Performance of a detailed land appraisal report to evaluate the effects of wastewater treatment plants upon the values of surrounding properties
20. Sponsored Research (Arkansas Archaeological Survey)-
    *Cultural resource survey of the PROJECT construction areas for the presence of historical and archaeological resources, as required by the Arkansas State Historic Preservation Officer
21. TWH-
    *Calculation of the 100-year flood elevation for the proposed West Side Wastewater Treatment Plant site and,

NOW THEREFORE be it resolved between the ENGINEER and OWNER, that the above referenced items of additional work, when authorized in writing by the OWNER, shall be completed for the following additional compensation, with the agreement to be amended in the following particulars:

A. Breakdown of Fees: "TO BE INSERTED WHEN APPROVED"

B. Section XII. Fees and Payments is amended as follows:

For the original and amended scope of services as set out in agreement and attachments hereto (Administrative Correspondence dated January 3, 2002), compensation shall be based upon actual salary cost for employees doing the work plus overhead at not more than 1.55 times the actual salary cost (said overhead rate to be based upon an independent certified public accountant's certified copy of "Overhead Computation" conforming to Form RLF-155, latest revision, as issued by the Arkansas Soil and Water Conservation Commission. The ENGINEER shall furnish copies of completed RLF-155 forms for each fiscal year that work is performed on the PROJECT, with the rate to be adjusted retroactively for any fiscal year in which deviations result), plus a fixed fee in the amount of $_________.

The estimated total compensation for the authorized services is $_______, including a fixed fee of $_________ and $_____ for direct labor, indirect labor, sub-consultant services and reimbursable expenses.

C. Section XVI. Miscellaneous Provisions is amended to include the following:

H. The ENGINEER and all sub-consultants providing services under this agreement shall be required to comply with the Arkansas Freedom of Information Act, latest provisions, with regard to records and information associated with the PROJECT. The ENGINEER shall comply with all requirements, including placement of identical disclosure requirements in agreements with all sub-consultants, and shall meet the obligations of the law regarding such items as electronic copies, time frame for responses, reasonable charges for information and similar conditions to those placed upon the City of Fayetteville.

I. The ENGINEER, in the performance of the authorized services, shall comply with applicable schedules and conditions of the approved Memorandum of Agreement with the Arkansas Soil and Water Conservation Commission, including amendments to said agreement.

J. The ENGINEER shall furnish copies of all sub-agreements, invoices, billing information, correspondence and other materials as the OWNER may request to verify the accuracy of invoices and the nature of the work being performed.

K. The ENGINEER shall comply with the applicable provisions of the approved Memorandum of Agreement (copy attached), shall comply with the applicable rules, regulations and guidelines of the Arkansas Soil and Water Conservation Commission-Revolving Loan Fund, including Regulation 10 provisions relating to nonperformance or negligence of the consulting engineering firm. These provisions are incorporated into the agreement by this reference.

IN WITNESS WHEREOF to the acceptance of the terms and conditions as set forth in the Amendment No 1 to the March 21, 2000 agreement for Engineering Services, McGoodwin, Williams and Yates, Inc. and the City of Fayetteville, Arkansas have executed this amendment to agreement effective the date set forth below. All other terms and conditions of said Agreement not in conflict with or not amended herewith remain in full force and effect.

Signed this _______ day of _________, 2002.

CITY OF FAYETTEVILLE FAYETTEVILLE, AR	McGOODWIN, WILLIAMS AND YATES, INC. FAYETTEVILLE, AR
____________________ Dan Coody Mayor of Fayetteville	____________________ L. CARL YATES President
____________________ ATTEST – City Clerk	____________________ ATTEST- Vice-President

ATTACHMENT 6
ENGINEERING COST SUMMARY
WEST SIDE WASTEWATER TREATMENT PLANT
FAYETTEVILLE, ARKANSAS
MWY Project Number Fy-296

Engineering	
McGoodwin, Williams and Yates	
Direct Labor	$183,635
Overhead on direct Labor (1.55)	284,634
Subtotal MWY Direct Labor + Overhead	$468,269
Engineering Subcontracts	
Boyle Engineering	$99,985
Webster Environmental Associates	83,820
Subtotal Engineering Subcontracts	$183,805
Total Engineering	**$652,074**
Technical Support Services	
Environmental Consulting Operations, Inc	$17,086
Geotechnical Services	14,000
Laboratory Sampling andTesting (3 Weeks)	33,170
Photogrammetry	10,980
Subtotal Technical Support Services	**$75,236**
Public Involvement	
Hanifin Associates, Inc.	$98,252
Subtotal Public Involvement	**$98,252**
Reimbursable Expenses	
AirTravel	$28,800
Car Rental	2,820
Lodging	4,425
Meals	4,590
GPS Equipment Rental	1,000
Subtotal Reimbursable Expenses	**$41,635**
Total Estimated Project Costs	**$867,197**
Professional Fee	**88,105**
Total Project Costs	**$955,302**

TRAVEL COST SUMMARY
WEST SIDE WASTEWATER TREATMENT PLANT
FAYETTEVILLE, ARKANSAS
Project No. Fy-296

Air Travel

Site Visits	$21,000
WEA	3,000
Boyle	4,800
	$28,800

Car Rental

Site Visits	$ 1,500
WEA	720
Boyle	600
	$ 2,820

Lodging

Site Visits	$ 2,625
WEA	900
Boyle	900
	$ 4,425

Meals

Site Visits	$ 3,150
WEA	540
Boyle	900
	$ 4,590

WASTEWATER SYSTEM IMPROVEMENTS PROJECT

MCGOODWIN, WILLIAMS AND YATES, Inc.

ENGINEERING AND SUB-CONSULTANT COSTS SUMMARY

ITEM NUMBER	COST CATEGORY	CONTRACT BUDGET Mar-00			CURRENT COSTS Dec-01	CURRENT STATUS Dec-01	PROJECTED COMPLETION COSTS - 2002	REQUESTED CONTRACT ADJUSTMENT AMOUNT	PERCENTAGE CHANGE
		Labor	Expense	Total					
1	Prime Consultant Services	$551,190.00	$34,459.00	$585,649.00	$729,268.19	-$143,619.19	$782,168.19	$196,519.19	133.56
2	Boyle Engineering	$99,985.00	$7,200.00	$107,185.00	$40,690.57	$66,494.43	$40,690.57	-$66,494.43	37.96
3	Webster Environmental	$83,820.00	$5,160.00	$88,980.00	$82,144.93	$6,835.07	$82,144.93	-$6,835.07	92.32
4	ECO (Environ. Consul. Ops.)	$14,931.00	$2,155.00	$17,086.00	$285,868.05	-$268,782.05	$343,868.05	$326,782.05	2012.57
5	M. J. Harden	$10,980.00	$0.00	$10,980.00	$10,980.00	$0.00	$10,980.00	$0.00	100.00
6	Grubbs-Hoskyn	$14,000.00	$0.00	$14,000.00	$8,204.50	$5,795.50	$8,204.50	-$5,795.50	58.60
7	Hanlfin and Associates	$76,752.00	$21,500.00	$98,252.00	$187,088.13	-$88,836.13	$187,088.13	$88,836.13	190.42
8	ESC (Environ. Svcs. Co.)	$33,170.00	$0.00	$33,170.00	$30,475.15	$2,694.85	$30,475.15	-$2,694.85	91.88
9	Reed and Associates	$0.00	$0.00	$0.00	$2,600.00	-$2,600.00	$2,600.00	$2,600.00	
10	Sponsored Research	$0.00	$0.00	$0.00	$0.00	$0.00	$45,000.00	$45,000.00	
11	TWH	$0.00	$0.00	$0.00	$600.00	-$600.00	$600.00	$600.00	
		$884,828.00	$70,474.00	$955,302.00	$1,377,919.52	-$422,617.52	$1,533,819.52	$578,517.52	

Exhibit "B"

SCOPE OF WORK

1. DEVELOPMENT OF SCOPE OF WORK

2. CONTRACT DEVELOPMENT

3. PRELIMINARY ENGINEERING DESIGN

A. Project Coordination

1. Coordination with City –Monthly meetings and as needed
2. Coordination with consultants
   a. Black and Veatch – as needed for sludge issues
   b. RJN/McClelland – as needed for flow issues
   c. Garver Engineers – as needed
3. Coordination with NPDES permitting – Preparation of final flow schematic and other items necessary for permitting.

B. Determine West Side WWTP Design Parameters

1. Define WWTP Influent flow hydrographs to be developed by RJN from existing or new flow data
2. Determine future flows - 20 year design horizon
3. Develop wastewater sampling and testing program within the existing collection system to determine projected influent loadings to the new West Side (BOD, TSS, TKN, NH3-N, TP, etc.)
4. Determine the amount and type of flow equalization to be constructed
5. Establish effluent design parameters for preliminary design (with City's concurrence)

C. Wastewater Treatment Plant Site Related Items

1. Assemble available mapping from City for preliminary design
2. Conduct preliminary topographic wastewater treatment plant site survey
3. Determine 100 Year Flood elevations and floodway width based upon COE studies
4. Determine 100 Year Flood elevations due to altered site
5. Acquire aerial photography for detailed design
6. Determine site improvements (roads, drainage, etc.)
7. Determine conditions of site related regulatory permitting and prepare application documents

D. West Side WWTP Liquid Stream Process Selection and Unit Sizing

1. Develop Liquid Stream Alternatives to be screened (maximum of 4 alternatives for detailed cost analysis)
2. Site visits
3. Unit sizing and configuration
   a. Influent pumping, screens and flow measurement
   b. Grit and scum removal units
   c. Flow equalization facilities
   d. Biological treatment processes
      1. Alternative 1 - 3 Stage BNR
      2. Alternative 2 - 5 Stage BNR
      3. Alternative 3 - Bio N removal + chemical precipitation
      4. Alternative 4 - Other as determined by engineer & City
   e. Final Clarifiers
   f. Filtration
   g. Disinfection
   h. Pumps and pumping facilities
4. Electrical Requirements and power supply
5. Instrumentation – Remote operation of facilities
6. Process equipment selection – A maximum of 3 manufacturers
7. Ancillary buildings and laboratory
8. Provide opinion of probable Capital Cost and O & M for the four alternatives
9. Provide listing of advantages and disadvantages for each alternative (monetary and non-monetary)

10. Rank, evaluate and recommend selected alternatives
11. Issue Technical Memorandum No. 1 – Recommendations regarding liquid stream processes and unit sizing.

E. West Side WWTP Effluent Line

1. Evaluate WWTP effluent line size and route (maximum of three alternative routes)
2. Address technical issues with respect to Arkansas Law regarding any facilities required outside city limits
3. Provide preliminary Plan and Profile for selected route
4. Address future line(s) requirements
5. Evaluate and recommend pipe material
6. Recommend easement widths
7. Determine conditions of site related regulatory permitting and prepare application documents
8. Provide detailed Opinion of Probable Cost for effluent line
9. Rank, evaluate and recommend selected alternative (monetary and non-monetary)
10. Issue Technical Memorandum No. 2 recommendation regarding WWTP effluent line

F. Biosolids Stabilization and Disposal Options – West Side WWTP

1. Develop biosolids disposal options based upon West Side WWTP as a "stand alone" facility
2. Develop cost estimates for biosolids stabilization strategies
   a. Class A sludge options (three maximum)
   b. Class B sludge options (three maximum)
3. Develop Detailed Cost Estimates for four biosolids disposal options
   a. Option 1 - Land Application
   b. Option 2 - Transport to Remote Sites
   c. Option 3 - Regional Concept
   d. Option 4 - Other - to be defined during study
4. Site visits to review alternative processes and disposal options
5. Process Equipment Selections – A maximum of three manufacturers
6. Ancillary buildings
7. Pumps and pumping facilities
8. Electrical and Instrumentation
9. Prepare estimates of probable capital cost and O and M costs
10. Rank, evaluate and recommend selected alternatives (monetary and non-monetary)
11. Issue Technical Memorandum No. 3 recommendation regarding WWTP effluent line biosolids stabilization and disposal based upon the West Side WWTP as a "stand alone facility"

G. Biosolids Disposal Options – West Side WWTP and Paul Noland WWTP

1. Develop Joint Biosolids Strategy with B & V and develop detailed Cost Estimates for a maximum of three biosolids preparation options at the West Side WWTP.
2. Evaluate a maximum of four transport scenarios from West Side WWTP to the Paul Noland WWTP
3. Site visits to review alternate disposal options
4. Process equipment selections – A maximum of three manufacturers
5. Ancillary buildings
6. Pumps and pumping facilities
7. Electrical and instrumentation
8. Prepare estimates of probable capital cost and O and M costs
9. Rank, evaluate and recommend selected alternatives (monetary and non-monetary)
10. Meet with State Regulatory Agencies
11. Issue Technical Memorandum No. 4 – Jointly with Black and Veatch rank, evaluate, and recommend sludge disposal alternative for the West Side WWTP and Paul Noland WWTP

H. Odor Control Strategy

1. Define Odor Control Design Strategy
2. West Side WWTP Liquid Stream Odor Control Measures – Develop technical description of odor control measures and cost estimates for a maximum of four liquid stream treatment alternatives
   a. Screening of alternatives
   b. Examine tank and channel cover alternatives
   c. Provide unit sizes and configurations for each of the four liquid stream alternatives

d. Process equipment selection (a maximum of three manufactures)
e. Opinion of probable costs and probable O & M Costs for each of the four liquid stream alternatives
f. List possible odor concerns for the system

3. West Side WWTP biosolids disposal alternatives – Develop technical description of odor control measures and cost estimates for a maximum of four biosolids disposal alternatives
   a. Screening of alternatives
   b. Examine tank and channel cover alternatives
   c. Provide unit sizes and configurations for each of the four biosolids disposal alternatives
   d. Process equipment selection (a maximum of three manufacturers)
   e. Opinion of probable costs and probable O & M costs for each of the four biosolids disposal alternatives
   f. List possible odor concerns for the system
4. West Side WWTP and Paul Noland WWTP – Biosolids Disposal Alternatives – Develop odor control strategy joint biosolids disposal options with Black & Veatch and develop a detailed cost estimate for a maximum of three **biosolids preparation options** at the West Side WWTP.
   a. Screening of alternatives
   b. Examine tank and channel cover alternatives
   c. Provide unit sizes and configurations for each of the four biosolids preparation alternatives
   d. Process equipment selection (a maximum of three manufacturers)
   e. Opinion of probable costs and probable O & M Costs for each of the four biosolids preparation alternatives
   f. List possible odor concerns for the system
5. Line work and lift stations - Provide input and recommendations and coordinate with RJN odor control mitigation measures to insure compatibility with West Side WWTP
6. Site visits to review alternative processes and equipment
7. Ancillary buildings

I. Develop Draft Recommended Plan for West Side WWTP Incorporating All Recommendations Accepted by the City

1. Prepare site layout for facilities to be initially constructed
2. Prepare site layout and conceptual plan for future expansion
3. Develop WWTP flow schematic
4. Develop WWTP hydraulic profile
5. Determine WWTP architecture
6. Develop conceptual drawings and renderings
7. Coordinate landscape plan with City staff
8. Prepare estimate of probable cost for the recommended West Side WWTP and outfall line
9. Prepare draft engineering report

4. PUBLIC INVOLVEMENT

A. Develop methodology with Hanifin - Bonner and present draft plan for the WWTP facilities to public
   1. Meeting 1 with public
   2. Meeting 2 with public
   3. Meeting 3 with public

B. Receive comments
C. Revise plan, if necessary
D. Coordinate Final Engineering Report with City and other engineering firms
E. Prepare Final Engineering Report of facilities to be constructed at the West Side WWTP

5. SUBMIT FINAL ENGINEERING REPORT

A. Submit Final Engineering Report to City
B. Submit Final Engineering Report to State and Federal Agencies
C. Submit recommended/approved plan to the Planning Commission
D. Response to State and Federal Agencies

ENVIRONMENTAL
CONSULTING
OPERATIONS

ECO, INC.

"Integrating ECOnomy and ECOlogy"

1313 Highway 229-5A
Benton, Arkansas 72015
Phone (501) 315-9009
FAX (501) 315-9035
e-mail: eco@aristotle.net

November 27, 2001

Jim Ulmer, P.E.
McGoodwin, Williams, & Yates, Inc.
909 Rolling Hills Drive
Fayetteville, AR 72703

Re: ECO, Inc. projected costs for Section 404 permit for City of Fayetteville Wastewater Improvements: MWY project # FY 296

Dear Jim,

As requested, I am providing information regarding projected costs for completion of the Section 404 permit application for the City of Fayetteville Wastewater Improvement Project. The City's decision-makers that are reviewing the projected costs should be aware that the Section 404 permit application for a project of this magnitude is a complex process that goes way beyond simply filling out applications forms. It will be important to develop the application in a comprehensive manner that provides the Corps with all of the required information. To date, we have printed a very rough draft of the 404 application. The introduction, narrative descriptions of the 76 stream crossings (including photos of streams) narrative descriptions of the 21 linework wetlands and 50 wetland data points (including photos of wetlands) comprise approximately 140 pages.

As required by the Corps, a Wetland Mitigation Plan, which details the compensatory mitigation to offset the wetlands that will be permanently altered at the Westside Wastewater Treatment Plant site, is to be submitted with the application. Currently, our rough draft Mitigation Plan totals approximately 170 pages (including 56 wetland data points and wetland photos) and will involve further development. By the time we complete the Section 404 permit, the document will be in the neighborhood of 350 to 400 pages, excluding appendices and attachments.

Although the Candidate Conservation Agreement (CCA) is coupled to the 404 permit, it will be outside the scope of the actual 404 permit application.

Exhibit "D"

Consequently, I have not included the actual development of the CCA in the projected costs for the 404 application.

Below are descriptions of the tasks that remain to complete the 404 application:

1. Completion of COE Wetland Data Forms for Wetland Data Points

We have completed approximately 98% of the work for this task, contingent upon the lack of wetlands on the site selected for the mitigation wetland. This has been the most labor-intensive portion of the 404 application. It involved field identifications of potential wetland areas, soil characterizations, hydrological evaluations, identification of plant specimens to the species level, and completion of the Corps' wetland data forms. On the average, it takes about 8 man-hours per data point, depending on the location and number of plant species. With a total of 106 data points, a lot of labor was required.

As required by the Corps, additional fieldwork by ECO, Inc. will be necessary to mark the delineated wetlands in the field. I will attempt to get the Corps to agree to allow us to complete this after submittal of the permit application.

2. Compensatory Wetland Mitigation Plan

The site selection process for the mitigation site will be a joint effort by ECO, Inc. and MWY. Many variables must be evaluated in order to choose the location of the 17-acre constructed wetland. Building a functional wetland is much more involved than simply constructing a few berms to hold water. The design criteria will be developed as a part of the site selection process. ECO, Inc. will provide this information to MWY for the design work.

A water budget/hydroperiod analysis must be modeled to determine the source and volume of input during the growing season to provide for hydrologic support of the proposed structure and functions in order to determine the amount of water needed to support a wetland plant community. Calculations with major input and output components of a hydrologic budget will form the basis for the wetland design. The calculations will need to represent a variety of years of rainfall data, which include median conditions and typical variations from those conditions. We will have to conduct an evaluation of potential water sources, which will provide the flexibility to regulate inputs to achieve a minimum level, and the output to limit the maximum level. We must answer such questions as: Is it possible to select a site with the input source to be provided solely from runoff? Is it feasible to construct a well as the primary (or supplemental) input source? Can an input source for the wetland be developed that will also provide irrigation water for the proposed tree farm?

Exhibit "D"

All of the issues described above, along with others, must be discussed in the Mitigation Plan. For example, what depths of inundation are to be achieved, and what plant species can survive in these conditions? What will construction of the wetland cost, including the planting of wetland vegetation? We have found a source of wetland vegetation that sells clumps of sedges for $2.50 a bunch. Will this be cost-effective to the City, or will the use of wetland soils as a source of plant propagules better achieve the desired results? Furthermore, if the depth of inundation is not relatively uniform, there will be hydrologic zonation, whereby plant species adapted for specific depth ranges must be planted within the zones in which they can survive.

We may evaluate the possibility of using treated effluent as an input source. To avoid having an additional permitted outfall, any excess water that is removed from the wetland could be pumped back to the wastewater treatment system to co-mingle with the effluent just prior to disinfection. The relatively small volume of excess wetland water would make up a very small portion of the total effluent volume. Pumping, as a means to rid the system of any excess water, however, would require a greater expenditure of resources and energy than the conventional weir discharge. The cost-effectiveness of this will need to be evaluated.

Another issue that we may face is the possibility of having to conduct more wetland delineations. If the site we select has existing wetlands that will be altered during the construction of the mitigated wetland, additional delineations will need to be done.

<u>3) Meetings/Additional Field Work</u>

Before the Mitigation Plan can be fully developed, ECO, Inc. and MWY will need to have meetings and site visits to evaluated the suitability of the selected site. I suggest that we also have a meeting with the Corps at the time we submit the application. Presenting the nature of the proposed project to the Corps should provide them with a better understanding of the project timelines and goals. We should also receive feedback from the Corps, regarding permit requirements, and time frame for the permit issue date. This will be an important consideration that will be associated with the detailed design work completed by the engineering firms. It will be more cost-effective for the City if the engineers have an understanding of the permit restrictions prior to completion of the design work. For instance, I anticipate seasonal restrictions to be in the permit, whereby construction activities across streams will be limited to a six month period during the calendar year. This will have a great bearing on project phasing for construction activities. Additionally, having an issued 404 permit in hand will be vital in the development of the construction contract language (environmental requirements) further down the road.

As previously mentioned, the final development of the CCA will not be included within the scope of work for the 404 permit application. However, because the CCA will be closely associated with maintaining the 404 permit after it is issued, it will be essential to include the USFWS in some of the planning meetings. As I have mentioned before, Susan Rogers (USFWS Biologist) has requested a meeting with the City before the end of this year. We need a response from the City regarding this issue, because the USFWS will be among the regulatory agencies that will provide comments to the Corps after review of the draft 404 permit. Consequently, it would be prudent to have at least one meeting with USFWS before submittal of the 404 application. The final CCA can be developed at a later date. Susan Rogers has agreed to approach the CCA as a working, evolving document. Her primary goal at this point is to see some demonstration of reasonable assurances that the City will eventually execute the CCA.

It will also be advisable to schedule meetings with the City administrators in order to provide project updates, general design and operation/maintenance strategy, and potential site location(s) for the mitigation wetland. They will need to be aware that the selected site will be required to be deed-restricted in perpetuity, only one of several decisions that will also have to go before the City Council.

4) Division of Labor

As the 404 permit application process evolves, we will better define which tasks will be completed by MWY, and those to be performed by ECO, Inc. We will provide you with a general narrative of the mitigation wetland design criteria, and the models to analyze the hydrologic budget. ECO, Inc. will also accompany MWY personnel during site visits in the site selection process. Additional input will be provided by ECO, Inc. regarding the most feasible approach to establishing wetland vegetation.

At this point, we will need the following information to be provided by MWY:

Drawings

- **Aerial photograph/site location map indicating location of wetland mitigation site**
- **Cross-sectional drawings of berms/wetland design drawings**

- The complete "marked" set of drawings for the RJN work, showing wetlands and stream crossings, based on our field work (sent to Lane). Garver has completed marking their drawings.
- Drawing or aerial of delineated wetlands on Westside WWTP site
- Cross sectional drawings for the entire Westside access road, with the stream crossings.
- A "Typical Stream Crossing" diagram for Fayetteville similar to one completed for previous pipeline projects.
- The cross sectional drawings of the effluent line, specifically for the single stream crossing (Station 16+25), and the Goose Creek outfall structure.

Additional Information/Documentation

- Completed calculations/models for constructed hydrologic budget for constructed wetland
- An explanation of what will be done with the existing Mud Creek outfall structure
- Floodplain maps for areas within floodplains where construction activities will occur
- List of property owners along specific project scope areas within jurisdictional waters of the U.S. Refer to marked RJN and Garver drawings for station numbers of stream crossings and wetlands.

- Archaeological Study – This does not have to be completed prior to submittal of the 404 application to the Corps, however, the Corps will require a letter from the SHPO which states that the project will have no anticipated adverse impacts to cultural or historical resources before the final 404 permit can be issued.

5) Projected Costs

Based upon the information available to us at this time, I am providing projected cost estimates (in the attached tables) for completion and submittal of the Section 404 permit application to the Corps. This does not include tasks which will be necessary after the submittal of the application, such as annual wetland function and value monitoring (a standard requirement by the Corp), wetland construction oversight, or review/negotiation of the draft 404 permit. We do have a good general understanding of the necessary information to be provided in the permit application. However, it should be understood that the final regulatory requirements will be subject to the opinion and subjectivity of regulatory agency personnel.

I understand the concerns expressed by some, regarding the costs of the 404 permit. However, our experience has proven many times that compliance is always the most cost-effective approach to our environmental projects. The

Exhibit "D"

importance of the 404 permit should not be under-estimated. It will have an impact on virtually every phase of this project. The first shovel-full of dirt will not be moved until we have a permit that will have reasonable requirements, as provided by current environmental regulations.

As you can see from reviewing the information provided in this correspondence, additional work will be necessary (primarily constructed wetland issues) before the 404 application is at a stage that is suitable for submittal to the Corps. It is vital that we maintain our inertia, in order to continue with the goal of obtaining the 404 permit before final detailed designs are developed.

We appreciate the opportunity to work with you on this project. Should you need additional information, please contact me at (501) 315-9009.

Sincerely,

Bruce Shackleford, M.S., REM, REPA
President

ECO, Inc. Projected Costs For City Of Fayetteville Section 404 Permit Application

Section 404 Permit (Project Code 169-02)

Future services (through the submittal of the 404 permit application, which is anticipated to be early 2002) associated with th project code are projected to involve:

- **Meetings with Corps of Engineers (COE), USFWS, City officials, MWY**
- **Wetland mitigation site selection process**
- **Preconstruction characterization of wetland mitigation site**
- **Wetland narrative descriptions, COE delineation forms**
- **Calculation of backfill discharged, acreage of waters impacted**
- **Develop and review drawings, narratives, photos**
- **Notification to COE (Form 4345)**
- **Development of maps, drawings**
- **Compensatory Wetland Mitigation Plan w/ hydrologic modeling, soil criteria, vegetation strategy**
- **Assemble application attachments**

Project Code 169-02 – Projected Future Billing Thru Submittal of 404 Application

Task	Labor	Expenses*	Total
Meetings MWY(2-3), City(1-2), USFWS(1), COE(2)	$ 14,758	$ 3,317	$ 18,075
Mitigation Site Reconn/characterization (2 trips)	$ 8,590	$ 2,820	$ 11,410
Complete application: data forms, narratives, attachments	$ 5,080	$ -0-	$ 5,080
Hydrologic modeling, soil & vegetation criteria, input/output evaluations,	$ 15,175	$ -0-	$ 15,175
Finalize Mitigation Plan	$ 6,238	$ 778	$ 7,016
Totals	$ 49,841	$ 6,915	$ 56,756

*** Expenses include, but are not restricted to: mileage, meals, lodging, copying, and supplies**

Services excluded, but not restricted to, are:

- **Marking wetlands in the field** — **Review/negotiation of draft 404 permit**
- **Meetings beyond those specified in scope** — **Annual monitoring of wetland function and value**

Exhibit "D"

HANIFIN ASSOCIATES INC.
Community Outreach • Environmental Education • Communication Strategies
632 Main Street • Laurel, MD 20707 • 301•776•7407 • fax: 301•776•7409

October 15, 2001

James Ulmer, P.E.
Vice President
McGoodwin, Williams & Yates
909 Rolling Hills Drive
Fayetteville, AR. 72703

RE: Public Information and Communications Program
City of Fayetteville, AR. – Wastewater System
Improvement Project

Dear Jim:

The following information provides the sequence and circumstances affecting the additional program efforts required for the City's wastewater system improvement project. This work was primarily performed to comply with the public participation program efforts of the City's amendment to its 201 facilities planning process. The additional work that occurred, primarily in 2001, was not identified in the original scope of work for Hanifin Associates, Inc (March 2000 – Attachment 1), inasmuch as the overall technical efforts and final regulatory requirements were not clearly defined for the City's proposed amendment to its Wastewater Management Facility Plan.

The City's initial objective in February 2000 was to provide a public information program that addressed the project's overall objective. However, changes in the direction in which this program would continue into a second phase was acknowledged by the project leaders in January 2001. At that time, it was determined that an increased level of public education was needed as a result of the analysis derived from the public information and opinion survey (October/November 2000). This analysis confirmed that low levels of public knowledge existed about the project, the methods in which it would be financed, and the overall affects to water quality if the project did not materialize.

Subsequently, the project leaders agreed in January 2001 that an aggressive public education effort would be initiated over the next several months (Attachment 2). This decision was also reinforced by the City's newly-elected public officials. The City's new leaders recognized the importance of customer education in order to secure approval by State DEQ officials for the facility plan amendment.

In summary, the additional work tasks and out of scope costs incorporated the following level of effort.

1. Redesigning the information program to comply with the Facility Plan Amendment Update requirements, based on the survey analysis and public official's requests.
2. Additional (bi-monthly) trips to provide essential program support and produce the work required for the Facility Plan Amendment update.
3. Development and production of a comprehensive public information project summary mailed to over 2500 residents and distributed through numerous

Number:

Date Printed: 10/17/01

ACTUALS

TASK		PROJ OFFICER	PROD SPEC	GRAPHIC DESIGN	TOTAL HOURS ACTUAL	DIRECT LABOR COSTS	COSTS ODC's (General)	ODC's (Subcontracts)	TOTAL COST
	Hourly Rate	91.00	48.80	78.00					
		LHB	CAQ	SBR					
TASK 1 - Program Development	ACTUALS	459	54.5	53.25	566.75	$48,582.10	$22,243.61		$70,825.71
	BUDGET	368	40	0	408	$35,440.00	$7,500.00	$0.00	$42,940.00
	REMAINING	-91	-14.5	-53.25	-158.75	($13,142.10)	($14,743.61)	$0.00	($27,885.71)
TASK 2 - Public Opinion Survey	ACTUALS	221.5	49	31.75	302.25	$25,024.20	$2,267.33	$120.00	$27,411.53
	BUDGET	92	120	0	212	$14,228.00	$500.00	$0.00	$14,728.00
	REMAINING	-129.5	71	-31.75	-90.25	($10,796.20)	($1,767.33)	($120.00)	($12,683.53)
TASK 3 - Public Officials Workshop	ACTUALS	87	4	1	92	$8,190.20	$1,132.63		$9,322.83
	BUDGET	36	34	24	94	$6,807.20	$1,000.00	$0.00	$7,807.20
	REMAINING	-51	30	23	2	($1,383.00)	($132.63)	$0.00	($1,515.63)
TASK 4 - Water Quality Education Ex	ACTUALS		9		9	$439.20	$10,000.00		$10,439.20
	BUDGET	44	46	64	154	$11,240.80	$12,000.00	$0.00	$23,240.80
	REMAINING	44	37	64	145	$10,801.60	$2,000.00	$0.00	$12,801.60
TASK 5 - Web Page Update	ACTUALS	140	3.5	169.25	312.75	$26,112.30	$2,919.69		$29,031.99
	BUDGET	16	18	0	34	$2,334.40	$0.00	$0.00	$2,334.40
	REMAINING	-124	14.5	-169.25	-278.75	($23,777.90)	($2,919.69)	$0.00	($26,697.59)
TASK 6 - Education Kiosk Displays	ACTUALS			65	65	$5,070.00	$1,145.14		$6,215.14
	BUDGET	8	12	48	68	$5,057.60	$500.00	$0.00	$5,557.60
	REMAINING	8	12	-17	3	($12.40)	($645.14)	$0.00	($657.54)
Subtotals	ACTUALS	907.5	120	320.25	1347.75	$113,418.00	$39,708.40	$120.00	$153,246.40
	BUDGET	564	270	136	970	$75,108.00	$21,500.00	$0.00	$96,608.00
	REMAINING	-343.5	150	-184.25	-377.75	($38,310.00)	($18,208.40)	($120.00)	($56,638.40)

Out of Scope Work
Recorded Above

Through 9/30

Exhibit "E"

Summary of Out of Scope Tasks Costs
Public Information Program - City of Fayetteville, AR
Wastewater System Improvement Project
October 15, 2001

Date	Task Items	Description	
OUT OF SCOPE WORK TASKS			
2000 Jun	Public and community meetings	Special information meetings and large scale public workshop to present program approach	
2000 Sep	Database Development	Conducting socio-economic analysis on property owner issues & values; establishing database	
2000 Oct	Information Survey	Printing, postage and mailing fees	
	Travel	Survey management	
2000 Mar	Redesigning program to comply with Facility Plan Amendment; Travel & Survey Production	overall program development; Additional trips (2) for project meetings associated with program development and survey presentation	
2001 - Apr	Public Education & graphics	Newsletter development for citizens which transitioned into an overall "laymans" summary of the facility plan; Special graphics for citizens summary report and web page development	
2001 - May	Travel & Meetings	Additional travel to support program rescheduling and facility plan amendment needs	
2001 - Jun	Public Education Materials & travel	Web site development to support City needs, education project summary & special graphics	
2001 - July	Meetings, Materials & Travel	Public education (finance) fact sheet, workshop, meetings & travel (2) trips	
2001 - Aug	Meetings, Materials & Travel	(3) trips, workshop & material production, meetings, and printing & displays	
2001 - Sep	Meetings, Materials & Travel	(1) trip, public hearing materials & production, displays & printing	
Invoice Information:			
	Date	Invoice No.	Amt.
	4/3/2000	961348	2461.65
	5/3/2000	961350	5804.36
	6/1/2000	961358	3409.59
	7/6/2000	961365	18118.3
	8/1/2000	961370	18391.04
	9/7/2000	961372	8772.75
	10/4/2000	961376	5393.2
	12/4/2000	961383	14308.48
	2/16/2001	961393	4575.45
	1/8/2001	961386	2883.98
	3/14/2001	961397	2750.1
	4/4/2001	961405	6624.88
	5/2/2001	961409	7456.09
	6/4/2001	961412	4195.95
	7/5/2001	961415	5789.93
	8/6/2001	961418	15083.2
	9/4/2001	961420	26288.97
		Total Invoices:	152287.92

Exhibit "E"

THE CITY OF FAYETTEVILLE, ARKANSAS

DEPARTMENTAL CORRESPONDENCE

February 29, 2000

To: Fayetteville City Council

From: Don Bunn, Assistant Public Works Director
Thru: Charles Venable, Public Works Director
Mayor Fred Hanna

Subject: Contracts for Preliminary Engineering Services
Fayetteville Wastewater Improvements Project

The following three (3) items totaling $1,706,554.00 are proposed contracts for engineering services related to the Fayetteville Wastewater Improvements Project. The proposed contracts are with (1) Black & Veatch for services relating to improvements to the Noland Wastewater Treatment Plant, $359,720.00, (2) Garver Engineers for services related to sewer collection system improvements within the White River Watershed, $391,532.00, and (3) McGoodwin, Williams, and Yates for services relating to the new west side wastewater treatment facility, $955,302.00. The Council approved a contract with RJN for services in connection with the project in the amount of $638,267.00. All of the contracts authorize the development of a preliminary engineering report as a first phase of the engineering work and provide for future phases as the work progresses.

Attached to this memorandum is an outline of the procedure that the Staff followed in selecting the above named consultants. The process began last May immediately following the approval by the Council for the purchase of land west of Fayetteville for the purpose of siting a new treatment facility.

The Design Reports are due to be completed by November of this year. The Preliminary Design Reports will serve several purposes. The Reports will serve to update and revise the Facility Plan where needed to account for changes in conditions and costs since the Facility Plan was prepared (1995-1997). The basic conclusions of the Facility Plan will not change since those conclusions were based on comparative costs, however, the location and sizing of sewers and interceptors may change as well as the type of treatment considered, and the economics of various sludge alternatives.

Also, enough detail will be generated by the studies to determine the size and location of new facilities and to establish reasonably accurate cost estimates of the work. The work program and cost estimates will be used to plan the financing of the improvements and will serve as a basis for the scope of work and cost of preparing the detailed plans and specifications.

Exhibit "F"

We are considering utilizing the State's Revolving Loan Fund as the major source of funds for this project. The loan fund is managed by the Arkansas Department of Environmental Quality and is backed by grants from the Environmental Protection Agency. They have indicated that a total of $60,000,000 would be available to Fayetteville over a two or three year construction period. The current lending rate is 3.75 percent.

We have submitted materials to the State to determine the areas where we are already in compliance with their conditions and regulations, and how much additional work may be required to come into compliance. Areas that will be examined include our engineering selection process, form of engineering contracts, public involvement, sewer system evaluations as it relates to infiltration and inflow control, sewer rates, and accounting procedures.

If we make the decision to participate in the program there will have to be amendments to these contracts to account for whatever extra effort that may be required to comply with ADEQ regulations. However, it is expected that the savings in interest costs over the life of the ADEQ loan will more than offset whatever additional costs that we incur because of our participation in the program.

City of Fayetteville, Arkansas
Budget Adjustment Form

Budget Year	Department:	Public Works	Date Requested	Adjustment #
2002	Division:	Sewer Construction	January 15, 2002	
	Program:			

Project or Item Requested:

$579,000 in the Professional Services account in the Wastewater Treatment Plant - Expansion capital project.

Project or Item Deleted:

$579,000 from the Use of Fund Balance account in Water & Sewer Fund.

Justification of this Increase:

The funding is needed for the City to contract with McGoodwin, Williams, and Yates Inc. for consultant services as related to the construction of the Wastewater Treatment Plant Expansion.

Justification of this Decrease:

The fund balance is from remaining funds not spent in 2001.

Increase Expense (Decrease Revenue)

Account Name	Amount	Account Number					Project Number	
Professional Services	579,000	5400	5700		5314	00	98047	10

Decrease Expense (Increase Revenue)

Account Name	Amount	Account Number					Project Number	
Use of Fund Balance	579,000	5400	0940		4999	99		

Approval Signatures

Signature	Date
Requested By	
[signature]	1/7/02
Budget Manager	
[signature]	1/10/02
Department Director	
[signature]	1/11/02
Admin. Services Director	
[signature]	1/14/02
Mayor	

Budget Office Use Only

Type: A B C D E

Date of Approval ________

Posted to General Ledger ________

Posted to Project Accounting ________

Entered in Category Log ________

Blue Copy: Budget & Research / Yellow Copy: Requester

C:\DATA\FORMS\BA-ADJ\BA_02002.WK4

McGoodwin, Williams and Yates, Inc.
Consulting Engineers
909 Rolling Hills Drive
Fayetteville, Arkansas 72703

Telephone 501/443-3404 FAX 501/443-4340

January 25, 2002

Re: Wastewater System Improvement Project
Proposed Contract Amendment between City and Engineer
Fayetteville, Arkansas
MWY Project No. Fy-296

Mr. Greg Boettcher, P. E.
Director of Public Works
City of Fayetteville
113 West Mountain
Fayetteville, Arkansas 72701

Dear Greg:

Thanks for your letter of November 13 requesting a contract amendment. We're pleased to answer your questions and provide whatever detail you require to move our work forward. I've summarized relevant information below and attached a more comprehensive memorandum to this letter.

Project History

Our original contract with the City was executed March 21, 2000. It called for MWY to complete the Preliminary Engineering Design for the proposed Westside WWTF, including a written Preliminary Design Report. We completed this report in May 2001 and enlisted the services of subconsultants whose special expertise was critical to complete the work. They are listed in the attached memorandum. MWY successfully completed contract scope requirements approximately $200,000 below budget.

Along the way, the City made several decisions which resulted in the expansion of MWY's role in work related to the wastewater system improvement project. They are summarized as follows:

Revolving Loan Fund

Concurrent with the preliminary design process, the City elected to pursue Arkansas' Revolving Loan Fund program. This was an excellent decision, because it would provide a low-cost source of capital for all facets of the total project. In April 2000, at the City's request, Don Bunn, Assistant Public Works Director and Jim Ulmer, Vice-President of MWY, met with officials of the Arkansas Department of Environmental Quality to assess the program requirements to enter the RLF program and learned:

1. The 1997 Facility Plan created by CH2M Hill did not meet ADEQ requirements and the City would be required to produce a new Facility Plan Amendment. Later, at the City's direction, in May through November 2001, MWY created a new Facility Plan Amendment which required approximately 2,800 manhours to complete.

2. A new Environmental Information Document (EID) was required that would address all known environmental issues and program requirements.

3. A formal public hearing on the selected plan was also required. This meeting was supplemental to the numerous public meetings conducted during the preliminary design process. As you are aware, planning, organizing, facilitating and following-up a formal public hearing that conforms to state requirements is a time-intensive process. MWY also assumed responsibility for this activity.

<u>Environmental Permitting</u>

1. Early in this process, consultation with environmental regulatory agencies determined that the project would require one 404 and NPDES storm water permit rather than one for each part of the project. At this point, the project team agreed that ECO would develop the single 404 and NDPES storm water permit for the total project, a less cumbersome way to proceed. While this decision reduced work for each of the subconsultants, it significantly increased ECO's work, which accounts in large part for its higher billing.

2. ECO participated in nearly all public meetings to provide environmental overview, requirements and to answer public concerns regarding environmental issues. ECO also prepared the EID required for the Facility Planning process. In an attempt to reduce costs, much of the information developed during the 404 permitting process was used to develop the EID. This also allowed us to address the difficult environmental issues the City would have to overcome to successfully complete the projects.

<u>Public Education</u>

1. The City's decision to pursue RLF financing intensified the need to develop clear and effective information for voters who would be asked to approve a ¾-percent sales tax on November 6, 2001. And it resulted in significant additional support from our public information consultant, Hanifin and Associates. Instead of the planned three public meetings, sixteen were held before the election. Hanifin and Associates planned, coordinated and followed-up on all sixteen of these meetings.

2. In a public opinion survey, Hanifin and Associates learned a significant number of voters felt they had insufficient information about the overall wastewater treatment system improvements. This was a major concern, as voters won't approve issues they don't understand. As work moved forward, odor control issues at Noland, property value concerns and environmental matters took on paramount importance. Public education took on new importance and resulted in additional cost from our public information consultant.

Expanded Responsibilities

As you know, the RLF application process is complex and time-consuming. In the absence of clearly defined project leadership responsibility, the dearth of long-term experience with RLF as well as numerous regulatory agencies, and the absolute necessity of voters approving the ¾-percent sales tax, MWY became the de facto project manager. We did so with the implicit consent of the City to help ensure the compatibility of each project aspect and success of the total project.

While the choice resulted in significant additional responsibility, we saw a significant benefit to the City. MWY and its consultants helped the people of Fayetteville save over $38 million in interest costs related to these projects by successfully completing the RLF Program requirements to qualify for the 3 percent RLF loan.

In an August 8, 2001 memo, Don Bunn informed the public works director, the mayor and city council that MWY was:

> ...currently in the process of Facility Plan revision and EID preparation, working with ADEQ and the Arkansas Soil and Water Conservation Commission in connection with securing RLF funding and has attended several city related public meetings on the project. In addition, they have been working with the City in the investigation of the possible construction of a fertilizer plant in the Northwest Arkansas area which would utilize sewage sludge from the area cities and poultry litter. Contract Amendment No. 1 for the above activities will be presented to the Council for review and approval at a later date.

Unquestionably, these activities went beyond the scope of work in our original contract and we accept responsibility for our decisions. We made them with the City's best interests at heart and the interests of the project we have an obligation to complete in a timely manner and at the lowest possible cost.

At the same time, we fully understand the importance of keeping clients informed about our activities and the cost of services that exceed the scope of our contract. As this letter is written, we are reviewing internal processes to identify what changes we can make to better accomplish this objective. Prior to their implementation, we will discuss these changes with you to ensure they meet the City's objectives.

The attached memorandum provides detail and explanation of costs incurred by us and our subconsultants in the performance of our contract responsibilities. We trust you will find this information adequate and that you will forward our request for payment to the Council with your recommendation for approval.

If you have any questions or need any additional information, please do not hesitate to call us. We are at your disposal.

Cordially yours,

Carl

L. Carl Yates

LCY:sc
Attachment
cc: Mayor Dan Coody
Board of Aldermen

McGoodwin, Williams and Yates, Inc.
Consulting Engineers
909 Rolling Hills Drive
Fayetteville, Arkansas 72703

Telephone 501/443-3404 FAX 501/443-4340

MEMORANDUM

To: Mayor Dan Coody
Mr. Greg Boettcher, Public Works Director
Fayetteville City Council

From: McGoodwin, Williams and Yates, Inc.

Date: January 25, 2002

Re: Wastewater System Improvement Project
Proposed Contract Amendment between City and Engineer
Fayetteville, Arkansas
MWY Project No. Fy-296

On March 21, 2000, McGoodwin, Williams and Yates (MWY) entered into a contract with the City of Fayetteville to provide engineering services through preliminary design, final design, and the construction of facilities for the Westside Wastewater Treatment Facility. The contract provided for fees through the necessary studies, preliminary design and completion of a preliminary design report, with the fees for subsequent work to be negotiated at a later, unspecified date. At about the same time, the City entered into engineering contracts with the RJN Group for collection and transmission system engineering for the west side, with Garver Engineers for the same type of services on the east side, and with Black & Veatch to provide the required services for necessary upgrades to the existing Paul Noland Plant.

We completed our work under our original scope in May, 2001, at a cost approximately $200,000 below the estimated cost set out in the contract.

Our contract provides for the utilization of several subconsultants to assist us in our work. Two of these subconsultants and their scope of work are as follows:

1. ECO, Inc. – ECO's original scope provides for general environmental guidance to us as we developed the project and to provide services required for the filing of a Section 404 permit based on the assumption that the treatment facility could be permitted under the Nationwide permit rather than filing for an Individual 404 permit. The services proposed to be provided were for the Westside Treatment Plant only.

2. Hanifin Associates, Inc. – Hanifin Associates' charge was to develop a strategic communications program to inform the general public about

issues concerning the new proposed Westside Plant. Because of known opposition to constructing this facility, it was believed that a comprehensive program to inform the public about the issues related to their concerns was critical to the success of the project.

Soon after the work commenced on the project, the City decided that the services ECO, Inc. and Hanifin Associates, Inc. were providing for the Westside Treatment Plant should be expanded to include the total project, and in the case of ECO, Inc., to provide services necessary to obtain a 404 permit for the total project (including both plants and all line work). This decision was based on regulatory mandates that a single Individual 404 permit would be required. ECO was further directed to work closely with all project consultants and Hanifin Associates in the public involvement processes. Although these two subconsultants would then be working with the City and all consultants, we agreed that these expanded services would be invoiced to our firm and then passed on to the City for reimbursement.

The 400-page 404 permit application with documentation has been completed in draft format and will be finalized shortly after work has been re-authorized on the project. It is anticipated that once the final application is submitted it will take approximately six months for completion of review by the Corps of Engineers and the issuance of the permit. Consequently, in order to avoid delay of construction, when plans and specifications have been completed, environmental permitting work should proceed with all due haste. The cost to-date for the environmental management and permitting (over and above that accomplished under the original scope) is approximately $160,000, of which $154,000 is for work accomplished by ECO, Inc. and $6,000 by us. Please note that approximately 75 percent of the cost for work accomplished by ECO is for line work projects on both the east and west sides of the City and not part of our contract for the Westside Facilities. A brief summary of the 404 permit work elements is shown in Attachment A.

The cost of the additional work performed by Hanifin Associates, Inc. was due to its involvement in the entire project rather than just the Westside Treatment Facility, and for educational assistance during the development of the Facility Plan and the AutumnFest exposition in early October. Additional costs involved relate to odor problems at the existing Noland Plant, i.e., several meetings with attendant preparation were held to discuss this matter. The added cost for Hanifin Associates over the original budget is $88,426. Hanifin's original budget assumed three public meetings, whereas 16 were finally held. The need for additional public education was noted in Hanifin's summary of written comment presented in the Public Opinion Survey (Attachment B). A summary of Hanifin's work is shown in an October 15, 2001, letter included as Attachment C.

From the very beginning of the project, the City began evaluating the best method of funding for the project. At the City's request, we provided assistance in this evaluation. By May of 2001, the City had decided to utilize the State of Arkansas Revolving Loan Fund and at that time asked us to provide the necessary services to amend the Facility Plan which had been prepared in 1997 by CH2M Hill. This work was not included in our original contract. The Draft Facility Plan Amendment (including the required Environmental Information Document) was completed in August. A summary of significant meetings conducted relevant to the total project effort is presented in Attachment D. The entire Draft Facility Plan Amendment includes 10 separate volumes and was submitted to the Arkansas Soil & Water Conservation Commission in August for review and approval. The Draft Facility Plan was revised and has become the Final Facility Plan and incorporates the comments of the public at the formal public hearing and reviewing agency comments, and was resubmitted for final review and approval on November 2, 2001. By letters dated December 3 and 4 (Attachments E and F) to Mayor Coody from the ASWCC, they indicate that the Facility Plan had been reviewed and it appears to be "approvable." However, they cannot give final approval until certain programmatic events have occurred. Specifically, the City of Fayetteville must have officially entered into the Revolving Loan Fund program and environmental review processes must have been completed with closure on several environmental issues which should be resolved with the completion of the 404 permit process. Final Facility Plan and Environmental Information Document approval will come in the form of the issuance of a Finding Of No Significant Impact (FONSI) for the project. Thus, final approval may take some period of time, as all agencies having interest in the project must be given opportunity to comment on the draft 404 permit. Consequently, the City is "ahead of the curve" on receiving facility plan approval so that it will not delay start of construction. Additionally, the environmental issues that affect the design will have been identified and resolved early in the design process, so that costly redesigns will be avoided. The cost to-date on this facility planning part of the work (including RLF coordination) is approximately $245,000, with $190,000 being for work performed by us and approximately $55,000 for work performed by ECO, Inc. in the development of the Environmental Information Document. A graph showing the dates of our effort in manhours by payroll date is shown in Attachment G.

In addition to extra services detailed above, the City requested that we assist in the following tasks: 1) Broyles Road Extension study; 2) preliminary work on the Candidate Conservation Agreement involving not only the "Westside line project" but also the research and technology park; 3) evaluating the possible impact of potential industry on the Westside Plant; and 4) coordination of the effort to utilize the "waste-to-energy-to-fertilizer" process for the biosolids (DukeSolutions/Harmony).

There is still work to be completed in the facility planning process and securing approvals of preliminary environmental issues. This work will basically be completed by us, ECO, Inc., and by the Arkansas Archeological Survey, with some consultation with the other three engineering consultants on the project. Our work will include working with ECO, Inc. in the environmental permitting (including a wetlands mitigation plan, if required), coordinating final review and making any changes required in the Facility Plan Amendment, RLF coordination, and coordination of the effort to finalizing the definitive contract between the City and DukeSolutions/Harmony for the utilization of the waste-to-energy-to-fertilizer process for biosolids treatment and disposal. We estimate the cost of our effort to be approximately $57,500.

ECO's work will involve the completion of the environmental permitting process with some possible work revising the Environmental Information Document. It is estimated the cost of ECO's work to complete these tasks will be approximately $58,000. A summary of ECO's total project cost separated by work elements is presented as Attachment H.

A cultural resources survey will be required for those areas impacted by the project. We propose to utilize the Sponsored Research Program of the Arkansas Archeological Survey for this work, with an estimated cost of $45,000.

A summary of our requested contract scope is included in tabular form as Attachment I to this Memorandum.

We certainly understand the City's desire to execute contract amendments prior to completing the work. In this instance, we acknowledge that we were in error in not working with City staff to prepare and present the appropriate amendments to the Council for consideration prior to starting the work under the increased scope. We are implementing in-house procedures to assure that this doesn't happen with future work. Once these have been fully developed, we will share them with you.

It was not until July, 2001, that our cost actually began exceeding the original budget amount, and we notified the City. At that time, with the urgency of completing the Facility Plan to keep the project moving, we felt that the best interests of the project would be served by concentrating our efforts on completing the work so that the City could complete the program requirements to qualify for the 3 percent RLF loan, rather than stopping to amend our contract. We believe that the City's intent is evidenced in Don Bunn's memorandum of August 7, 2001 (Attachment J), which accompanied the contract amendments for the other project consultants on the Council meeting of September 18, 2001. Actually, we put the interests of the City and the project above our own.

We work in an atmosphere of trust. As clients have asked us to do additional work, we have bent over backwards to get that work done, with the understanding that formal contract amendments would be executed at a later date.

Attachments

January 25, 2002
McGoodwin, Williams and Yates, Inc.
Consulting Engineers
909 Rolling Hills Drive
Fayetteville, Arkansas 72703

ATTACHMENT A

Summary of 404 Work Elements

- **Illinois River Watershed Sewer Lines (20 miles)**
  - 40 stream crossings
  - 11 wetlands totaling 10.82 acres

- **Westside Plant Outfall**
  - 1 stream crossing

- **Westside Plant Effluent Line (2.78 miles)**
  - 1 stream crossing
  - 1 wetland totaling 1.47 acres

- **Westside WWTP Site**
  - 2 wetlands totaling 7.0 acres

- **Broyles Road Reroute (0.40 miles)**
  - 2 stream crossings
  - 2 wetlands totaling 1.5 acres

- **West Fork of the White River Watershed Sewer Lines (14.84 miles)**
  - 28 stream crossings
  - 4 wetlands totaling 2.35 acres

PROJECT TOTALS

- 72 stream crossings
- 20 wetlands totaling 23.14 acres
- 38.02 miles for linear portions of project

ATTACHMENT B

PUBLIC OPINION SURVEY COMMENT SUMMARY

Question No.	Comments
1	When this survey first arrived, we lacked knowledge and information. It was during a meeting with the "Candidates for Mayor" that we heard discussion of this matter. We plan to be alert to future information from any source.
1	We didn't return the first survey because we did not believe we were informed enough to give you opinions that we could substantiate with facts. We hope this survey is helpful despite our lack of knowledge regarding the treatment of wastewater.
1	We are new to the area and not very informed about this topic.
1	This is certainly an important issue and I appreciate your efforts to seek citizen input. It asks about respondent's self-assessed level of information, and then, at times assumes quite a lot of information and understanding about Fayetteville's current waste matter situation. To rally support for the new facility, you might have provided a quick summary of the current situation and future options...Just a paragraph, and then ask more esoteric questions. Just a suggestion!!
1	Since I don't know anything about the subject I do not feel that I can make any kind of an opinion. Thanks anyway.
1	Obviously, I need to be more informed
1	Not sufficient information to have an informed opinion.
1	Need to know more information
1	Need more knowledge about how existing funds are used. Another area where consumer is last to know facts--true story?
1	Need more info
1	I've lived here since 6/98 and know there is a debate about waste but have never read a good explanation or learned anything from media. NEED MORE INFO!!
1	I think that all of these issues should be presented in a public forum to educate the citizens so that we might make more informed decisions on these matters.
1	I just don't know anything about this problem. Either way.
1	I don't know enough about fair pricing, need for improvement of water treatment, or need for tax increases to make an informed decision on this matter. Does most of the public?
1	I don't feel that I have enough knowledge about water treatment to answer these questions
1	I do not feel that I am informed enough to properly answer the above questions (questions 9b-e).
1	I can't answer any of these questions without knowing something about deficiencies and strengths of current system.
1	I am not well informed about water quality systems or waste treatment. But if a new facility is necessary, I think it should be of a quality that will last and meet all the city's needs. I would rather pay for it on my bill (those who use more, pay more), than with a sales tax.
1	Good luck. Your department is asking questions that require more information in order to develop an intelligent response.
1	Do not understand any of this!!!
1	Being new residents to Arkansas and the Fayetteville area, we're not knowledgeable about the water problems

ATTACHMENT C

HANIFIN
ASSOCIATES INC.
Community Outreach • Environmental Education • Communication Strategies
632 Main Street • Laurel, MD 20707 • 301•776•7407 • fax: 301•776•7409

October 15, 2001

James Ulmer, P.E.
Vice President
McGoodwin, Williams & Yates
909 Rolling Hills Drive
Fayetteville, AR. 72703

RE: Public Information and Communications Program
City of Fayetteville, AR. – Wastewater System
Improvement Project

Dear Jim:

The following information provides the sequence and circumstances affecting the additional program efforts required for the City's wastewater system improvement project. This work was primarily performed to comply with the public participation program efforts of the City's amendment to its 201 facilities planning process. The additional work that occurred, primarily in 2001, was not identified in the original scope of work for Hanifin Associates, Inc (March 2000 – Attachment 1), inasmuch as the overall technical efforts and final regulatory requirements were not clearly defined for the City's proposed amendment to its Wastewater Management Facility Plan.

The City's initial objective in February 2000 was to provide a public information program that addressed the project's overall objective. However, changes in the direction in which this program would continue into a second phase was acknowledged by the project leaders in January 2001. At that time, it was determined that an increased level of public education was needed as a result of the analysis derived from the public information and opinion survey (October/November 2000). This analysis confirmed that low levels of public knowledge existed about the project, the methods in which it would be financed, and the overall affects to water quality if the project did not materialize.

Subsequently, the project leaders agreed in January 2001 that an aggressive public education effort would be initiated over the next several months (Attachment 2). This decision was also reinforced by the City's newly-elected public officials. The City's new leaders recognized the importance of customer education in order to secure approval by State DEQ officials for the facility plan amendment.

In summary, the additional work tasks and out of scope costs incorporated the following level of effort.

1. Redesigning the information program to comply with the Facility Plan Amendment Update requirements, based on the survey analysis and public official's requests.
2. Additional (bi-monthly) trips to provide essential program support and produce the work required for the Facility Plan Amendment update.
3. Development and production of a comprehensive public information project summary mailed to over 2500 residents and distributed through numerous

meetings; an information report about the costs of the wastewater system and needed improvements, and one about the environmental regulations that guided the overall technical development of the facility plan amendment.

4. Providing additional survey and socio-economic analysis on property owner issues and establishing a significant database of citizen questions and responses.
5. Developing special graphics and information for the City's web site.
6. Design, management and facilitation and documentation services for additional public information meetings, the amendment public hearing and educational workshops about the project.
7. Production of project graphic materials to support the City's public information presentations and activities about the project, and additional mailings to wastewater system customers and property owners.
8. Developing the framework and script for the City's public information video.
9. Providing additional communication services and public official updates.
10. Establishing for the City a framework for a long-range public information program about the relationship of clean water and the value of wastewater treatment technology.

Should you desire additional information, please let me know.

Sincerely,

Linda

Linda Hanifin Bonner, Ph.D

Number:

Date Printed: 10/17/01

ACTUALS

TASK			PROJ OFFICER	PROD SPEC	GRAPHIC DESIGN	TOTAL HOURS ACTUAL	DIRECT LABOR COSTS	COSTS ODC's (General)	ODC's (Subcontracts)	TOTAL COST
		Hourly Rate	91.00	48.80	78.00					
			JHS	CAO	SBR					
TASK 1 -	Program Development	ACTUALS	459	54.5	53.25	566.75	$48,582.10	$22,243.61		$70,825.71
		BUDGET	358	42	2	408	$35,440.00	$7,500.00	$0.00	$42,940.00
		REMAINING	-01	-14.5	-63.25	-158.75	($13,142.10)	($14,743.61)	$0.00	($27,885.71)
TASK 2 -	Public Opinion Survey	ACTUALS	221.5	49	31.75	302.25	$25,024.20	$2,267.33	$120.00	$27,411.53
		BUDGET	92	120	0	212	$14,228.00	$500.00	$0.00	$14,728.00
		REMAINING	-129.5	71	-31.75	-90.25	($10,796.20)	($1,767.33)	($120.00)	($12,683.53)
TASK 3 -	Public Officials Workshop	ACTUALS	87	4	1	92	$8,190.20	$1,132.63		$9,322.83
		BUDGET	36	34	24	94	$6,807.20	$1,000.00	$0.00	$7,807.20
		REMAINING	-51	30	23	2	($1,383.00)	($132.63)	$0.00	($1,515.63)
TASK 4 -	Water Quality Education Ex	ACTUALS		9		9	$435.23	$10,000.00		$10,435.20
		BUDGET	44	46	64	154	$11,245.60	$12,000.00	$0.00	$23,245.80
		REMAINING	44	37	64	145	$10,801.00	$2,000.00	$0.00	$12,801.00
TASK 5 -	Web Page Update	ACTUALS	140	3.5	169.25	312.75	$26,112.30	$2,919.60		$29,031.99
		BUDGET	16	18	0	34	$2,334.40	$0.00	$0.00	$2,334.40
		REMAINING	-124	14.5	-169.25	-278.75	($23,777.90)	($2,919.60)	$0.00	($26,697.59)
TASK 6 -	Education Kiosk Displays	ACTUALS			65	65	$5,070.00	$1,145.14		$6,215.14
		BUDGET	8	12	48	68	$5,057.60	$500.00	$0.00	$5,557.60
		REMAINING	8	12	-17	3	($12.40)	($645.14)	$0.00	($657.54)
Subtotals		ACTUALS	907.5	120	320.25	1347.75	$113,418.00	$39,706.49	$120.00	$153,246.40
		BUDGET	564	270	136	970	$75,108.00	$21,500.00	$0.00	$96,608.00
		REMAINING	-343.5	150	-184.25	-377.75	($38,310.00)	($18,206.40)	($120.00)	($56,638.40)

Out of Scope Work
Recorded Above

Through 9/30

Summary of Out of Scope Tasks Costs
Public Information Program - City of Fayetteville, AR
Wastewater System Improvement Project
October 15, 2001

Date	Task Items	Description	
OUT OF SCOPE WORK TASKS			
2000 Jun	Public and community meetings	Special information meetings and large scale public workshop to present program approach	
2000 Sep	Database Development	Conducting socio-economic analysis on property owner issues & values; establishing database	
2000 Oct	Information Survey	Printing, postage and mailing fees	
	Travel	Survey management	
2000 Mar	Redesigning program to comply with Facility Plan Amendment; Travel & Survey Production	overall program development; Additional trips (2) for project meetings associated with program development and survey presentation	
2001 - Apr	Public Education & graphics	Newsletter development for citizens which transitioned into an overall "laymans" summary of the facility plan; Special graphics for citizens summary report and web page development	
2001 - May	Travel & Meetings	Additional travel to support program rescheduling and facility plan amendment needs	
2001 - Jun	Public Education Materials & travel	Web site development to support City needs, education project summary & special graphics	
2001 - July	Meetings, Materials & Travel	Public education (finance) fact sheet, workshop, meetings & travel (2) trips	
2001 - Aug	Meetings, Materials & Travel	(3) trips, workshop & material production, meetings, and printing & displays	
2001 - Sep	Meetings, Materials & Travel	(1) trip, public hearing materials & production , displays & printing	
Invoice Information:			
	Date	Invoice No.	Amt.
	4/3/2000	961348	2461.65
	5/3/2000	961350	5804.36
	6/1/2000	961358	3409.59
	7/6/2000	961365	18118.3
	8/1/2000	961370	18391.04
	9/7/2000	961372	8772.75
	10/4/2000	961376	5393.2
	12/4/2000	961383	14308.48
	2/16/2001	961393	4575.45
	1/8/2001	961386	2883.98
	3/14/2001	961397	2750.1
	4/4/2001	961405	6624.88
	5/2/2001	961409	7456.09
	6/4/2001	961412	4195.95
	7/5/2001	961415	5789.93
	8/6/2001	961418	15063.2
	9/4/2001	961420	26288.97
		Total Invoices:	152287.92

ATTACHMENT D

Fayetteville Wastewater System Improvements Project

MEETING SUMMARY

April 19, 2000	Partners meeting at MWY.
April 26, 2000	Jim Ulmer and Don Bunn to Little Rock – ADEQ/RLF meeting.
May 5, 2000	Meeting at MWY.
June 6, 2000	Neighborhood meeting – West Side.
June 7, 2000	Media briefing.
June 8, 2000	Neighborhood meeting – East Side.
June 14-15, 2000	Meetings; sludge meeting in p.m. on 15th. Meet with Greg Boettcher and Ted Webber re project update.
June 15, 2000	Major public meeting at Hilton.
June 28, 2000	Partners meeting – Linda H. Bonner insisted that we initiate meetings with ODEQ and OSRC.
June 29, 2000	Sludge Workshop at Fayetteville Room 326.
July 20, 2000	Partners meeting.
August 24, 2000	Partners meeting;Odor Control Seminar at Drake 5:30-8:00 p.m.
Sept. 11, 2000	**ADEQ at Fayetteville.**
Sept. 21, 2000	**Partners meeting – RLF process.**
Oct. 12, 2000	**Meeting w/Don Bunn at 10:00 a.m. re Facility Planning schedule.**
Oct. 13, 2000	Conference call w/Murray Flemming re effluent limits.
Oct. 16, 2000	Meet with ODEQ/OSRC at Tahlequah.
Oct. 19, 2000	Partners meeting and Citizens project update.
Oct. 25, 2000	Meeting with Thone & Scott Carr at 8:30 a.m. re biosolids disposal.
Nov. 8, 2000	Biosolids meeting at Don Bunn's office.
Nov. 16, 2000	Partners meeting and Citizens project update.
Dec. 28, 2000	Meet with Don Bunn re Farmington report of overflows.
Jan. 11, 2001	**Meeting with Mayor Coody at 10:00 a.m.**
Jan. 25, 2001	Meet with Kim Hesse and Bruce Shackleford re perimeter screening.
Jan. 25, 2001	Meet with Mayor Coody in Room 313 re odor.
Feb. 15, 2001	Meet with Mark Bradley re ADEQ permits.
Feb. 20, 2001	Meet with Don Bunn at 1:15 p.m.
Feb. 22, 2001	Partners meeting.
March 7, 2001	**Don Bunn at 9:00 a.m.; Mayor Coody at 1:30 p.m.**
March 15, 2001	**Mayor Coody at 3:00 p.m. – prepare for Water & Sewer Committee.**
March 27, 2001	**Water & Sewer Committee.**
March 28, 2001	Duke Solutions conference call.
April 3-4, 2001	Charlotte, N.C. & Harrisburg, VA to Duke-Harmony plant tour. (Jim Ulmer, Jeff Richards, Don Bunn, and other NWA city officials.)
April 19, 2001	Murray Flemming 9:30 a.m.; Rogers Tour 2:00 p.m.; Public Mtg. p.m.
April 23, 2001	Conference call 10:00 a.m., Springdale/Fayetteville Biosolids.

Bold signifies meeting about RLF or where RLF discussed.

May 9, 2001	**Meet with Alderman Lionel Jordan at 4:30 p.m. – briefing on project.**
May 23, 2001	**ADEQ at Fayetteville – agenda and sign-in sheet available.**
May 24, 2001	Partners meeting at 1:00 p.m.
June 5, 2001	Odor presentation 8:30 a.m.; **Review Appl. WWAC 1:30 p.m.**
June 21, 2001	Partners meeting.
July 6, 2001	Meet with Greg Boettcher and Don Bunn at 8:30 a.m.
July 9, 2001	**Fayetteville Water & Sewer Committee 7:00 p.m.**
July 10, 2001	Meet with Don Bunn at 8:30 a.m.
July 10, 2001	**Fayetteville Council Agenda Meeting.**
July 11, 2001	WWAC at Little Rock with Don Bunn.
July 17, 2001	**Fayetteville Council, call for Sales Tax election.**
July 26, 2001	Meet with Don Bunn, Bruce Shackleford, et.al. 10:00 a.m. re environmental permitting.
July 26, 2001	**Financing seminar.**
August 1, 2001	**2nd trip to WWAC (Little Rock) with Don Bunn & Lane Crider.**
August 2, 2001	**Sierra Club tour and meeting (6:00 p.m. to midnight).**
August 5, 2001	Advertise Public Hearing.
August 7, 2001	**Council meeting setting Sales Tax election.**
Aug. 13-14, 2001	AutumnFest educational booth.
August 16, 2001	Draft Facility Plan to Depositories.
August 23, 2001	Partners meeting.
August 23, 2001	**Environmental Workshop at Continuing Ed. Center 6:30-9:00 p.m.**
August 28, 2001	West Side neighborhood meeting.
August 30, 2001	East Side neighborhood meeting.
Sept. 20, 2001	**Facility Plan/EID Public Hearing at Continuing Ed. Center.**
Sept. 24, 2001	Review RLF application and re ASWCC meeting.
Oct. 12-13, 2001	AutumnFest booth & display about Project and Environmental Issues.
Oct. 16, 2001	**Fayetteville Staff meeting re Project.**
Oct. 16, 2001	Meeting at Oklahoma Scenic Rivers Commission re Project/Biosolids.
Oct. 18, 2001	Meeting/Conf. Call re Mayor's Town Hall meeting. (Greg Boettcher, Don Bunn, Maureen Hoover, Linda Bonner, Jim Ulmer.)
Oct. 29, 2001	Mayor's Town Hall meeting.
Oct. 30, 2001	Meeting with cities re Biosolids Disposal.
Nov. 20, 2001	Meeting with Greg Boettcher and Don Bunn.
Nov. 20, 2001	Meeting with Oklahoma Scenic Rivers Commission.
Dec. 4, 2001	Meet with Greg Boettcher re MOA dates.
Dec. 11, 2001	**Meeting w/USFWS, Corps, AG&F, ASWCC, Mayor Coody, Greg Boettcher, Don Bunn, Ted Webber & Gary Dumas re Environmental Coordination.**
Jan. 3, 2002	Okla. Scenic Rivers Commission Select Committee w/Mayor Coody and Greg Boettcher.
Jan. 28, 2002	Mayors' meeting at Fayetteville re Biosolids.

Bold signifies meeting about RLF or where RLF discussed.

Arkansas Soil and Water Conservation Commission

J. Randy Young, P.E.
Executive Director

101 EAST CAPITOL
SUITE 350
LITTLE ROCK, ARKANSAS 72201

PHONE 501-682-1611
FAX 501-682-3991

December 3, 2001

ATTACHMENT E

Honorable Dan Coody
Mayor, City of Fayetteville
113 West Mountain
Fayetteville, Arkansas 72701

Re: CS-050803-03
Fayetteville, Arkansas

Dear Mayor Coody:

The Water Resources Development Division (WRDD) of the Arkansas Soil and Water Conservation Commission (ASWCC) has reviewed the Final Environmental Information Document and offers the following comments. It appears every effort has been made to notify every agency, organization, citizen group, and citizen that may have an interest in this proposed project. The attention given to the Environmental Review Process (ERP) is greatly appreciated.

Prior to the production and publication of a required Finding of No Significant Impact (Fonsi) and Environmental Assessment (EA) that meets the ERP requirements there are a few things that must take place. A couple of these reviewing agencies have made comments requesting clarity so they may make a better determination of their position on the proposed project. The U.S. Fish and Wildlife Service and the Arkansas Historic Preservation Program are two of the agencies requesting more information. The U.S. Corps' of Engineers will also be involved with the permitting of stream crossings and construction within "waters of the United States." These issues are being addressed with diligence and coordination is taking place at the time of this letter to satisfy the above reviewing agencies.

Once again, we appreciate the attention given to the environmental aspects of this project and please call me if you have any questions.

Sincerely,

Keith Sanders
Environmental Program Manager

Cc: Lane Crider, P.E.; McGoodwin, Williams and Yates, Inc.

Fy-296
B-1

Arkansas Soil and Water Conservation Commission

J. Randy Young, P.E.
Executive Director

101 EAST CAPITOL
SUITE 350
LITTLE ROCK, ARKANSAS 72201

PHONE 501-682-1611
FAX 501-682-3991

December 4, 2001

ATTACHMENT F

The Honorable Dan Coody
Mayor, City of Fayetteville
113 West Mountain Street
Fayetteville, AR 72701

Re: CS-050803-03
Wastewater Systems Improvement Project
Fayetteville, Arkansas

Dear Mayor Coody:

As stated in my October 15, 2001 letter, I had no particular comments regarding the "draft facility plan"; other than the need to address the comments received from all other interested parties. It does appear that that mission was accomplished.

The "final facility plan" has been reviewed, and it appears to be approvable. I would like to emphasize that final approval cannot be given until certain programmatic events have occurred. Specifically, the City of Fayetteville must have officially entered the RLF program; or have signed the Memorandum of Agreement (MOA). Next, the EID process must have been completed, with the issuance of a FONSI (Finding of No Significant Impact).

At such time that these two key steps have been completed, official approval may be given. Any changes resulting from the EID or other activities (water quality modeling, etc.) may require the amendment of the facility plan. This would not pose that great of a problem.

This is not a totally unique situation; as many communities at this stage authorize their consultants to proceed with the development of plans and specifications.

Please contact me at 501-682-0556, if there are any questions.

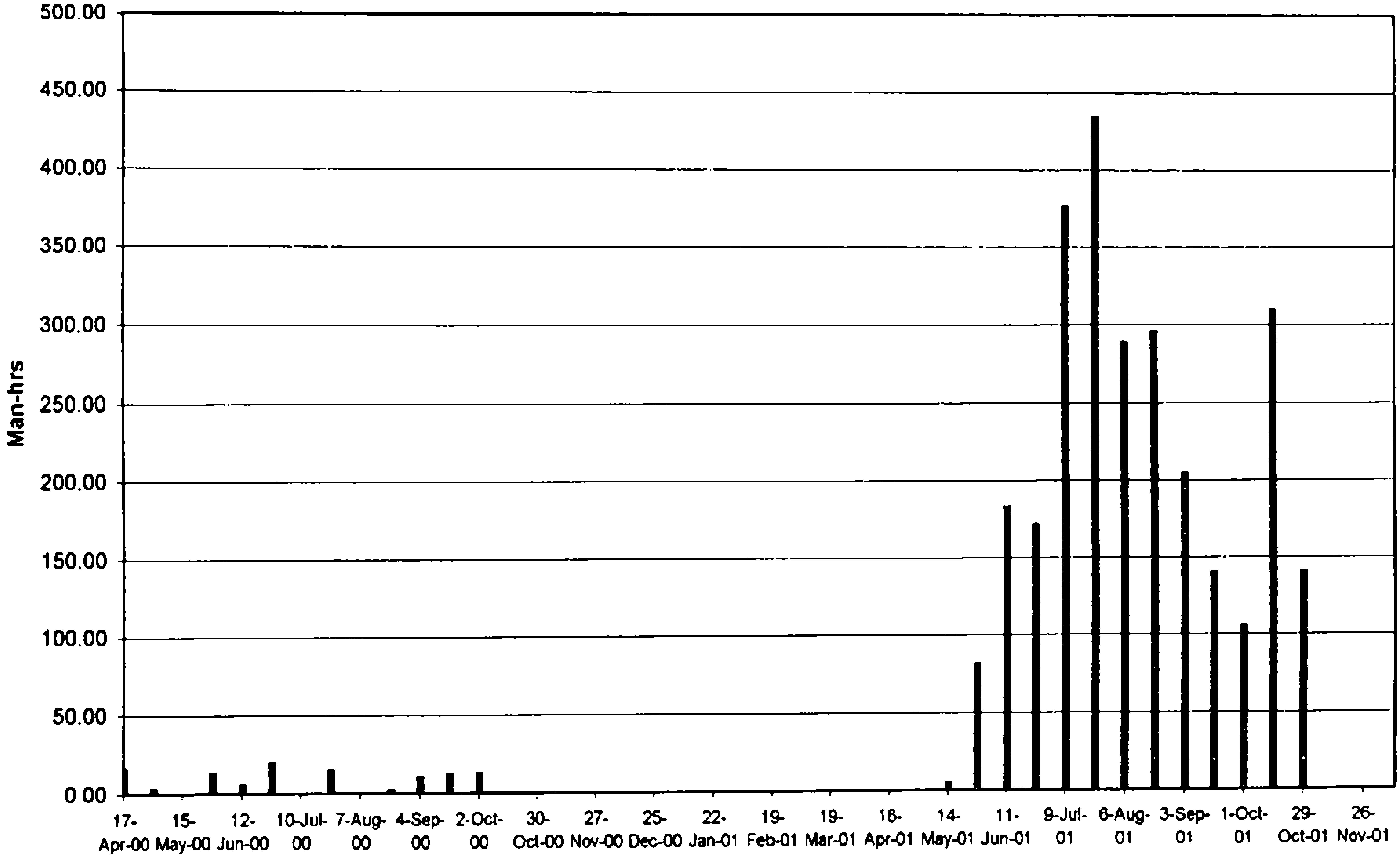
Sincerely,

Michael L. Core

Michael L. Core, P.E.
Project Engineer

cc: James C. Ulmer, P.E., McGoodwin, Williams and Yates, Inc.
Greg Boettcher, Public Works Director, City of Fayetteville

Attachment G
MWY Facility Planning Man-hrs by Pay Period



ATTACHMENT H

ECO's Total Project Cost Summary

Section	Description	Total Cost
169-01	General Regulatory Compliance	$ 46,511.51
169-01A	Regulatory Compliance Westside WWTP/MWY	2,423.48
169-01B	Regulatory Compliance Westside Linework/RJN	412.87
169-01C	Regulatory Compliance Eastside WWTP/B&V	246.43
169-01D	Regulatory Compliance Eastside Linework/Garver	929.72
169-02	404 Permit General Services	27,159.21
169-02A	404 Permit Westside WWTP/MWY	27,655.65
169-02B	404 Permit Westside Linework/RJN	52,471.09
169-02D	404 Permit Eastside Linework/Garver	26,829.88
169-03	Storm Water Permit General Services	55.76
169-03C	Storm Water Permit Eastside WWTP/B&V	.90
169-04	EID Review/Revision	55,591.20
169-04A	EID Westside WWTP/MWY	13.69
169-04C	EID Eastside WWTP/B&V	42.50
169-05	Public Participation Process	34,565.59
169-06	Candidate Conservation Agreement	9,642.80
169-07	ART Park	1,315.77
Total	---	$ 285,868.05

ATTACHMENT I

SUMMARY OF REQUESTED BUDGET

Firm	(1) Original Budget	(2) Costs to December 9 (Rounded)	(3) Difference	(4) Additional Budget Cost Requested After December 9[1]	(5) Requested Budget Adjustment Totals[2] (Rounded)	(6) Project Budget Totals[3] (Rounded)
MWY	$ 497,544	$ 595,863	$ 98,319	$ 57,500	$ 155,819	$ 653,363
ECO, Inc.	17,086	285,868	268,782	58,000	326,782	343,868
Webster	88,980	82,145	(6,835)	-0-	(6,835)	82,145
Boyle	107,185	40,691	(66,494)	-0-	(66,494)	40,691
Hanifin	98,252	186,678	88,426	488[4]	88,914	187,166
M.J.Harden, Grubbs & ESC	58,150	49,660	(8,490)	-0-	(8,490)	49,660
TWH & Reed	-0-	3,200	3,200	-0-	3,200	3,200
Sponsored Research	-0-	-0-	-0	45,000	45,000	45,000
Totals	$ 867,197	$1,244,105	$ 376,908	$ 160,988	$ 537,896	$1,405,093
MWY Fixed Fee	88,105				57,895[5]	146,000
Totals	$ 955,302				$ 595,791	$1,551,093

[1] For work yet to be done.
[2] Column 3 plus Column 4.
[3] Column 1 plus Column 5.
[4] Invoice received after December 9.
[5] Fixed fee requested.

NOTE: All cost figures include expenses.

ATTACHMENT J

City of Fayetteville DEPARTMENTAL CORRESPONDENCE

To: Fayetteville City Council

From: Don Bunn, Assistant Public Works Director

Thru: Greg Boettcher, Public Works Director
Mayor Dan Coody

Subject: Contract Amendments
Wastewater Improvements Project

Date: August 7, 2001

In March and April of 2000 the City entered into contracts with Black and Veatch Engineers of Kansas City, Garver Engineers of Fayetteville, McGoodwin, Williams, and Yates Engineers of Fayetteville, and RJN Group of Dallas. The contracts were for the purpose of developing Preliminary Design Reports connected with the Fayetteville Wastewater Improvements Project. The contract amounts and the responsibilities of each engineer are:

Black & Veatch	Renovation, Existing Noland Plant	$ 359,720.00
Garver Engineers	East Side Lines and Pump Stations	$ 429,392.00*
McGoodwin	Westside Treatment Plant	$ 955,302.00
RJN Group	Westside Lines and Pump Stations and Development of Design Flows	$ 638,267.00.
	Total of All Contracts	$ 2,382,681.00

* Includes Amendment No. 1 approved Feb 6, 2001

Since the execution of those contracts in February and March of 2000, there been several developments which has necessitated a change in the scope of the work and justifies increases in each of the contracts:

1. In the summer of 2000 the City of Fayetteville made the decision to participate in the State's Revolving Loan Fund (RLF) Program as the primary source of funding for the project. By participating in the RLF Program the City obligated itself to a) Revise the Facility Plan of 1997 to the satisfaction of the Arkansas Department of Environmental Quality, b) Prepare a revised Environmental Information Document (EID), and c) Hold a Public Hearing.

2. In early December it became apparent from preliminary data developed at that time that the cost of the project, based on established design criteria, would run well over $150,000,000.00. At that time the consultants were asked to revise their cost estimates and make the other changes necessary based on some revised design criteria*.

Three (3) contract amendments are being presented for the Council's review and approval. The contract amendments are with Black and Veatch, RJN Group, and Garver Engineers. Explanations of each are:

<u>**Garver Engineers**</u>**:** On February 6, 2001 the Council approved Amendment No. 1 with Garver Engineers in the amount of $37,860.00. This amendment was for the extra work in connection with the change in design criteria. Attached for your review and approval is <u>**Amendment No.2 in the amount of $37,218.**</u> The specific work included in Amendment No. 2 is:

1. Revision of the Preliminary Design Report as a result of the design flow changes.

2. Coordination with McGoodwin on Facility Plan and EID Revisions.

3. Additional Monthly Coordination Meetings.

4. Additional meetings with the Council, the public, and with the Health Department, ADEQ, and other regulatory agencies.

** Two changes in the design criteria were made in order to reduce costs on the project. The original criteria called for the 2025 design flows to be met in sewer pipes flowing 2/3 full with no surcharge of sewers under ultimate flow conditions. This was changed so that sewer pipes would carry 2025 design flows flowing full and ultimate flows would be carried under a surcharged condition. In addition, more credit was taken for flow reductions as a result of future sewer rehabilitation efforts than originally planned.*

This work is intended to carry through the Public Hearing to be held in September and also cover any incidental work until such time as an amendment for the preparation of Detailed Plans and Specifications is approved. The amount of this amendment is **$37,218**, bringing the total not-to-exceed contract amount to $466,610.

Black and Veatch: Attached for the Council's review and approval is proposed **Contract Amendment No. 1 with Black and Veatch in the amount of $38,809.** The work specifically included under this proposed amendment is:

1. Preparation and attendance at the Public Meeting to be held September 20.

2. Additional public information meetings (4).

3. Attendance at six (6) additional coordination meetings.

4. Provide coordination and assistance in the preparation of the Revised Facility Plan.

This amendment is intended to carry through the Public Hearing to be held in September and provide for miscellaneous assistance until such time as an amendment for the preparation of Detailed Plans and Specifications is approved. The not-to-exceed figure would be increased to a total of $398,529 with approval of this amendment.

RJN Group: Attached for the Council's review and approval is proposed **Contract Amendment No. 1 with the RJN Group in the amount of $124,903.03.** This amendment is to provide compensation for additional work incurred in connection with the change in design criteria, additional public meetings, and coordination and assistance in connection with the Revised Facility Plan and EID. Generally, the work includes:

1. Work involved in revising flow projections for both east and west sewer lines, the existing Noland Plant, and the proposed Westside Treatment Plant.

2. Additional public meetings and coordination meetings required until such time as an amendment is approved for the preparation of detailed Plans and Specifications.

3. Provide assistance in the preparation of the Revised Facility Plan and the EID.

Exhibit A of the proposed Contract Amendment No. 1 gives a more detailed listing of the additional work items required. The not-to-exceed Contract Amount would be increased to $763,170.88 with the approval of this amendment.

<u>McGoodwin, Williams, and Yates:</u> The engineering firm of McGoodwin, ______, and Yates is currently in the process of Facility Plan Revision, EID preparation, working with ADEQ and the Arkansas Soil and Water Conservation Commission in connection with securing RLF Funding, and has attended several city related public meetings on the project.

In addition, they have been working with the City in the investigation of the possible construction of a fertilizer plant in the Northwest Arkansas area which would utilize sewage sludge from the area cities and poultry litter.

Contract Amendment No. 1 for the above activities will be presented to the Council for review and approval at a later date.

It is the recommendation of the Staff that Contract Amendment No. 2 with Garver Engineers, and Contract Amendment No. 1 with Black and Veatch and RJN Group be approved. A summary of the proposed amendments is:

Engineering Firm	Cost of Amendment	Revised Contract Amount
Black and Veatch	$ 38,809	$ 398,529.00
Garver Engineers	37,218	466,610.00
RJN Group	124,903	763,170.88
Totals	$200,930	$ 1,628,309

Staff also recommends the approval of a project budget adjustment of $236,572.00 to fund this request as well as provide funding for the additional financial services to be performed by Stephens, Inc and rate studies to be performed by Black & Veatch.

STAFF REVIEW FORM

_X_ AGENDA REQUEST
___ CONTRACT REVIEW
___ GRANT REVIEW

For the Fayetteville City Council meeting of **February 5, 2002**

FROM:

Louise Schaper	**Library**	**Urban Development**
Name	Division	Department

ACTION REQUIRED: Approve an ordinance waiving requirements for competitive bidding in the burial of utilities for new Fayetteville Public Library.

COST TO CITY:

0	$	**Services and Charges**
Cost of this Request	Category/Project Budget	Category/Project Name
	$	**Site Improvements New Library**
Account Number	Funds Used To Date	Program Name
N/A	$	**General**
Project Number	Remaining Balance	Fund

BUDGET REVIEW: N/A Budgeted Item N/A Budget Adjustment Attached

Budget Coordinator

Administrative Services Director

CONTRACT/GRANT/LEASE REVIEW: **GRANTING AGENCY:**

Accounting Manager Date
Internal Auditor Date

City Attorney 1/16/02 Date
ADA Coordinator Date

Purchasing Manager 1-16-02 Date

STAFF RECOMMENDATION: Staff recommends approval.

Division Head 1-16-02 Date

Department Director 1-16-02 Date

Administrative Services Director 1/16/02 Date

Mayor 1/16/02 Date

Cross Reference

New Item: **Yes No**

Prev Ord/Res #:

Orig Contract Date:

FAYETTEVILLE PUBLIC LIBRARY

For City Council Agenda February 5, 2002

To: Mayor Dan Coody and City Council
From: Louise Schaper, Library; Hugh Earnest, Urban Development
Date: January 16, 2002

Subject: Ordinance waiving requirement for competitive bidding on the site improvements for the new Fayetteville Public Library: Utility Duct Banks, 401 West Mountain

Background:
Existing overhead utilities along School and West Avenues between Mountain and Rock Streets will be buried as part of the library project. Utilities include power, telephone, cable and a University of Arkansas fiber optic cable. All ducts for these utilities can generally be located in the same trench. The power company, AEP / SWEPCO, has exacting requirements which demand the contractor for electric power ducts and vaults be approved by AEP / SWEPCO. It would not be feasible or safe and would be more expensive to have different contractors digging numerous times in the same trenches.

Request:
The request is to bid this work to pre-qualified contractors currently approved by AEP/SWEPCO. The bid would be divided into two components 1) electric power ducts and vaults and 2) telephone, cable and fiber optic ducts. Award would be to the lowest responsible bidder whose total for these two components is the least cost.

JAMES N. MCCORD
Attorney at Law
11 N. WEST AVE.
SUITE #202
FAYETTEVILLE, ARKANSAS 72701

TELEPHONE (501) 695-1134
FACSIMILE (501) 695-1135
jimmccordlaw@alltel.net

VIA HAND DELIVERY

To: Mayor Dan Coody and Fayetteville City Council
From: James N. McCord, Counsel for Fayetteville Public Facilities Board
Date: January 15, 2002
Re: $23,000,000 Fayetteville Public Facilities Board Revenue Refunding Bonds, Series 2002 – Butterfield Trail Village Project

Butterfield Trail Village Inc. ("Butterfield") is requesting the Fayetteville Public Facilities Board (the "Board") to issue approximately $23,000,000 in tax exempt bonds to refund all of the outstanding Series 1997 tax exempt bonds issued by the board for Butterfield. The refunding would result in substantial interest savings to Butterfield. No new construction is proposed. The Board will meet at 4:00 p.m. on February 4, 2002 to hold a public hearing on the proposed bond issue and to consider a bond authorizing resolution. The meeting will be held held in the conference room of Stephens Inc. at 3425 N. Futrall Drive, Suite 201.

If the Board approves the refunding bond issue requested by Butterfield, the Board's action must be ratified by the Fayetteville City Council. Butterfield representatives are requesting that this matter be placed on the agenda for the February 5, 2002 City Council meeting. An informational packet for the City Council and a proposed ratifying resolution will be submitted prior to the meeting.

xc: Fayetteville Public Facilities Board
Kit Willams, Fayetteville City Attorney
Heather Woodruff, Fayetteville City Clerk
Steve Gunderson (Wade & Gunderson), Borrower's Counsel
Glen Pratt (Peck, Shaffer & Williams), Bond and Underwriter's Counsel
Kirk Hendricks (Lancaster, Pollard & Company), Underwriter

JAMES N. MCCORD
Attorney at Law
11 N. WEST AVE.
SUITE #202
FAYETTEVILLE, ARKANSAS 72701

TELEPHONE (501) 695-1134
FACSIMILE (501) 695-1135
jimmccordlaw@alltel.net

VIA HAND DELIVERY

To: Mayor Dan Coody and Fayetteville City Council
From: James N. McCord, Counsel for Fayetteville Public Facilities Board
Date: January 17, 2002
Re: $25,000,000 Fayetteville Public Facilities Board Revenue Refunding Bonds, Series 2002 – Butterfield Trail Village

Enclosed is an informational packet provided by Butterfield Trail Village, Inc. ("Butterfield") on the revenue refunding bond issue Butterfield has requested the Fayetteville Public Facilities Board (the "Board") to consider authorizing at the Board's February 4, 2002 meeting. Butterfield has increased the size of the bond issue not to exceed $25,000,000 because Butterfield decided to keep its existing capital replacement fund and not use those funds to redeem Butterfield's 1997 bonds.

xc: Fayetteville Public Facilities Board
Kit Williams, Fayetteville City Attorney
Heather Woodruff, Fayetteville City Clerk
Steve Gunderson (Wade & Gunderson), Borrower's Counsel
Glen Pratt (Peck, Shaffer & Williams), Bond and Underwriter's Counsel
Kirk Hendricks (Lancaster, Pollard & Company) Underwriter

LANCASTER
POLLARD

THE CITY COUNCIL OF FAYETTEVILLE, ARKANSAS

Butterfield Trail Village

January 15, 2001

1017 Wildwood Drive • Lawrence, KS 66049 • Phone 785.550.4366 • Fax 785.842.2043

Introduction

In 1997, Butterfield Trail Village ("Butterfield"), a not-for-profit Continuing Care Retirement Community ("CCRC"), went before the Fayetteville City Council to explain its plan to refinance its debt. That plan was to change the debt structure from fixed rate bonds to a "letter of credit enhanced variable rate bond" structure. The plan has worked extremely well. Butterfield has experienced an average cost of funds of approximately 5.63% over the last five years, compared to the previous interest cost from 1989 to 1997 of 9.67%. The existing letter of credit bank (Dresdner Bank AG) has notified Butterfield that the Letter of Credit ("LOC") that enhances the Series 1997 Bonds and maturing on April 2, 2002 will not be renewed. Butterfield now desires to replace the Letter of Credit and to restructure the existing indebtedness in order to further reduce its cost of capital.

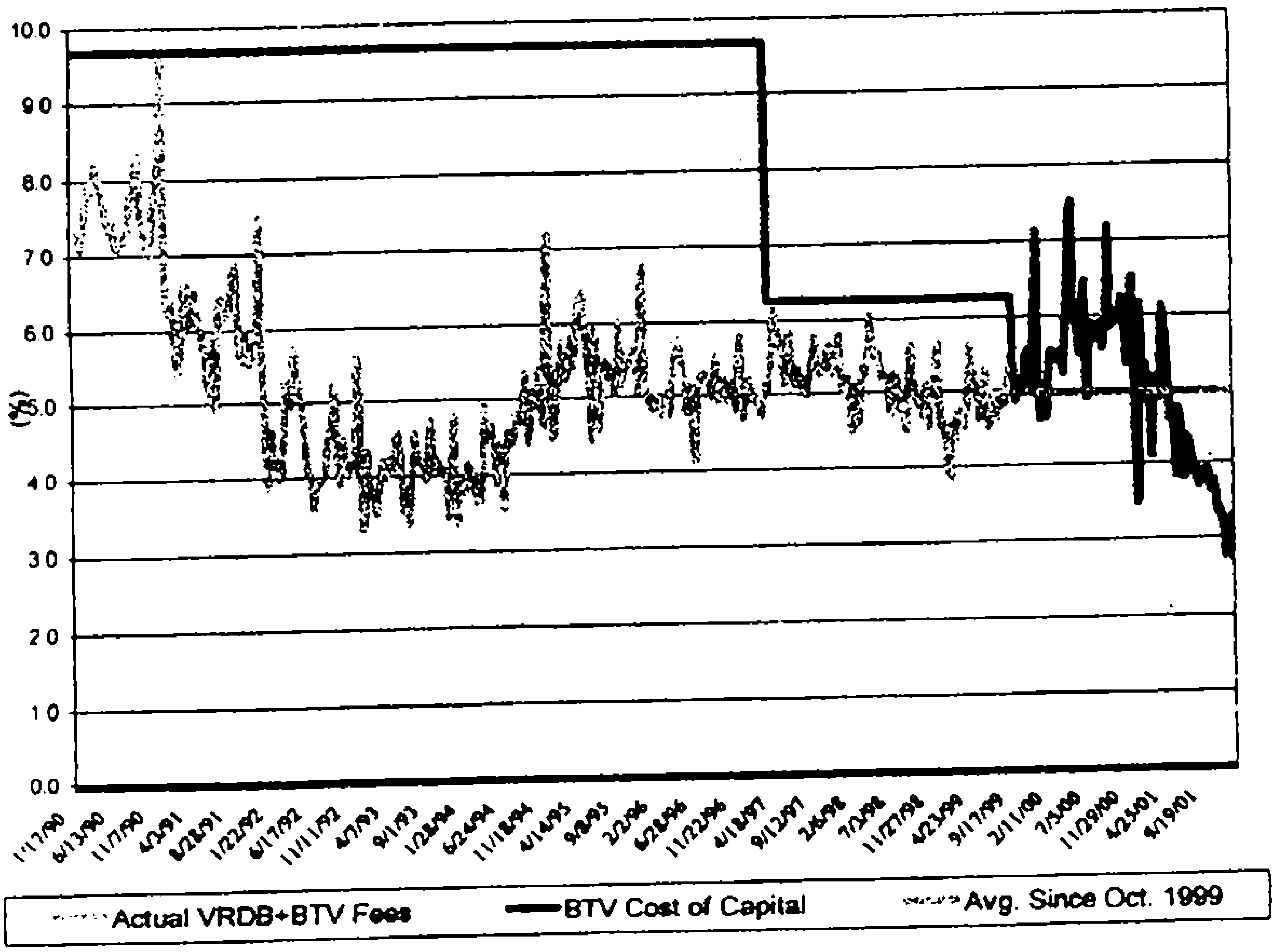
Butterfield has received a commitment from US Bank (the "Bank") to provide a Letter of Credit guaranteeing the payment of all principal and interest due on a $22,675,000 new bond issue to refinance the outstanding Series 1997 Bonds. US Bank has an "A1/VMIG-1" investment grade credit rating from Moody's Investors Service. US Bank will replace the previous letter of credit provider, Dresdner Bank AG. With this Letter of Credit guarantee, Butterfield will be able to sell the bonds to national money market funds at the lowest possible tax-exempt rates, known as "weekly tax-exempt variable rates." The new bond issue will provide Butterfield with an average annual debt service savings of approximately $280,000 and a total cash savings of over $7,043,000 for the 25-year term of the debt, which is equivalent to a net present value savings of over $5,000,000.

Why did Butterfield select the variable rate structure rather than a fixed rate?

The lowest possible interest rates available to a not-for-profit CCRC borrower are achieved by having the bonds guaranteed by an investment grade rated commercial bank and sold on a variable rate basis. Bond issues that are guaranteed by a letter of credit pay an interest rate based on the credit rating of the bank providing the letter of credit. This variable rate structure has saved Butterfield 4.0% in the annual cost of funds compared to the earlier fixed interest rate bond structure. Since 1990, these variable rate demand bonds ("VRDB") have averaged an interest rate of 3.545%, have been as low as 1.08%, and have never gone above 8.0%.

The blue line on the graph below shows Butterfield's former fixed interest rate at 9.67% and how the cost of capital was reduced in 1997 when structured as a variable rate bond issue (including the letter of credit bank fee and the remarketing fee), first to 6.25% and then beginning in 1999 to an average of 4.95%. The green line represents the average cost of variable rate bonds (with the equivalent of Butterfield's LOC and remarketing fees) since 1990.

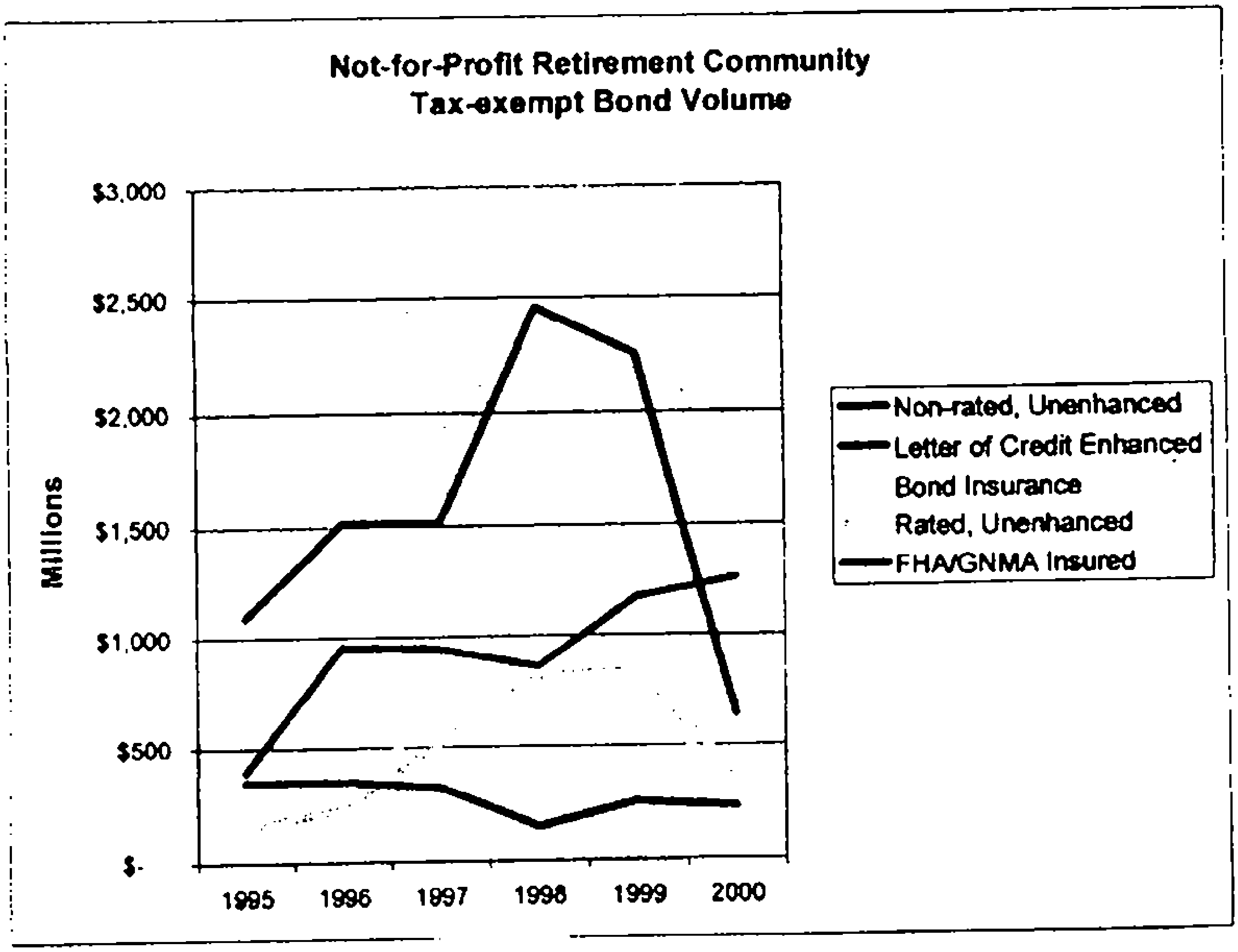
Butterfield Trail Village Cost of Capital



Weekly Variable Rate Tax-Exempt Bonds
Average Annual Interest Rates 1984-2001

1984	6.063%
1985	5.038%
1986	4.399%
1987	4.533%
1988	5.170%
1989	6.331%
1990	5.715%
1991	4.100%
1992	2.591%
1993	2.378%
1994	2.924%
1995	3.914%
1996	3.383%
1997	3.657%
1998	3.426%
1999	3.307%
2000	4.120%
2001	2.610%

This low interest rate structure is available to CCRC bond issues that carry the guarantee of an investment grade rated bank. In 1997, when Butterfield moved to this letter of credit structure, there were not many CCRCs that had accessed this financing model. Since then, however, the approach has been widely accepted and in 2000, more not-for-profit senior living facilities used letter of credit enhanced tax-exempt bonds to finance their projects than any other type of tax-exempt bond structure. Over the last three years alone, the investment banking firm of Lancaster Pollard & Co. has served as investment banker for over 50 letter of credit enhanced tax-exempt bond financings, working with 17 different letter of credit providers.



Is Butterfield extending the maturity of the new bonds?

No, the remaining 25-year term of the debt will not be extended, and the debt service (principal and interest) will be level over the term. Total cash savings over the period will exceed $7,043,000, if future interest rates equal the historical 10-year average.

Will Butterfield be able to put a cap on its interest rate?

Yes, if the Board of Butterfield so chooses, an interest rate cap can be secured, with a technique similar to the transaction Butterfield used to fix its rate at 6.25% from April of 1997 to September of 1999.

Can Butterfield prepay its debt?

Yes, Butterfield can make advance payments or completely pay off the debt at any time without penalty.

What are the expenses associated with the new bonds?

The bank providing the letter of credit guarantee will be paid an upfront fee of 0.25% of the principal amount of the bonds for providing the guarantee. The upfront letter of credit fee for the Series 1997 bonds was 0.75%.

The issuance expenses will be 1.04% of the par amount of the new Series 2002 bonds. On Butterfield's Series 1989 bonds, the total issuance expense was 3.75%. On the Series 1997 bond refinancing, the total issuance cost was 3.73%.

What is the letter of credit fee to be paid?

The annual letter of credit fee will be 1.15% for this new Series 2002 bond issue. For the Series 1997 bond issue, the annual letter of credit fees approximated 1.55% (1.25% annual LOC Fee, 0.25% annual Bank Fronting Fee, and a $10,000 annual Agent Fee).

Sources and Uses of Funds

Butterfield Trail Village
Estimated Sources and Uses of Funds
2002 Variable Rate Demand Bonds with a 25 Year Maturity

Sources of Funds

Bond Proceeds from Series 2002 Bonds	$23,795,000
Existing Debt Service Reserve Fund	2,175,244
Existing General & Letter of Credit Account	2,157
Total Sources of Funds	$25,972,401

Uses of Funds

Retire Existing Series 1997 Bonds	$25,565,000
Costs of Issuance	266,975
Prepaid First Year LOC and Remarketing Fees	136,933
Additional Proceeds	3,493
Total Uses of Funds	$25,972,401

Butterfield Trail Village
Fayetteville City Council Meeting

Cost of Issuance Butterfield Trail Village Series 2002 Current Refunding	Amount
Bond & Underwriter's Counsel	$ 40,000
Borrower's Counsel	8,500
Bank Counsel	25,000
Issuer's Counsel	15,000
Rating Fee	18,500
Trustee Acceptance	2,500
Printing & Distribution	2,500
Miscellaneous	6,000
Total Cost of Issuance	$118,000

Arbitrage yield	4.643028%
Bond Par Amount	$23,795,000
True Interest Cost	4.717565%
Net Interest Cost	3.332698%
Average Coupon Assumed*	3.300000%

*Future interest costs are based on the historical 10-yr. average BMA Index.

Savings of Butterfield Trail Village Series 2002 Current Refunding	Prior Net Cash Flow	Refunding Net Cash Flow	Savings	Present Value 02/01/02 @ 4.6430278%
Feb. 2003	3,850,431.78	1,615,349.48	2,235,082.30	2,473,547.91
Feb. 2004	1,711,591.95	1,616,174.67	95,417.28	98,980.82
Feb. 2005	1,687,906.56	1,615,852.51	72,054.05	74,201.92
Feb. 2006	1,762,476.10	1,619,366.89	143,109.21	131,638.67
Feb. 2007	1,734,032.35	1,616,520.57	117,511.78	105,364.91
Feb. 2008	1,705,588.62	1,617,510.85	88,077.77	78,288.12
Feb. 2009	1,775,460.11	1,617,124.27	158,335.84	127,134.75
Feb. 2010	1,742,250.88	1,615,360.88	126,890.00	99,618.07
Feb. 2011	1,709,066.50	1,617,204.55	91,861.95	71,963.77
Feb. 2012	1,774,172.52	1,617,441.96	156,730.56	110,946.06
Feb. 2013	1,736,275.90	1,616,073.06	120,202.84	83,393.50
Feb. 2014	1,796,612.91	1,618,081.76	178,531.15	114,847.84
Feb. 2015	1,753,947.29	1,618,254.72	135,692.57	86,065.02
Feb. 2016	1,809,572.05	1,616,591.94	192,980.11	113,318.12
Feb. 2017	1,762,201.29	1,618,077.34	144,123.95	83,643.18
Feb. 2018	1,813,049.92	1,617,497.46	195,552.46	105,454.57
Feb. 2019	1,859,193.46	1,614,852.44	244,341.02	123,906.31
Feb. 2020	1,802,305.96	1,615,125.97	187,179.99	93,252.97
Feb. 2021	1,843,755.00	1,618,088.74	225,666.26	105,908.59
Feb. 2022	1,880,371.13	1,618,527.37	261,843.76	116,298.56
Feb. 2023	1,814,002.36	1,616,441.81	197,560.55	86,480.35
Feb. 2024	1,845,924.01	1,616,816.01	229,108.00	94,729.58
Feb. 2025	1,873,161.81	1,614,436.56	258,725.25	101,379.17
Feb. 2026	1,895,545.39	1,614,287.40	281,257.99	104,871.63
Feb. 2027	1,913,245.17	1,616,139.02	297,106.15	105,713.64
Feb. 2028	608,552.03		608,552.03	188,106.82
Totals	47,460,693.05	40,417,198.23	7,043,494.82	5,079,554.88

FAYETTEVILLE
THE CITY OF FAYETTEVILLE, ARKANSAS

KIT WILLIAMS, CITY ATTORNEY
DAVID WHITAKER, ASST. CITY ATTORNEY

LEGAL DEPARTMENT

DEPARTMENTAL CORRESPONDENCE

TO: **Brenda Thiel**, Alderman

FROM: **Kit Williams**, City Attorney

DATE: **January 17, 2002**

RE: **Proposed Ordinance to increase number of Civil Service Commissioners to seven (7)**

Attached is a proposed Ordinance to accomplish your request (and the Fayetteville FOP's request) to increase the number of Civil Service Commissioners to seven (7).

If you approve of this please provide it to Heather for the Agenda.

STAFF REVIEW FORM

__X__ AGENDA REQUEST
_____ CONTRACT REVIEW
_____ GRANT REVIEW

FOR: COUNCIL MEETING OF February 5, 2002 **MAYOR'S APPROVAL** ____________

FROM:

Brenda Thiel	Alderman	
Name	Division	Department

ACTION REQUIRED: An Ordinance To Add Two More Members To The Fayetteville Civil Service Commission

COST TO CITY:

Cost of this Request	Category/Project Budget	Category/Project Name
Account Number	Funds Used to Date	Program Name
Project Number	Remaining Balance	Fund

BUDGET REVIEW: _____ Budgeted Item _____ Budget Adjustment Attached

Budget Coordinator

Administrative Services Director

CONTRACT/GRANT/LEASE REVIEW: **GRANTING AGENCY:** ____________

Accounting Manager	Date	Internal Auditor	Date
City Attorney	Date 1/17/02	ADA Coordinator	Date
Purchasing Officer	Date		

STAFF RECOMMENDATION:

Division Head	Date
Department Director	Date
Administrative Services Director	Date
Mayor	Date

CROSS REFERENCE

New Item: **Yes** No

Previous Ordinance/Resolution No.: ____________

ORDINANCE NO. ______

AN ORDINANCE TO ADD TWO MORE MEMBERS
TO THE FAYETTEVILLE CIVIL SERVICE COMMISSION

WHEREAS, the City Council of the City of Fayetteville, Arkansas may add two additional members to its established Board of the Civil Service Commission so that the total number of Commissioners will be seven; and

WHEREAS, the City Council of the City of Fayetteville, Arkansas determines it is in the best interest of the citizens of Fayetteville and the fire and police employees to broaden the Board of the Civil Service Commission to seven members.

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

Section 1. That the City Council of the City of Fayetteville, Arkansas hereby exercises its power pursuant to A.C.A. §14-51-201(c) to add two more members to its civil service commission to serve pursuant to the requirements of state law.

PASSED and **APPROVED** this the _____ day of February, 2002.

APPROVED:

By: DRAFT
DAN COODY, Mayor

ATTEST:

By: ______________________________
Heather Woodruff, City Clerk

Effective Dates. Acts 1989, No. 432, § 4: Mar. 9, 1989. Emergency clause provided: "It is hereby found and determined by the General Assembly that the chairmanship of many city civil service commissions changes during the first week in May; that this act provides that the chairmen should be selected by the commission; and that this act must go into effect immediately in order to coincide with the change in chairmanships. Therefore, an emergency is hereby declared to exist and this Act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1989, No. 439, § 5: Mar. 9, 1989. Emergency clause provided: "It is hereby found and determined by the General Assembly that the powers and duties of Civil Service Commissions established pursuant to Act 28 of 1933, as amended, require immediate clarification in that such commissions' interference with the day to day operations and management of police and fire departments is contrary to the efficient and effective operation of such departments and is injurious to the public health, safety and welfare. Therefore, an emergency is hereby declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

CASE NOTES

In General.

There is nothing in this subchapter creating an enforceable expectation of continued employment; it merely gives employees certain procedural rights surrounding termination. Dalton v. City of Russellville, 290 Ark. 603, 720 S.W.2d 918 (1986).

14-51-201. Appointment of members.

(a) In all cities of the first class having a civil service system, the city's governing body shall, by ordinance, name five (5) upright and intelligent citizens of their cities as a board of civil service commissioners for the police and fire departments or the nonuniformed employees.

(b) The commissioners shall hold office as follows:

(1) One (1) shall hold office until the first Monday in April of the second year after his appointment;

(2) One (1) shall hold office until the first Monday in April of the fourth year after his appointment;

(3) One (1) shall hold office until the first Monday in April of the sixth year after his appointment;

(4) One (1) shall hold office until the first Monday in April of the eighth year after his appointment; and

(5) One (1) shall hold office until the first Monday in April of the tenth year after his appointment.

(c)(1) In all cities of the first class having a civil service system, the governing body may, by ordinance, add two (2) more members to its civil service commission. The law applicable to the commission shall apply to the additional members, except that in each such city, the first two (2) additional members appointed pursuant to this subsection shall serve staggered terms to be determined by lot so that one (1) will serve a three-year term and one (1) a six-year term, and their successors shall serve six-year terms.

FAYETTEVILLE

aynda Semm.

THE CITY OF FAYETTEVILLE, ARKANSAS

TENTATIVE AGENDA
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.

→ AWARD PRESENTATION – Peggy, Steve.

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.

A. CONSENT AGENDA

1. **APPROVAL OF THE MINUTES:**

2. **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.

NB 3. **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. Remove from Consent.

4. **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.

5. **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.

NB. 6. **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.

Remove from Consent.

113 WEST MOUNTAIN 72701 501 521-7700
FAX 501 575-8257

NB

7. **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.
remove from consent.

8. **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.

B. OLD BUSINESS

1. **CIVIL SERVICE VETO:** Veto of Civil Service Ordinance.

2. **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.

3. **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. Need revised Resolution from Kit for final agenda.

C. NEW BUSINESS

1. **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. NEED BILL OF ASSURANCE – SEE TIM – FINAL AGENDA

2. **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.

3. **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.

4. **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. ADD. ORD TO FINAL AGENDA.

Consent

5. **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.

~~6.~~ - DUKE SOLUTION.

Last

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.

~~7.~~ **LIBRARY:** An ordinance waiving the requirement of competitive bidding in the burial of utilities for new Fayetteville Public Library.

Consent

8. - 3/6/7 resolution. **BUTTERFIELD TRAIL VILLAGE:** $23,000,000 Fayetteville Public Facilities Board Revenue Refunding Bonds, Series 2002.

9. **CIVIL SERVICE:** An ordinance to increase the number of Civil Service Commissioners to seven.

move to next agenda.

~~10.~~

FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

TENTATIVE AGENDA
CITY COUNCIL
FEBRUARY 5, 2002

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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.

A. CONSENT AGENDA

1. **APPROVAL OF THE MINUTES:**

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6. **EGIS CONSULTING:** A resolution approving Amendment No. 2 in the amount of $55,700 to the contract with EGIS Consulting for additional services.

NB

~~[illegible]~~ 134 - ded $134,000 est. or add. Work on net decrease of $. wording.

113 WEST MOUNTAIN 72701 501 521-7700
FAX 501 575 8257

7. **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.

NB

8. **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.

B. OLD BUSINESS

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BILL OF ASSURANCE. –

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5. **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.

6. **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.

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

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

9. **CIVIL SERVICE:** An ordinance to increase the number of Civil Service Commissioners to seven.

January 29, 2002

AGENDA SESSION
CITY COUNCIL
FEBRUARY 5, 2002

NEW ITEMS:

Consent 1. **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.

Consent 2. **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.

NIB 3. **DUKE SOLUTIONS AND HARMONY PRODUCTS:** A resolution approving a proposal for solids supply agreement, with Duke Solutions, and Harmony Products.
to negotiate. need info - for Greg.

Consent 4. **WRMC:** A resolution authorizing the Mayor to execute a contract for the ~~sale~~ purchase of real property to purchase a block of land from Washington Regional Medicorp for the new city library in the amount of $268,000.

ADDITIONAL INFORMATION

1. **RZN 02-2.00:** Additional information for Item C. 2.

2. addl. info for floodplain ordinance. (add to Final agenda packet).

FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

KIT WILLIAMS, CITY ATTORNEY
DAVID WHITAKER, ASST CITY ATTORNEY

LEGAL DEPARTMENT

DEPARTMENTAL CORRESPONDENCE

TO: **Dan Coody**, Mayor

THRU: **Heather Woodruff**, City Clerk

FROM: **Kit Williams**, City Attorney

DATE: **February 6, 2002**

RE: **Passed Ordinances and Resolutions from City Council meeting of February 5, 2002**

The following Ordinances and Resolutions were passed at the last City Council meeting and are ready for the mayor's signature.

Enclosed are:

RES. 9-02 1. Ridgeway Waterline: Resolution approving construction contract w/Fayette Tree & Trench in amount of $248,295; plus project contingency amount of $37,244 and approval of budget adjustment

RES. 10-02 2. Butterfield Trail Village: RESOLUTION $23,000,000 Fayetteville Public Facilities Board Revenue Refunding Bonds, Series 2002 w/ emergency clause

RES. 11-02 3. Duncan & Assoc.: Resolution approving change order in amount of $7,500 for five additional "person-days" to attend impact fee meetings and approval of budget adjustment

RES. 12-02 4. **Airport Taxiway Extension:** Resolution approving Amendment No. 2 to agreement w/McClelland Engineering for services in amount of $116,730 and approval of Task Order No. 9

RES. 13-02 5. **Forest Service:** Resolution approving lease agreement w/USDA Forest Service in amount of $28,160.00 for lease of 12.8 acres of Fayetteville Municipal Airport Property and approval of budget adjustment

RES. 14-02 6. **OMI:** Resolution approving Amendment No. 7 to OMI's contract for operation and maintenance of Wastewater Treatment Facilities, w/contract amount for 2002 being $3,834,957.00 and approval of budget adjustment requested

RES. 15-02 7. **Airport:** Resolution approving grant agreement up to $200,000 plus 10% contingency; upon grant approval contracts will be submitted to City Council for approval

RES. 16-02 = BLOCK GRANT

RES. 17-02 = WRMC

ORD. 4366 8. **Motor Vehicular Raceways:** Ordinance regulating motor vehicular raceways

ORD. 4367 9. **RZN 02-3.00:** Ordinance approving rezoning request as submitted by Bob Hill of Nickle-Hill Group for property located at 2684 W. Sixth Street; property is currently R-O and C-2 request is to rezone entire tract of 4.75 acres to C-2

ORD. 4368 10. **ADM 01-39.00:** Ordinance approving ADM 01-39.00 to revise Flood Damage Prevention Code by adding/ revising setback required from stream bank in Zone A and Zone X flood zones as shown on FEMA Flood Insurance Rate Map

ORD. 4369 11. **Library:** Ordinance waiving requirement of competitive bidding in burial of utilities for new Fayetteville Public Library

RES. 18-02 12. **Boys & Girls Club:** Resolution to waive building permit fees and other developmental fees for construction of new Fayetteville Boys and Girls Club

RES. 21-02 13. **Duke Solutions & Harmony Products**: Resolution approving proposal for solids supply agreement to negotiate w/Duke Solutions & Harmony Products

The following resolutions were passed by the City Council on February 5, 2002, but require changes to contracts which are Exhibits to the Resolutions. These Resolutions will be supplied when properly amended contracts are available

RES. 19-02 1. **EGIS Consulting**: Resolution approving Amendment No. 2 in amount of $55,700 to contract w/EGIS Consulting for additional services and deleting $134,946 from Amendment No. 1

RES. 20-02 2. **Arkansas Business Technology Park**: Resolution approving contract w/McClelland Engineering for design, bidding, and construction phase administration in development of preliminary plat of Phase I for Arkansas Business Technology Park - fee based on per hour charge, not to exceed $128,158 and approval of budget adjustment

RES. 22-02 3. **Wastewater System**: Resolution approving Consultant Contract Amendment for Wastewater System Improvement Project in amount of not more than $578,918.24, and approval of budget adjustment

- VETO - CIVIL SERVICE

- ROLL FORWARDS ? - NEXT AGENDA.

Jan 30. returned for PICCS.

VETO OF CIVIL SERVICE - and pass 1/15. -
- MAYOR COODY VETOED C.S.

DRAFT TENTATIVE AGENDA
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.

A. CONSENT AGENDA

1. APPROVAL OF THE MINUTES:

B. OLD BUSINESS

1 Veto - Civil Service -

2. **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.

3. CABLE - RANDY. TABLE.

C. NEW BUSINESS

1. **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.

2. **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 budge adjustment.

3. **BUSINESS TECHNOLOGY PARK:** An ordinance approving Amendment #2 to the contract dated 1-18-00 with EGIS Consulting. Scope of service change: Deduct $134,946; add $48,542,

New memo See Gary

New memo.

4. **BUSINESS TECHNOLOGY PARK:** An ordinance approving a contract with McClelland Engineering for design, bidding and construction observation in the development of the large scale development, preliminary plat and the final plat of phase I for the Arkansas Business Technology Park.

5. **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.

6. **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.

? RZN - ~~On~~ GARLAND - SEE HUGE - MEMO.

7. **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.

8. **BUTTERFIELD TRAIL VILLAGE:** $23,000,000 Fayetteville Public Facilities Board Revenue Refunding Bonds, Series 2002. — Jim McCord

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

~~10. **WASTEWATER SYSTEM IMPROVEMENT:** A resolution approving a contract amendment in the amount of not more than $578,918.24~~ -

11. **DDEPT:** A resolution approving $20,000 in additional funding for the Downtown Dickson Enhancement Project. — Remove

12. **CIVIL SERVICE:** An ordinance to increase the number of Civil Service Commissioners to seven. Brenda.

- Forest service Lease. - Ray.
- McClelland - ? airport - Ray.
- Executive lease. - Ray.