FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

FINAL AGENDA
CITY COUNCIL
MAY 7, 2002

A meeting of the Fayetteville City Council will be held on May 7, 2002 at 6:30 p.m. in Room 219 of the City Administration Building located at 113 West Mountain Street, Fayetteville, Arkansas.

A. CONSENT

1. **APPROVAL OF THE MINUTES**

2. **TRAILS GRANT:** A resolution authorizing a recreational trails grant application and authorizing resources for a 20% share of project's cost.

3. **MOTOROLA:** A resolution awarding a contract to Motorola in the amount of $130,378.99 to upgrade the radio system to allow digital and encryption capabilities to be added to the Police Department's radios and approve a $10,000 contingency to the project.

4. **MAXIMUM AVIATION SERVICES:** A resolution approving License to Maximum Aviation Services for use of Fayetteville Municipal Airport ramp space to park temporarily out of service airliners.

5. **DON NELMS:** A resolution approving Don Nelms ground lease agreement for the purpose of constructing an aircraft hangar.

6. **FLYING INVESTMENTS:** A resolution approving Flying Investments ground lease agreement for the purpose of constructing an aircraft hangar.

7. **JUVENILE BLOCK GRANT:** A resolution accepting the 2002 Juvenile Accountability Incentive Block Grant Program. 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.

8. **FIRE APPARATUS:** A resolution approving the return of $15,100.00 to the Fire Departments Operations Budget from the sale of fire apparatus. The money will be used to replace personal protective equipment for Firefighters.

113 WEST MOUNTAIN 72701 479-521-7700
FAX 479-575-8257

9. **TRAFFIC STUDY:** A resolution approving a transfer of Sanitary Sewer Rehab. Costs of $564,000 from CIP Sales Tax Fund to Water and Sewer Enterprise Fund, with $200,000 of the available CIP Sales Tax Funds to budget for a Master Traffic Study and $25,000 to be transferred to other Drainage Improvements.

10. **CDBG:** A resolution to waive the building permit fee and other development fees for the Community Development.

11. **BLACK AND VEATCH:** A resolution approving a contract amendment with Black and Veatch for water and sewer system operations and rate study services and approval of a budget adjustment.

12. **MCGOODWIN, WILLIAMS & YATES:** A resolution approving Amendment No. 2 to the contract with McGoodwin, Williams and Yates and approval of a contract contingency in the amount of $25,000 relating to the Wastewater System Improvement Project.

B. OLD BUSINESS

1. **RZN 02-7.00:** An ordinance approving rezoning request RZN 02-7.00 as submitted by Lindsey and Associates on behalf of the Estate of Marie Frankie Hughes for property located west of Porter Road and north of Valley Drive. The property is zoned R-1, Low Density Residential and contains approximately 11.94 acres. The request is to rezone to RMF-12, Moderate Density Family Residential. The item was left on the first reading at the Apirl 16, 2002 meeting.

C. NEW BUSINESS

1. **WASTEWATER SYSTEM IMPROVEMENTS:** An ordinance authorizing the issuance and sale of up to $25 million of Sales and Use Tax Capital Improvement Bonds for the Wastewater System Improvement Project.

2. **SALES AND USE TAX:** An ordinance providing for the levy of a one percent sales and use tax and providing for an expiration date for such replacement Sales and Use Tax of June 30, 2013.

3. **SPECIAL ELECTION:** An ordinance calling for a special election on the question of levying a one percent Sales and Use Tax within the City of Fayetteville, to replace the one percent Sales and Use Tax expiring on June 30, 2003 and providing for an expiration date for such tax of June 30, 2013.

4. **RZN 02-9.00:** An ordinance approving rezoning RZN 02-9.00 as submitted by Julian and Jane Archer for property located at 2231 Markham Road. The property is zoned R-1, Low Density Residential and contains approximately 18.80 acres. The request is to rezone to A-1, Agricultural.

5. **RZN 02-12.00:** An ordinance approving rezoning request RZN 02-12.00 as submitted by Julian and Jan Archer for property located at 2231 Markham Road. The property is zoned R-1, Low Density Residential and contains approximately 4.10 acres. The request is to rezone to A-1, Agricultural.

6. **VA 02-1.00:** An ordinance submitted by Greg Brockman for property located north of 15th Street and west of Duncan Streets the request is to vacate a 30' side portion of an unimproved Price Avenue right-of-way.

7. **PLANNING COMMISSION APPEAL:** Appeal of a Planning Commission Decision regarding LSD 02-7.00 for property located at the southwest corner of Fletcher Avenue and Rodgers Drive.

8. **WATER MAIN REPLACEMENT:** A resolution to budget the 1.5 million of Water and Sewer Operating Funds reimbursed from Bond Proceeds, towards accelerated water main replacement activities, including approval of a budget adjustment and an addition to the fiscal year 2002 Capital Improvements Program.

9. **BURNS AND MCDONNELL:** A resolution to approve an agreement with Burns and McDonnell to perform program management services in connection with the Wastewater System Improvement Project.

10. **RAZE AND REMOVAL:** A resolution approving a raze and removal of house at 1200 S. Roberts as per Ordinance 3948.

11. **RURAL FIRE CONTRACTS:** An ordinance amending the Code of Fayetteville to establish annual fees for Rural Fire Contracts for a two year period from June 1, 2002 through May 31, 2004.

17
May 7, 2002

City Council ~~June 4, 2002~~

	Roll		Consent/BDLG		
Young	✓		✓		
Davis	✓		✓		
Santos	✓		✓		
Jordan	✓		✓		
Reynolds	✓				
Thiel	✓		✓		
Coody	✓				

RZN 02-7.00	BP move to CU. Tuttle.				
Young	✓				
Davis	✓				
Santos	✓				
Jordan	✓				
Reynolds	✓				
Thiel	✓				
Coody					

City Council June 5, 2001

W/S improv. Bonds	PPD ICS 2ND	ICS PP 3RD	PASS		
Young	✓	✓	✓		
Davis	✓	✓	✓		
Santos	✓	✓	✓		
Jordan	✓	✓	✓		
Reynolds	✓	✓	✓		
Thiel	✓	✓	✓		
Coody					

Sales & use tax ord.					
Young					
Davis					
Santos					
Jordan					
Reynolds					
Thiel					
Coody					

City Council June 5, 2001

Sp Election					
Young					
Davis					
Santos					
Jordan	Left on 1st reading.				
Reynolds					
Thiel					
Coody					

RZN 02-9.00	RD 2ND				
Young	✓				
Davis	✓				
Santos	✓				
Jordan	✓				
Reynolds	✓				
Thiel	✓				
Coody					

City Council June 5, 2001

RZN 2-9-00	BD 2ND VJ				
Young	✓				
Davis	✓				
Santos	✓				
Jordan	✓				
Reynolds	✓				
Thiel	✓				
Coody	left m 2nd				

VA 02-1.00	BD 2ND RP	VJ 2ND RP	PASS		
Young	✓	✓	✓		
Davis	✓	✓	✓		
Santos	✓	✓	✓		
Jordan	✓	✓	✓		
Reynolds	✓	✓	✓		
Thiel	✓	✓	✓		
Coody					

City Council June 5, 2001

Plan Com. appeal	KS. LJ	Table 2nd June. June 18, 2002.			
Young	✓				
Davis	✓				
Santos	✓				
Jordan	✓				
Reynolds	✓				
Thiel	✓				
Coody					

Water main appeal	KS LJ				
Young	✓				
Davis	✓				
Santos	✓				
Jordan	✓				
Reynolds	✓				
Thiel	✓				
Coody					

City Council June 5, 2001

Burns motion	BD Cy				
Young	✓				
Davis	✓				
Santos	✓				
Jordan	✓				
Reynolds	✓				
Thiel	✓				
Coody					

Jun 18

RAZE motion	Cy BD.				
Young	✓				
Davis	✓				
Santos	✓				
Jordan	✓				
Reynolds	✓				
Thiel	✓				
Coody					

City Council June 5, 2001

Mun. Fin. Contracts	KS 2nd LJ.	KS 3rd LJ.	Pass		
Young	✓	✓	✓		
Davis	✓	✓	✓		
Santos	✓	✓	✓		
Jordan	✓	✓	✓		
Reynolds	✓	✓	✓		
Thiel	✓	✓	✓		
Coody					

Young					
Davis					
Santos					
Jordan					
Reynolds					
Thiel					
Coody					

meeting adjourned. 8:45.

FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

FINAL AGENDA
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MAY 7, 2002

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A. CONSENT

1. **APPROVAL OF THE MINUTES**

RES. 67-02 2. **TRAILS GRANT:** A resolution authorizing a recreational trails grant application and authorizing resources for a 20% share of project's cost.

RES. 68-02 3. **MOTOROLA:** A resolution awarding a contract to Motorola in the amount of $130,378.99 to upgrade the radio system to allow digital and encryption capabilities to be added to the Police Department's radios and approve a $10,000 contingency to the project.

RES. 69-02 4. **MAXIMUM AVIATION SERVICES:** A resolution approving License to Maximum Aviation Services for use of Fayetteville Municipal Airport ramp space to park temporarily out of service airliners.

RES. 70-02 5. **DON NELMS:** A resolution approving Don Nelms ground lease agreement for the purpose of constructing an aircraft hangar.

RES. 71-02 6. **FLYING INVESTMENTS:** A resolution approving Flying Investments ground lease agreement for the purpose of constructing an aircraft hangar.

RES. 72-02 7. **JUVENILE BLOCK GRANT:** A resolution accepting the 2002 Juvenile Accountability Incentive Block Grant Program. 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.

RES. 73-02 8. **FIRE APPARATUS:** A resolution approving the return of $15,100.00 to the Fire Departments Operations Budget from the sale of fire apparatus. The money will be used to replace personal protective equipment for Firefighters.

113 WEST MOUNTAIN 72701 479-521-7700
FAX 479-575-8257

RES. 74-02 9. **TRAFFIC STUDY:** A resolution approving a transfer of Sanitary Sewer Rehab. Costs of $564,000 from CIP Sales Tax Fund to Water and Sewer Enterprise Fund, with $200,000 of the available CIP Sales Tax Funds to budget for a Master Traffic Study and $25,000 to be transferred to other Drainage Improvements.

RES. 75-02 10. **CDBG:** A resolution to waive the building permit fee and other development fees for the Community Development.

RES. 76-02 11. **BLACK AND VEATCH:** A resolution approving a contract amendment with Black and Veatch for water and sewer system operations and rate study services and approval of a budget adjustment.

RES. 77-02 12. **MCGOODWIN, WILLIAMS & YATES:** A resolution approving Amendment No. 2 to the contract with McGoodwin, Williams and Yates and approval of a contract contingency in the amount of $25,000 relating to the Wastewater System Improvement Project.

B. OLD BUSINESS

TABLED 1. **RZN 02-7.00:** An ordinance approving rezoning request RZN 02-7.00 as submitted by Lindsey and Associates on behalf of the Estate of Marie Frankie Hughes for property located west of Porter Road and north of Valley Drive. The property is zoned R-1, Low Density Residential and contains approximately 11.94 acres. The request is to rezone to RMF-12, Moderate Density Family Residential. The item was left on the first reading at the Apirl 16, 2002 meeting.

TABLE

C. NEW BUSINESS

ORD. 4389 PASS 1. **WASTEWATER SYSTEM IMPROVEMENTS:** An ordinance authorizing the issuance and sale of up to $25 million of Sales and Use Tax Capital Improvement Bonds for the Wastewater System Improvement Project.

LEFT ON FIRST READING 2. **SALES AND USE TAX:** An ordinance providing for the levy of a one percent sales and use tax and providing for an expiration date for such replacement Sales and Use Tax of June 30, 2013. – need additional info from Steve Davis.

left on 1st reading

LEFT ON FIRST READING 3. **SPECIAL ELECTION:** An ordinance calling for a special election on the question of levying a one percent Sales and Use Tax within the City of Fayetteville, to replace the one percent Sales and Use Tax expiring on June 30, 2003 and providing for an expiration date for such tax of June 30, 2013.

left on 1st reading

LEFT ON SECOND READING 4. **RZN 02-9.00:** An ordinance approving rezoning RZN 02-9.00 as submitted by Julian and Jane Archer for property located at 2231 Markham Road. The property is zoned R-1, Low Density Residential and contains approximately 18.80 acres. The request is to rezone to A-1, Agricultural. NEW BILL OF ASSURANCE

left on 2ND

LEFT ON SECOND READING 5. **RZN 02-12.00:** An ordinance approving rezoning request RZN 02-12.00 as submitted by Julian and Jan Archer for property located at 2231 Markham Road. The property is zoned R-1, Low Density Residential and contains approximately 4.10 acres. The request is to rezone to A-1, Agricultural. New Bill of Ordinance.

left on 2nd

ORD. 4390 6. **VA 02-1.00:** An ordinance submitted by Greg Brockman for property located north of 15th Street and west of Duncan Streets the request is to vacate a 30' side portion of an unimproved Price Avenue right-of-way.

PASS

TABLED UNTIL JUNE 18th C.C. mtg. **PLANNING COMMISSION APPEAL:** Appeal of a Planning Commission Decision regarding LSD 02-7.00 for property located at the southwest corner of Fletcher Avenue and Rodgers Drive.

RES. 78-02 6/18/02 TABLED June 2nd mtg. 8. **WATER MAIN REPLACEMENT:** A resolution to budget the 1.5 million of Water and Sewer Operating Funds reimbursed from Bond Proceeds, towards accelerated water main replacement activities, including approval of a budget adjustment and an addition to the fiscal year 2002 Capital Improvements Program.

PASS

RES. 79-02 9. **BURNS AND MCDONNELL:** A resolution to approve an agreement with Burns and McDonnell to perform program management services in connection with the Wastewater System Improvement Project. Revised contract. –

PASS

TABLED UNTIL JUNE 18th C.C. mtg. 10. **RAZE AND REMOVAL:** A resolution approving a raze and removal of house at 1200 S. Roberts as per Ordinance 3948.

Tabled to 6-18-02

ORD. 4391 11. **RURAL FIRE CONTRACTS:** An ordinance amending the Code of Fayetteville to establish annual fees for Rural Fire Contracts for a two year period from June 1, 2002 through May 31, 2004.

PASS

Other Business

Kent Zunto – start advertising this Sunday

meeting adjourned 8:45

Run for 2 weeks:

SUN 5-12th, 5-19th

Wed 15th, 22nd

There w/ be a Special Meeting for this

May

dead line 24th

FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

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2. **TRAILS GRANT:** A resolution authorizing a recreational trails grant application and authorizing resources for a 20% share of project's cost. STEVE HATfield

3. **MOTOROLA:** A resolution awarding a contract to Motorola in the amount of $130,378.99 to upgrade the radio system to allow digital and encryption capabilities to be added to the Police Department's radios and approve a $10,000 contingency to the project. Rick Hoyt

4. **MAXIMUM AVIATION SERVICES:** A resolution approving License to Maximum Aviation Services for use of Fayetteville Municipal Airport ramp space to park temporarily out of service airliners. RAY BOUDREAUX

5. **DON NELMS:** A resolution approving Don Nelms ground lease agreement for the purpose of constructing an aircraft hangar. RAY BOUDREAUX

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7. **JUVENILE BLOCK GRANT:** A resolution accepting the 2002 Juvenile Accountability Incentive Block Grant Program. 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. Rick Hoyt

8. **FIRE APPARATUS:** A resolution approving the return of $15,100.00 to the Fire Departments Operations Budget from the sale of fire apparatus. The money will be used to replace personal protective equipment for Firefighters. CHRIS BOSCH

113 WEST MOUNTAIN 72701 479-521-7700
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9. **TRAFFIC STUDY:** A resolution approving a transfer of Sanitary Sewer Rehab. Costs of $564,000 from CIP Sales Tax Fund to Water and Sewer Enterprise Fund, with $200,000 of the available CIP Sales Tax Funds to budget for a Master Traffic Study and $25,000 to be transferred to other Drainage Improvements. GREG BOETCHER

10. **CDBG:** A resolution to waive the building permit fee and other development fees for the Community Development.

11. **BLACK AND VEATCH:** A resolution approving a contract amendment with Black and Veatch for water and sewer system operations and rate study services and approval of a budget adjustment. STEPHEN DAVIS

12. **MCGOODWIN, WILLIAMS & YATES:** A resolution approving Amendment No. 2 to the contract with McGoodwin, Williams and Yates and approval of a contract contingency in the amount of $25,000 relating to the Wastewater System Improvement Project. GREG BOETCHER

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C. NEW BUSINESS

1. **WASTEWATER SYSTEM IMPROVEMENTS:** An ordinance authorizing the issuance and sale of up to $25 million of Sales and Use Tax Capital Improvement Bonds for the Wastewater System Improvement Project. TED WEBBER

2. **SALES AND USE TAX:** An ordinance providing for the levy of a one percent sales and use tax and providing for an expiration date for such replacement Sales and Use Tax of June 30, 2013. TED WEBBER

3. **SPECIAL ELECTION:** An ordinance calling for a special election on the question of levying a one percent Sales and Use Tax within the City of Fayetteville, to replace the one percent Sales and Use Tax expiring on June 30, 2003 and providing for an expiration date for such tax of June 30, 2013. TED WEBBER

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6. **VA 02-1.00:** An ordinance submitted by Greg Brockman for property located north of 15th Street and west of Duncan Streets the request is to vacate a 30' side portion of an unimproved Price Avenue right-of-way. Tim Conklin

Removed per Rick Osborne

7. **PLANNING COMMISSION APPEAL:** Appeal of a Planning Commission Decision regarding LSD 02-7.00 for property located at the southwest corner of Fletcher Avenue and Rodgers Drive.

8. **WATER MAIN REPLACEMENT:** A resolution to budget the 1.5 million of Water and Sewer Operating Funds reimbursed from Bond Proceeds, towards accelerated water main replacement activities, including approval of a budget adjustment and an addition to the fiscal year 2002 Capital Improvements Program. Greg Boettcher

9. **BURNS AND MCDONNELL:** A resolution to approve an agreement with Burns and McDonnell to perform program management services in connection with the Wastewater System Improvement Project. Greg Boettcher

10. **RAZE AND REMOVAL:** A resolution approving a raze and removal of house at 1200 S. Roberts as per Ordinance 3948. Mike McKinney

11. **RURAL FIRE CONTRACTS:** An ordinance amending the Code of Fayetteville to establish annual fees for Rural Fire Contracts for a two year period from June 1, 2002 through May 31, 2004. Chris Bosch

FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

TENTATIVE AGENDA
CITY COUNCIL
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9. Traffic Study

113 WEST MOUNTAIN 72701 479-521-7700
FAX 479-575-8257

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moved to consent

Committee - Kevin Santos

8 ~~9.~~ **WATER MAIN REPLACEMENT:** A resolution to budget the 1.5 million of Water and Sewer Operating Funds reimbursed from Bond Proceeds, towards accelerated water main replacement activities, including approval of a budget adjustment and an addition to the fiscal year 2002 Capital Improvements Program.

9 ~~10.~~ **BURNS AND MCDONNELL:** A resolution to approve an agreement with Burns and McDonnell to perform program management services in connection with the Wastewater System Improvement Project.

to Consent 10 ~~11.~~ **MCGOODWIN, WILLIAMS & YATES:** A resolution approving amendment No. 2 to the contract with McGoodwin, Williams and Yates and approval of a contract contingency in the amount of $25,000 relating to the Wastewater System Improvement Project.

to Consent 11 ~~12.~~ **BLACK AND VEATCH:** A resolution approving a contract amendment with Black and Veatch for water and sewer system operations and rate study services and approval of a budget adjustment.

12 ~~13.~~ **RAZE AND REMOVAL:** A resolution approving a raze and removal of house at 1200 S. Roberts as per Ordinance 3948.

~~12~~ 11. ~~14.~~ **RURAL FIRE CONTRACTS:** An ordinance amending the Code of Fayetteville to establish annual fees for Rural Fire Contracts for a two year period from June 1, 2002 through May 31, 2004.

to Consent 12 ~~15.~~ **CDBG:** A resolution to waive the building permit fee and other development fees for the Community Development.

16. **CHURCH OF THE NAZARENE:** A resolution to waive the building permit fee and other development fees for the rebuilding of the First Church of the Nazarene.

pulled off completely

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: **May 8, 2002**

RE: **Passed Ordinances and Resolutions from City Council meeting of May 7, 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. 67-02 1. **Trails Grant:** Resolution authorizing recreational trails grant application and authorizing resources for a 20% share of project's cost.

RES. 68-02 2. **Motorola:** Resolution awarding contract to Motorola in amount of $130,378.99 to upgrade radio system to allow digital and encryption capabilities to be added to Police Department's radios and approve $10,000 contingency to project.

RES. 69-02 3. **Maximum Aviation Services:** Resolution approving license to Maximum Aviation Services for use of Fayetteville Municipal Airport ramp space to park temporarily out of service airliners.

RES. 70-02 4. **Don Nelms:** Resolution approving Don Nelms ground lease agreement for purpose of constructing an aircraft hangar

RES. 71-02 5. **Flying Investments:** Resolution approving Flying Investments ground lease agreement for purpose of constructing an aircraft hangar

RES. 72-02 6. **Juvenile Block Grant:** Resolution accepting 2002 Juvenile Accountability Incentive Block Grant Program in amount of $34,440.00 plus 10% match requirement of $3,827 for total of $38,267 to be used for software and equipment

RES. 73-02 7. **Fire Apparatus:** Resolution approving return of $15,100.00 to Fire Department Operations Budget from sale of fire apparatus. Money will be used to replace personal protective equipment for Firefighters.

RES. 74-02 8. **Traffic Study:** Resolution approving transfer of Sanitary Sewer Rehab. Costs of $564,000 from CIP Sales Tax Fund to Water and Sewer Enterprise Fund wth $200,000.00 of the available CIP Sales Tax Funds to pay for a Master Traffic Study and $25,000 to be transferred to other Drainage improvements

RES. 75-02 9. **CDBG:** Resolution waiving building permit fee and other development fees for the Community Development

RES. 76-02 10. **Black & Veatch:** Resolution approving contract amendment w/Black & Veatch for water and sewer system operations and rate study services and approval of budget adjustment

RES. 77-02 11. **McGoodwin, Williams & Yates:** Resolution approving Amendment No. 2 to contract and approval of contract contingency in amount of $25,000.00 relating to Wastewater System Improvement Project

ORD. 4389 12. **Wastewater System Improvements:** Ordinance authorizing issuance and sale of up to $25 million of Sales and Use Tax Capital Improvement Bonds for Wastewater System Improvement Project

ORD. 4390 13. **VA 02-2.00:** Ordinance to vacate and abandon a 30' wide portion of unimproved Price Avenue right-of-way adjacent to Lots 3 & 4, Block 2, Parksdale Addition

RES. 78-02 14. **Water Main Replacement:** Resolution to budget 1.5 million of Water and Sewer Operating Funds reimbursed from Bond Proceeds, towards accelerated water main replacement activities, including approval of budget adjustment and an addition to the 2002 Capital Improvements Program

RES. 79-02 15. **~~Burns & McDonnell~~**: Resolution approving agreement w/Burns & McDonnell to perform program management services in connection with the Wastewater System Improvement Project

ORD. 4391 16. Rural Fire Contracts: Ordinance amending Code of Fayetteville to establish annual fees for Rural Fire Contracts effective June 1, 2002

FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

FINAL AGENDA
CITY COUNCIL
MAY 7, 2002

A meeting of the Fayetteville City Council will be held on May 7, 2002 at 6:30 p.m. in Room 219 of the City Administration Building located at 113 West Mountain Street, Fayetteville, Arkansas.

A. CONSENT

1. **APPROVAL OF THE MINUTES**

PASS

2. **TRAILS GRANT:** A resolution authorizing a recreational trails grant application and authorizing resources for a 20% share of project's cost.

3. **MOTOROLA:** A resolution awarding a contract to Motorola in the amount of $130,378.99 to upgrade the radio system to allow digital and encryption capabilities to be added to the Police Department's radios and approve a $10,000 contingency to the project.

4. **MAXIMUM AVIATION SERVICES:** A resolution approving License to Maximum Aviation Services for use of Fayetteville Municipal Airport ramp space to park temporarily out of service airliners.

5. **DON NELMS:** A resolution approving Don Nelms ground lease agreement for the purpose of constructing an aircraft hangar.

6. **FLYING INVESTMENTS:** A resolution approving Flying Investments ground lease agreement for the purpose of constructing an aircraft hangar.

7. **JUVENILE BLOCK GRANT:** A resolution accepting the 2002 Juvenile Accountability Incentive Block Grant Program. 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.

8. **FIRE APPARATUS:** A resolution approving the return of $15,100.00 to the Fire Departments Operations Budget from the sale of fire apparatus. The money will be used to replace personal protective equipment for Firefighters.

113 WEST MOUNTAIN 72701 479-521-7700
FAX 479-575-8257

9. **TRAFFIC STUDY:** A resolution approving a transfer of Sanitary Sewer Rehab. Costs of $564,000 from CIP Sales Tax Fund to Water and Sewer Enterprise Fund, with $200,000 of the available CIP Sales Tax Funds to budget for a Master Traffic Study and $25,000 to be transferred to other Drainage Improvements.

10. **CDBG:** A resolution to waive the building permit fee and other development fees for the Community Development.

11. **BLACK AND VEATCH:** A resolution approving a contract amendment with Black and Veatch for water and sewer system operations and rate study services and approval of a budget adjustment.

12. **MCGOODWIN, WILLIAMS & YATES:** A resolution approving Amendment No. 2 to the contract with McGoodwin, Williams and Yates and approval of a contract contingency in the amount of $25,000 relating to the Wastewater System Improvement Project.

B. OLD BUSINESS

TABLED

1. **RZN 02-7.00:** An ordinance approving rezoning request RZN 02-7.00 as submitted by Lindsey and Associates on behalf of the Estate of Marie Frankie Hughes for property located west of Porter Road and north of Valley Drive. The property is zoned R-1, Low Density Residential and contains approximately 11.94 acres. The request is to rezone to RMF-12, Moderate Density Family Residential. The item was left on the first reading at the Apirl 16, 2002 meeting.

TABLE

C. NEW BUSINESS

PASS

1. **WASTEWATER SYSTEM IMPROVEMENTS:** An ordinance authorizing the issuance and sale of up to $25 million of Sales and Use Tax Capital Improvement Bonds for the Wastewater System Improvement Project.

LEFT ON FIRST READING

2. **SALES AND USE TAX:** An ordinance providing for the levy of a one percent sales and use tax and providing for an expiration date for such replacement Sales and Use Tax of June 30, 2013. – [redacted]

left on 1st reading

LEFT ON FIRST READING

3. **SPECIAL ELECTION:** An ordinance calling for a special election on the question of levying a one percent Sales and Use Tax within the City of Fayetteville, to replace the one percent Sales and Use Tax expiring on June 30, 2003 and providing for an expiration date for such tax of June 30, 2013.

left on 1st reading

LEFT ON SECOND READING

4. **RZN 02-9.00:** An ordinance approving rezoning RZN 02-9.00 as submitted by Julian and Jane Archer for property located at 2231 Markham Road. The property is zoned R-1, Low Density Residential and contains approximately 18.80 acres. The request is to rezone to A-1, Agricultural. [redacted]

left on 2nd

LEFT ON SECOND READING 5. **RZN 02-12.00:** An ordinance approving rezoning request RZN 02-12.00 as submitted by Julian and Jan Archer for property located at 2231 Markham Road. The property is zoned R-1, Low Density Residential and contains approximately 4.10 acres. The request is to rezone to A-1, Agricultural. [redacted]

left on 2nd

6. **VA 02-1.00:** An ordinance submitted by Greg Brockman for property located north of 15th Street and west of Duncan Streets the request is to vacate a 30' side portion of an unimproved Price Avenue right-of-way.

PASS

TABLED UNTIL JUNE 18th C.C. mtg. **PLANNING COMMISSION APPEAL:** Appeal of a Planning Commission Decision regarding LSD 02-7.00 for property located at the southwest corner of Fletcher Avenue and Rodgers Drive.

6/18/02 TABLED JUNE [redacted]

8. **WATER MAIN REPLACEMENT:** A resolution to budget the 1.5 million of Water and Sewer Operating Funds reimbursed from Bond Proceeds, towards accelerated water main replacement activities, including approval of a budget adjustment and an addition to the fiscal year 2002 Capital Improvements Program.

PASS

9. **BURNS AND MCDONNELL:** A resolution to approve an agreement with Burns and McDonnell to perform program management services in connection with the Wastewater System Improvement Project. [redacted]

PASS

TABLED UNTIL JUNE 18th C.C. mtg. 10. **RAZE AND REMOVAL:** A resolution approving a raze and removal of house at 1200 S. Roberts as per Ordinance 3948.

tabled 6-18-02

11. **RURAL FIRE CONTRACTS:** An ordinance amending the Code of Fayetteville to establish annual fees for Rural Fire Contracts for a two year period from June 1, 2002 through May 31, 2004.

PASS

- Other Business -

- Next Meeting →

meeting adjourned 8:45

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11. **RURAL FIRE CONTRACTS:** An ordinance amending the Code of Fayetteville to establish annual fees for Rural Fire Contracts for a two year period from June 1, 2002 through May 31, 2004.

MINUTES OF A MEETING OF THE CITY COUNCIL MARCH 19, 2002

A meeting of the City Council was held on March 19, 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 Santos, Jordan, Reynolds, Thiel, Young, and Davis, City Attorney Kit Williams, City Clerk Heather Woodruff, Staff, Press and Audience.

Mayor Coody stated Tim Conklin had been recognized at the 2002 Planner of the Year by the Arkansas Chapter of the American Planning Association.

NOMINATING COMMITTEE REPORT

REMOVED FROM THE AGENDA.

CONSENT

APPROVAL OF THE MINUTES

BID 02-12: A resolution awarding Bid No. 02-12, Item No. 1, 5000 lb. Forklift, to Yale Materials Handling Gammon Inc.

RESOLUTION 43-02 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

I-540 SEWER REPAIR: A resolution awarding the construction contract to 4-D Construction in the amount of $182,520 with a 15% contingency for a total of $209,898 and approval of a budget adjustment for sanitary sewer main replacement and repairs, I-540 crossing.

RESOLUTION 44-02 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

LIBRARY: A resolution approving a contract with Robert Kohler for owner's representative services for the construction of the new Fayetteville Public Library. The amount to be paid to the owner's representative shall not exceed $3000 monthly. The contract will expire on the date of final completion of the building.

RESOLUTION 45-02 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

ROLL-OFF CONTAINERS: A resolution approving the purchase of roll-off style containers for use by Solid Waste Customers from WasteQuip-MayFab. Purchase up to $50,000.

SW CLERK: A resolution authorizing to add part-time temporary clerk in Solid Waste.

RESOLUTION 46-02 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

POLICIES AND PROCEDURES: A resolution amending the Rules of Order and Procedure - Mayor / City Council, pertaining to the selection process for members of citizen committees.

RESOLUTION 48-02 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

BID 01-55: A resolution awarding the Item No. 1,2,3,4,5,7,9 and 10 in the amount of $991,835 to Ron Blackwell Ford and Item No. 8 and 11 in the amount of $105,622.80 to Landers Ford and approval of a budget adjustment.

RESOLUTION 49-02 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

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

OLD BUSINESS

RZN 02-1.00: An ordinance approving request RZN 02-1.00 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 rezone to R-1.5, Moderate Density Residential. The ordinance was tabled on the second reading at the March 5, 2002 meeting.

Alderman Davis moved to take the item off the table. Alderman Santos seconded. Upon roll call the motion carried unanimously.

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

Mr. Williams read the ordinance.

Mr. Brock Thompson, property owner, stated they had spent about six month evaluating where they wanted to do this project. He had family in Fayetteville, Arkansas. They had looked at the zoning. They had received a letter from the city stating this property was R-1.5 which would work for his project. He had held a neighborhood meeting in which twenty to twenty-five neighbors came along with several aldermen. At least fifty percent of the neighbors had changed their minds and were in favor of the project. With all the expansion going on in Fayetteville, it was only a matter of time before this property developed. He was not a professional builder or contractor. He was adding a lot of extras because he was trying to heighten the professionalism of the tenants that he wanted. Seventy-five percent of each unit would be brick. He was asking for a total of nine units. They were going to be nice. They were going to go above and beyond in the landscaping and the interiors. He presented a picture of the proposed project with landscaping.

Ms. Hanna stated the neighborhood association was requesting the property be left as R-1. They had met with Mr. Thompson at that meeting they had agreed unanimously that they would request the council to leave the property at R-1. She read a letter from Ms. Richards objecting the rezoning. She expressed concern about the increase in traffic. She had lived on Stevens for thirty years. There were a lot of others who had lived there twenty-five and thirty years. They were a permanent neighborhood.

Ms. Jeanie Sanderland, an area resident, stated she was concerned about the possible of triplexes. She was also concerned about the traffic and the destruction of trees on the property. She would like to see the property stay at its current zoning.

Mr. Palmer Alice, an area resident, stated he had lived there for approximately six years. This last year two triplexes had gone up. His concern with this project was that it would open the door for more properties to be developed. If there were the case, then he would ask them not to rezone this property. However, he understood that this was a mistake and that Mr. Thompson had purchased property understanding that the zoning was R-1.5. If that was the case, then he was entitled to build what he wanted to build. He did not have a problem with him and he liked what Mr. Thompson was proposing. He thought it would improve the neighborhood.

Mr. Conklin stated most of the rezoning activity that they had seen in that area had been on property that had been vacant or used for non-residential purposes in the past. They have not seen too much activity. The likelihood was not very high, when they had lots already developed with single-family homes. Garland Avenue was classified as a principle arterial. In the future, it was planned to be a four lane road and State highway. Typically, they did see a transition of different types of residential uses. Also, within their comprehensive plan it did talk about a mixture of residential type uses.

Mr. John David Lindsey, Lindsey and Associates, they had the property listed for sale. Their information had been that this property was R-1.5. Mr. Thompson had bought the property under that assumption. There was a second ingress and egress to this subdivision on the Mt. Comfort Road. He thought that would help with traffic, but this property being right on the corner of Garland, the R-1.5 zoning would be a perfect fit. This project will not affect the property values in that neighborhood.

Ms. Carla Grey, an area resident, stated this had been a mistake, but there were a lot of strong feelings over this issue. The neighborhood association was against spot rezoning, but they were divided on whether or not they believe that it should be left R-1 or if they should go R-1.5 as part of a larger plan. She asked what they could do about the existing triplex that was also a mistake.

Mr. Conklin stated what has occurred was that back in 1995 they took a 1970's map and digitized it. During that process, R-1.5 had been entered into that area. With regard to the previous triplexes being build, the error had not been discovered. This mistake had not been discovered until now. What they were doing now was going back and reviewing the rezoning. They were going to go back and look at thirty-two years worth of ordinances. From there they were going to bring back a zoning map for adoption. They have not address the issue of the triplexes in the R-1 zoning district. They were there, they were permitted, they were built and occupied. He did not have the answers on how to justify the past mistakes.

Alderman Jordan stated the neighbors were concerned about how this area was going to be rezoned.

Mr. Conklin stated in their General Plan, that the council adopted in 1995 it stated they would look at industrial, Heavy Industrial area, identify them and determine whether or not those need to remain I-1. The first neighborhood that they had looked at was west of the square. It has transitioned from two active rail lines to one active rail lines. The process was to work with the neighborhood

associations to identify. He was concerned with them saying they were going to rezone the entire city. There were many areas that were not zoned industrial that were currently zoned. It was not his intention to rezone the entire city. They were working with neighborhoods. This was going to come from the neighborhoods to them. It was not going to be them telling the industrial neighborhoods what to do. It was a pilot process, they have not done this in thirty-two years. They will improve on the process and they will continue the process. He may need more help in the future too. This was going to take more and more staff time.

Ms. Mona York, an area resident, stated her property adjoined this property on the east side. She had originally signed the petition, since then she has seen what was proposed. She did not object to this at all. She did not see how this was going to harm her. She thought it might make the area a little more beautiful. She did not have any problem getting out onto Garland.

Ms. Sawyer, an area resident, stated she supported the development. The area was going to develop anyway. She hoped that it would be an improvement to the neighborhood.

Ms. Ada Washington, an area resident, stated she would love to see something come in as pretty as this in their neighborhood. She had lived there twenty years and she had not see anything positive happen there. She was definitely for the development. The last ten years had been terrible. This seemed positive to him.

Mr. Scott Roberts, an area resident, stated Mr. Thompson had purchased the property based on it being R-1.5, information that had been given out by the city. He wanted to be able to trust the system. He wanted to be able to make investments in the future himself. He wanted to be able to rely on the information given to him.

Mr. Greg Henry, an area resident, stated he was relying on the city's records of zoning to invest in property. He did not believe they should be able to change what has been committed to Mr. Thompson. He was in favor of this project.

Ms. Terry Faylyn, an area resident, stated she has lived here for sixteen years. The city had made a mistake and she felt for Mr. Thompson, but she wanted to remind the council that the other people in the neighborhood also purchased their property with the understanding that neighborhood was zoned R-1.

Ms. Bolin, an area resident, stated that the other property owners had purchased their property with the assurance that it was R-1. When Mayor Coody ran for office, he had stated that he would support neighborhood associations and he would listen to them. This association was opposed to this. No every one in the neighborhood was at the meeting, but those that vote decide for the rest of them. They were opposed to this. They would like to keep this neighborhood a post-war expansion neighborhood with affordable housing.

Mr. Osburn stated a vote on this rezoning was not setting a precedent on any other rezoning. He felt if the same mistake had not happen on the triplexes, they would not be facing so much opposition. R-1.5 made perfect since as a transition from Garland to the neighborhood.

Mr. Thompson stated he had made every effort to talk to as many people as possible. He has

proposed a Bill of Assurance on some of things that he has committed to. He had previously committed to a Bill of Assurance saying nine units. He was now committing to other things that they talked about at the neighborhood meeting that he could make work for the bank. Which was all the extras, single level, with landscaping, trees, privacy fence, and security system.

Mayor Coody asked if that included using the design that he was presenting tonight?

Mr. Thompson replied he was trying to elevate the amount of professionalism that he was going to attract into that area. These will rent from a thousand to eleven hundred per month.
He had spent $160,000 on this property that for the past eight years been zoned R-1.5. If he reduced the number of units he would not be able to spend as much money on materials. He would not be able to do brick and put in as many sixteen foot trees as he wanted or the security system.

Mr. Williams stated it would require five affirmative votes for this to pass. He noted there were two members missing.

Mr. Thompson stated he would be in favor of waiting two more weeks.

Alderman Davis moved to table the item for two more weeks. Alderman Santos seconded.

Alderman Young stated he would like to see from both sides of the homeowners. It appeared to him that the neighborhood was split. He would like to hear from every one.

Upon roll call the motion carried unanimously.

ORDINANCE WAS TABLED ON THE THIRD READING.

CIVIL SERVICE: An ordinance adding two additional members to the Fayetteville Civil Service Commission. The ordinance was tabled on the third reading at the March 5, 2002 meeting.

Alderman Santos moved to take the item off the table. Alderman Jordan seconded. The motion carried unanimously.

Alderman Thiel stated she thought adding two commissioners would better reflect their increase size and the diversity of our city. Commissioners had six-year terms and they had five commissioners. They had seven applicants for the one open position. People were willing and qualified and had the time.

Alderman Davis stated he was opposed to it because trying to get that many people together would be more difficult. He had spoken to three of the commissioners. They had all told him that there was no reason to add any more members. It was hard enough now to get meeting times arranged. There were times when they had to meet for three or four consecutive days, all day. They had very good applicants, but there were a few who were surprised when they told them they would need two or three days. He had not heard from the police force.

Alderman Thiel stated she had spoken with Tad Scott, FOP, and stated he was in favor of this. They were still supporting this.

Alderman Reynolds stated he could not support this. What they had now was working well.

Mayor Coody asked shall the ordinance pass. Upon roll call the ordinance passed by a vote of 5-2, Reynolds and Davis voting nay and Mayor Coody voting yea.

ORDINANCE 4379 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

INDUSTRIAL PARK LANDS: An ordinance amending the ordinance establishing the formal process for the sale of municipally owned real property by defining industrial park lands. The ordinance was left on the second reading at the March 5, 2002 meeting.

Mr. Williams read the ordinance as amended.

Alderman Young stated the only thing that bothered him was that this amended the first ordinance. When they passed that ordinance, it had been represented to the council that there was a map with prices of lots on it. He had asked for that and never gotten that.

Mayor Coody stated they were currently selling the property for $20,000 per acre.

Alderman Young requested an official map with the prices.

Mayor Coody stated one of the problems that they had run into was that they would try and sell some acreage, but as soon as they buy the lot, the city would require them to build sidewalk or to put in sewer lines. They have run into situation where they might have to rethink their position, where they had to change the price of the acre to $23,000 and include in that the price of getting the work done, so they would not have to pay to get the work done.

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

ORDINANCE 4380 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

ADM 01-47.00: A resolution to approve ADM 01-47.00 to update census data; the community facilities section; and an annexation policy; and reorganize the General Plan 2020 for easier use. The resolution was tabled at the March 5, 2002 meeting.

Mr. Conklin introduced Ms. Shelly Rushing from the Planning Division who was responsible for their long range planning, ordinances that implement their General Plan, and has worked with Tree and Trails Task Force. She will be presenting the General Plan 2020 update and the annexation policy.

Ms. Rushing presented the major changes to the plan. The majority of the changes were in the census data and the housing data. She explained the purpose of the plan and the new annexation policy. The purpose of the annexation section was to introduce policy regarding annexations. They were taking a more proactive approach to their annexation by identifying potential annexation areas and establishing policy and criteria for reviewing those requests.

In response to Alderman Young's request to replace "should" with "shall", Mr. Williams stated this was a guiding plan. Most guiding plans did not require things, they recommended things. He thought "shall" might be a little misleading. He did not believe they could give a directive with just a plan.

Alderman Young stated they were guiding policies, but he questioned how often it would be done, occasionally or every time.

Mr. Williams stated if the city did not follow this, it would not be fatal to their annexation, however, it might give someone an opportunity to try and attack them.

Alderman Young stated he was looking at from the view point of information provided to the Planning Commission, the council and the public.

Mr. Conklin stated the planning staff had made sure that annexation went to different divisions. They were pretty much doing a study. They will formalize the process as they go forward. They wanted to make sure that they understood that they understand what they were doing with regard to annexation. These are the things the council asked staff to bring forward to them to consider. They should make their decisions based on these policies. He added they will see these reports as annexations occur.

Alderman Young moved to change the word, "should" to "shall" in 11.6.b. Alderman Reynolds seconded. Upon roll call the motion failed by a vote of 3-3, Santos, Thiel and Davis voting nay.

Alderman Santos moved to pass the resolution. Alderman Jordan seconded. The motion carried unanimously.

RESOLUTION 50-02 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

MCCLELLAND ENGINEERING: A resolution authorizing McClelland Engineering to proceed with their contract for I-540 Business/Technology Park. The original resolution was passed at the February 5, 2002 meeting.

Mayor Coody gave a presentation updating the progress of the project. He stated the Arkansas Game and Fish Commission was very interested in locating their regional facility out here. They would want to have an educational component built in. The city would also be able to build some trails.

Mr. Emmanuel Barns, EGIS, stated the proposed conservation area was about one hundred acres that would be set aside by Corp of Engineers permit and by the conservation agreement from the U.S. Fish and Wildlife service. A large portion of the area would be newly created wetlands. He thought this was very proactive. In response to questions from Alderman Thiel, Mr. Barns stated the total area delineated and confirmed by the Corp of Engineers was approximately eighty-four acres of wetlands. About forty-five acres would be impacted. There was about thirty-five to thirty-seven acres that was wetland that must be mitigated. If that impact did not occur, then the whole concept of having a conservation area.

Alderman Thiel stated it would not cost them as much if they just left it and did not mitigate it.

Mr. Barns stated of they just preserved the area it would not give them the opportunity to take Clabbar Creek and recreate more stream habitat rather than a lake.

Mr. Tom McKinney stated he had found an area that looked like prairie grass land. It was very rare. He suggested that they try and preserve the area.

Mr. Dumas stated they were asking the council to let them proceed with their preliminary plat work. McClelland will come up with at least three designs which would be presented to the council for review. From there they would prepare a final preliminary plat.

Alderman Thiel stated she would like to see three proposals that showed a broad diversity. She wanted to see this project move forward. She noted in their contract there was a budget item of $1,380 for a field trip to observe a similar wetland project.

In response to questions, Mr. Dumas stated McClelland would be drawing up three preliminary designs with preliminary costs.

Mr. Tom McKinney, Sierra Club, stated they had some concerns. It was very difficult to find where things were on the property. There were no markers or way to tell exactly where they were and what was planned to be developed. They were concerned about the area close to Wilson Springs. They also wanted to preserve the prairie they had found.

Ms. Andrea Radwell, an area resident, expressed concern about the wetlands and the floodplain. She questioned what they planned to mitigate.

Mr. Jeff Erf, an area resident, questioned why the city wanted to be able to open bids in October of 2002.

Mayor Coody stated they had two grants that had be obligated within one year.

Mr. Erf stated he had not been able to find the terms and conditions of the grant and had not been provided the information. He had called the administrator of the grant. There was no time limit on the money, according the person he talked to. He wanted to see the documentation that if in fact that was the case. He was also concerned that there was no business plan for this project. It had also gone from the Technology Park to a Business Technology park. What kind of tentants did they expect. What kind of jobs were going to be provided out there.

Mayor Coody stated they were coming up with three different options. If they did not know what the plan was, how could they estimate what it was going to cost. They did not have the information yet because they kept taking it back to the public input process. They had gone completely back to the drawing board. They already had one client interested, the Arkansas Game and Fish Commission.

Mr. Robert Ferrel, Chamber of Commerce, stated the Chamber of Commerce had been working with the city and had been trying to find common grounds on this 540 park. It was a great opportunity to preserve nature and combine the business together.

Mr. Jim Bemis, an area resident, stated they wanted to have the research and business people together. He asked how they were going to further develop the site as a business park. He asked who was going to pay for the infrastructure.

Mr. Bill Ramsey, Chamber of Commerce, stated the Fish and Game people were meeting here tomorrow. They were waiting on the City. They would be a great draw for what they were trying to do out there.

Ms. Barbara Moorman, an area resident, stated they were relying on people who had a financial interest. They had hired someone to advise them on what to do and they were the same people who would be doing the work. She felt this was on the fast tract. They were starting something before they knew what they were doing. In the past officials had denied that there were problems with the land at all. She quoted from minutes stating that there were no problems with flooding on the property. The residents opposed to the rezoning of this property were the only ones who noted the problems with the flooding and the wetland. There were still unanswered questions.

Ms. Fran Alexander, an area resident, stated the environmental community has not been included.

Ms. Radwell stated she felt it had been very difficult for them to be involved in this process. They had never been consulted.

Ms. Alexander stated she quoted from the February 5, 2002 minutes regarding "team". She felt they had been left off the team. The team was not happening. They were just saying that it was.
Mr. Barns stated he could recall a number of meetings that they had had with Andrea and several other agencies. He had seen an evolution of this project. They had opened their arms up to the environmental community. He was totally for environmental protection, but they wanted to live in reality. They had to work together.

In response to questions from Alderman Thiel, Mr. Dumas stated they would make several places on the site so people could orientate themselves on the site.

Mr. Joe Tarban, McClelland, stated they were the implementers of what the city and EGIS come up with. They had no preconceived notations of how this should be done. They did not want to make a mistake any more than they did. They had not gotten to the part in the contract where they look at soils. So they really did not know what was out there. They had looked at some county soils maps. They had abandoned conventional means. The only problem that he could see was that someone had to referee. Someone had to make decisions. They could meet and discuss for a long time, but someone had to decide what they were going to do. If they get bogged down trying to decide what the options were, that could become a problem. He was very open to meeting with anyone who wanted to be apart of this thing. They wanted to come up with something they could all be proud of.

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

RESOLUTION 51-02 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

NEW BUSINESS

RZN 02-5.00: An ordinance approving rezoning request RZN 02-5 as submitted by Shawki Al-Madoun of Northstar Engineering Consultants on behalf of Fadil Bayyari for property located west of I-540 and south of Point West Phase I and east of Pine Valley Phase I. The property is zoned I-1, Heavy Commercial / Light Industrial and R-2, Medium Density Residential and contains approximately 14.84 acres. The request is to rezone to R-1.5, Moderate Density Residential.

Mr. Williams read the ordinance for the first time.

Alderman Jordan asked for them to leave this on the first reading, since most of the public had left.

Ms. Sue Jenson, an area resident, stated her association was concerned about drainage and traffic. Thirty-four lots had been planned for a total of sixty-eight units. They would like to have some definite feelings from the city about how they were going to handle this. They were asking the council to table this issue until they had time to find out more information.

Mr. Chad Calson, an area resident, stated typically he would agree that down zoning from an industrial to a residential would be a good thing. They had originally proposed duplexes and connecting his neighborhood and this neighborhood. They were asking for some assurances that there would be some minimum standards set for those duplexes. He has refused to do that. He questioned what kind of duplexes they were going to have. They were going to see those duplexes from 540.

Mr. Fidal Bayyari, owner, stated his proposal was for 1200 square foot per side for these duplexes. They were going to be brick. Some of the lots were going to be small. He would be doing two story duplexes out there. Because of the price of the land the extra cost in development that by the time the duplexes were finished the property values in the neighborhood would increase. The traffic issue was a concern to the neighbors but it would be an enhancement to the city because they were going to open that road to take Shiloh all the way to Hwy 16. He proposed to the neighbors a set of covenants that would be put in place to protect their interest. They would have control over the builders. The neighbors were asking for a set of assurances from him to go with the land. In the past, he gave a bill of assurance and it came to haunt him later. The property now was useless.

Mr. Conklin stated they could have restrictive covenants , they can be filed. The property owners could vote to change them. There was no guarantee that what they see today may not be the same tomorrow. The city did not enforce covenants.

An area resident, questioned why Mr. Bayyari was not willing to give them a bill of assurance. They were willing to work with them.

Mr. Williams stated they could not dictate to developers once the property is zoned meet the minimum requirements.

Mr. Conklin stated the staff's job once the zoning decision was made was to tell the developer what

they had to do to comply with their ordinances. Once they complied with those ordinances, then they would recommend approval. Their job was to tell them how to get their developments approved based on their current ordinances. They could not negotiate.

Mr. Jim Owen, an area resident, stated he was concerned that they had only seen a draft of covenance. Those could only be enforced by an attorney that they would hire. They would have no power after it was written. It could be changed. He also requested a bill of assurance.

ORDINANCE WAS LEFT ON THE FIRST READING.

WATER AND SEWER REVENUE BONDS: An ordinance authorizing the issuance of $10,250,000 of Water and Sewer Revenue Bonds to refund the City's 1994 and 2000 Water and Sewer Revenue Bonds and authorizing the issuance and execution of a Trust Indenture, and Official Statement, a Bond Purchase Agreement, an Escrow Agreement, and a Continuing Disclosure Agreement.

Mr. Hunt stated the ordinance attempted to accomplish three things. The first was that the city had outstanding debt, Gross Revenue Rate, during the time they were working with them on the sales tax issue, the subject came up. Basically, it required them to increase rates much more than they would have too if they had a Net Revenue Rate. Secondly, it was to provide fixed rate financing on some of their short-term variable rate financing that they had issued in the past. We believe short-term rates were going to go up fairly significantly in the short term and they believed now was the time to lock in. Third, they had an issue of which the interest rate by reissuing at this point in time will be reduced from the current rate that was outstanding. They had three issues that were outstanding for Water and Sewer Revenue Bonds: Series 1994 ($3,215,000), Series 1999 ($7,350,000), and Series 2000 (10,000,000). This ordinance would address the Series 1994 and the Series 2000. Approximately May 2004 they will want to address their 1999 issue. Each of those bond issues have a gross revenue covenant.

Mr. Williams read the ordinance for the first time.

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

Mr. Williams read the ordinance for the second time.

Alderman Davis 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 for the third and final time.

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

ORDINANCE 4381 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

BULK TRASH DISPOSAL: An ordinance amending collection charges for bulk brush disposal.

Mr. Williams read the ordinance.

Alderman Young 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.

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

Mr. Williams read the ordinance.

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

ORDINANCE 4382 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

DDEP: A resolution awarding the construction contract to Township Builders based upon the result of March 5, 2002 construction contract bid opening for Dickson Street Improvements.

Mr. Boettcher, Public Works Director, stated they had five bids on March 5. Three were not responsive. Two were. The low bid was by Township Builders of Little Rock. Their base bid was $3,011,368.30 with two deductive alternates that eliminated scoring concrete and welcome mats at the buildings. If they take the alternates the bid becomes $2,948,590.30. The funds that they had on hand includes city funds, Dickson Street Improvement District and the Razorback Foundations, so they ended up with $3,068,864 available for the project. All parties involved are recommending an award of the contract to Township Builders with the deductive alternates.

Randy Richy, Atkins Benham, stated Township Builders had worked on a couple projects in Fort Smith, very similar to this project in which traffic was minimally affect. They have also done a similar project for the city of Little Rock and they had been well pleased with them.

Mr. Williams asked Mr. Richy if he had checked into the legalities of the bids and if it was his opinion that they were not allowed to accept some of the other bids.

Mr. Richy stated there were other bids that were numerically lower, but they had been rendered non responsive. Certain Federally required documents had not been submitted. Their hands were tied. It was a mandate.

Alderman Jordan asked how much business will be brought in because of this investment.

Ms. Ackerman stated the project itself was a response to about 65 million dollars of private investment on the street in the last ten years, since the building of the Walton Art Center.

Alderman Young questioned the phasing the project.

Mr. Richy stated they had presented the contract with a suggested sequence of construction. Their purpose of that was to make them aware going into the bid that they could not treat this job as an interstate. They were not going to hold them to it. They were going to ask them for a plan. Their main purpose was to keep the district open and working. It was going to difficult, but if they could keep those work areas short and finish the work section completely, then the merchants and users can see the finished product.

Alderman Davis moved to award the bid to Township Builders. Alderman Santos seconded. Upon roll call the motion carried unanimously.

RESOLUTION 52-02 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

CDBG: A resolution accepting the 2002 Community Development Block Grant in the amount of $647,000 and approval of the sub-recipient grant agreements with the Fayetteville Boys and Girls Club, Fayetteville Public Library, and Habitat for Humanity.

Mr. Ernest stated what they were being asked to approve was three of four sub-recipient grant agreements. They had some questions with the South Fayetteville Development Corporation. They had met with them and they could resolve those issue with respect to reporting and conformance with Federal and city regulations.

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

RESOLUTION 53-02 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

BOYS AND GIRLS CLUB: An ordinance waiving the requirements of competitive bidding and approving a contractual agreement between the City of Fayetteville and the Fayetteville Youth Center, Inc. in the amount of $68,000 to provide water service to Donald W. Reynolds Boys and Girls Club facility and $17,900 for a temporary haul road.

Mr. Williams read the ordinance.

Alderman Davis 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.

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

Mr. Williams read the ordinance.

Mayor Coody asked shall the ordinance pass. Upon roll call the motion carried unanimously.
ORDINANCE 4383 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

Meeting adjourned at 11:50 p.m.

MINUTES OF A MEETING OF THE CITY COUNCIL APRIL 2, 2002

A meeting of the Fayetteville City Council will be held on April 2, 2002 at 6:30 p.m. in Room 219 of the City Administration Building located at 113 West Mountain, Fayetteville, Arkansas.

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

The meeting began with a moment of silence in remembrance of Alderman Trent Trumbo.

NOMINATING COMMITTEE REPORT

ADVERTISING AND PROMOTION COMMISSION
Pat Gazzola - Re-appointed to fill term ending 04/01/06

BOARD OF ADJUSTMENTS/BOARD OF SIGN APPEALS
Robert A. Nickle - One five-year Public-at-Large term ending 03/31/07

CIVIL SERVICE COMMISSION
Merlin Augustine - One six-year Full term ending 03/31/08

CONSTRUCTION BOARD OF ADJUSTMENTS AND APPEALS
Stanley P. Johnson - One five-year Full term ending 03/31/07
Dennis Becker - One five-year Full term ending 03/31/07
Owen Eudell Luttrell - One one-year Alternate term ending 03/31/03

TELECOMMUNICATIONS BOARD
Susan Cromwell - One unexpired term ending 06/30/03

Alderman Davis stated he would like to discuss the Planning Commission and Library Board.

Alderman Santos moved to approve the report with the exception of the Planning Commission and the Library Board. Alderman Jordan seconded. Upon roll call the motion carried unanimously.

CONSENT

BOYS AND GIRLS CLUB: A resolution authorizing a lease agreement with the Fayetteville Boys and Girls Club for 8.16 acres of park land to be used for recreational purposes for the future Fayetteville Boys and Girls Club.

RESOLUTION 54-02 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

PAGERS: A resolution increasing the City's annual pager/cell phone allotment by $2,810.16. The increase will allow the Fire Department to save approximately $60,000 in the 2002 CIP Budget scheduled for an upgrade to the High Band Paging System.

RESOLUTION 55-02 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

PROPERTY SALE: A resolution approving the sale of City owned property in the Fayetteville Industrial Park identified as a lot split of Parcel R containing approximately 7.75 acres for $20,000 per acre or an amount not to exceed $155,000 and approval of a budget adjustment.

RESOLUTION 56-02 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

SAGE HOUSE: A resolution approving a lease agreement between the City of Fayetteville and Sage House.

RESOLUTION 57-02 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

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

OLD BUSINESS

RZN 02-1.00: An ordinance approving rezoning request RZN 02-1.00 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. The ordinance was tabled on the third reading at the March 5, 2002 meeting.

Alderman Davis moved to remove the item from the table. Alderman Santos seconded. Upon roll call the motion carried unanimously.

Mr. James Parish, an area resident, stated he had lived in this neighborhood for thirty years. The area had been R-1. He asked why the neighborhood should pay for their mistake. The neighborhood was totally against this. This was a good neighborhood. People were starting to bring the area back up.

Ms. Joyce Richards, an area resident, stated as president of the neighborhood association, she would be the only one speaking against the rezoning. The association had meet and taken a vote. The majority of the residents in attendance said "no" to the rezoning. There were five votes for a conditional "yes", however the conditions were not stated at that time. There were nineteen votes "no". The council had received their petition with approximately 116 names from residences in the

area. The others were to the southwest of them, but they were affect by the traffic. They were against this rezoning. She asked them to help them maintain the character of their neighborhood. They already had transition zones. Hendrix was on the city's schedule to be repaved in 2003. Their neighborhood did not need more traffic. The law could not be changed by a clerk making a mistake on a computer. They were not breaking the faith with the ones who would get the benefit of the mistake. They were breaking faith with the voters who for years thought this was R-1. They needed to protect this neighborhood.

Ms. Terry Faylyn, an area resident, stated she had been on Maxwell since 1985. Mr. Thompson had presented a bidder with a petition. The petition did not have addresses written on them. She had looked at some of the signers. Some of them were across town and out in the county. She believed that the significance of opinion regarding the rezoning should be weighted in favor of those that actually live the neighborhood association area since they would be the ones most affected. She did not believe the city should favor one developer over a neighborhood when the fault lies with the city. Mayor Coody had reportedly told a class that they were going to make it right. She believed that the residents of the neighborhood association all purchased their property in good faith and that the neighborhood should stay R-1.

Ms. Valerie Sawyer, an area resident, stated she was a renter. She was concerned by what trees would get left. There were some really nice trees that she would like to see saved. There should be some kind of compromise. Her son wanted to come to the meeting tonight because his favorite tree was a big red bud. He wanted to see the trees saved more than he cared what got built there. She realized Fayetteville was going to need more housing. She was more or less in favor of the rezoning, but there should be some conditions.

Mr. Scott Roberts, an area resident, stated he had lived here for three years. He thought Mr. Thompson had bent over backward in terms of the presentation that he had put together as well as what he was trying to do with the land he was developing. This person was investing in a community that was a great place to live and a great place to invest in. He was also looking to purchase some property in the area. If they voted against this thing, the word of the city would be no good. He wanted to be able to trust the city and the system. If something had been done wrong, then they should do the right thing.

Ms. Mona York, an area resident, stated Mr. Thompson's project was in her back yard. She did not have any problems with it. She supported it.

Mr. Brock Thompson, applicant, stated he had provided books last week which provided a lot of information. He was at Harps last week and he did go door to door. He tried to get out to the community in terms of getting people to understand exactly the situation that happened with his project. He did not represent that he got all those signatures at Harps. They were going to see some conflicting houses that were covered. He spoke with Ms. Brown last night. She had lived on the property for seventeen years. She did not plan on moving anywhere. She understood about the

expansion on Garland. She signed the petition. Her indication was that they were bringing something new to their property. She was in favor. The owner across the street was in favor of this. He brought one neighbor tonight who was in favor of this.

Mr. Osburn stated some residents were concerned about traffic. There was no reason for the traffic from this development to go to the west. They were going to go east, north or south.

Ms. Sharon Davidson, an area resident, stated they needed to realized property owners have been getting ran over by single individuals who come in and buy property for development. As a community they were drained on all of their services, yet they were being run over by people who came in, not to be part of our community, but to profit. They were going to approve this because they were afraid of a law suit from a single individual who was trying to manipulate their whole community. They should be worried about law suit from collective groups, such as neighborhoods.

Ms. Carla Grey, an area resident, stated they had been presented with two conflicting maps. So that they did not get the wrong idea, they were both correct. The original petition, when it went around, she signed it. When the sign first went up in the corner lot, they did all think that it was apartments. After the triplexes were built on Hendrix, the idea of apartments on that corner was freighting because it looked like their neighborhood was being sliced up like a pie. A lot of information had come out since the first petition was circulated. Mr. Thompson had purchased the property thinking that it was zoned R-1.5. He did not buy residential lots trying to rezone them. She did not understand until after the last city council meeting that the triplex behind her was R-1, with improper use. One of the biggest fears that the neighborhood had collectively was triplex in the middle of the street, triplexes on the corner. How could anyone say no to triplexes in between. After she found out that the triplexes in the middle of the street were R-1 with improper use, they can not be used as leverage to rezone anything else on that block. She felt that her neighborhood was protected. Garland was scheduled to be a five-lane highway at some point. There were two houses there now that had been on the market for a very long time because no one wants to live where a large highway is going to be put. She did not believe single family homes would ever have a chance of being owner occupied. More and more neighbors have dropped out on the opposition to this rezoning. She was one of them. The right thing for this lot was R-1.5.

Alderman Davis asked how many years had it been that the city had showed this on the city map as being R-1.5.

Mr. Conklin stated the map had been converted in 1995.

Alderman Davis stated so for the past seven years it had been showed incorrectly. How long ago was the prior triplex built on Hendrix.

Mr. Conklin stated it was last summer.

Alderman Davis asked if he had not brought this to their attention, would they be here tonight. The property would still be shown as R-1.5.

Mr. Conklin stated that was correct. That was what happened to the last one. He wanted to make sure that there was an actual ordinance for this one. They could not find one. After they could not find one, twenty-four hours later the map was changed on the website and their office. He then advised Mr. Thompson. And recommended that he go through the rezoning process.

Alderman Davis stated it was his understanding that someone on the city staff wrote a letter confirming that this was a R-1.5 to a financial institution.

Mr. Conklin stated a letter had been written.

Alderman Davis stated neighborhood associations needed to come to city hall from time to time to check their zoning.

Mr. Conklin stated he did not want this to ever happen again. He had been through the map once. He was in the process of looking at thirty-two years of ordinances. He would be bring forward a map. He wanted to make sure. They now have better technology. This area zoning classification was done by arrows. It was very difficult to see that from the 1970 zoning map which had been hand done with crayon.

Alderman Davis stated it had been seven years. The city has written him and given their word that it was zoned R-1.5. as neighbors needed to check from time to time to make sure that the city had the zoning on the map as they believe is correct. He did not see how they could back and tell him tough luck. If they did that, how could the citizens ever trust them on anything again.

Alderman Jordan stated they talked about the word of the city to Mr. Thompson, but what about the word of the city to the individuals that lived inside the city limits. The neighbors bought their property in good faith, believing that this was R-1 zoning. They expected to finish their lives out in that neighborhood. That neighborhood has come forth and stated they wanted the city to stand by them and protect their neighborhood and quality of life.

Alderman Theil stated the organized association had made a statement, but the people closer to where this was going to be built were for it. In her mind they weighed heavier than the others. Those were the neighbors next to the property. she was trying to weigh which set of neighbors to listen too.

Alderman Santos stated Garland Avenue has been a state highway for years. People should have known that more dense development was going to occur on a state highway. Three of the last city plans that he has worked with have been expecting more dense development along Garland Avenue. That was why the highway department was planning on widening it. Almost fifty percent of the

traffic from the University came from Garland. The University was trying to expand by fifty percent. Without even the mistake being made the proper thing to do is to rezone the property for more dense development. Which is what they see more and more of along Garland. The project Mr. Thompson has brought them was more compatible and serves has a better buffer to this neighborhood than the kind of dense apartments across the street. They had to expect that development. They had to respect their plans. A lot of people other than the people in this neighborhood contributed to making the plans. There were a lot of goals that they set forth in those plans that they want more dense development in the center of the city, within walking distance of schools and shopping centers. There was a transit line already here. That will make the transit line more efficient to have higher density. This was good for all of Fayetteville.

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

ORDINANCE 4384 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

RZN 02-5.00: An ordinance approving rezoning request RZN 02-5.00 for property located west of I-540 and south of Point West Phase I and east of Pine Valley Phase I. The property is zoned I-1, Heavy Commercial / Light Industrial and R-2, Medium Density Residential and contains approximately 14.84 acres. The request is to rezone to R-1.5, Moderate Density Residential. The ordinance was left on the first reading at the March 5, 2002 meeting.

Mr. Williams stated the applicant had sent a memo withdrawing the request. The applicant would have to reapply and start from scratch if he wanted to have the item reconsidered.

REMOVED FROM AGENDA.

CDBG: A presentation regarding the 2002 Community Development Block Grant.

Mr. Hugh Earnest, stated presented a overview of their program. This program gave them the opportunities for the city to provide additional money for housing. They can utilize the funding for further cost of bonds for the provision of new home construction. They may be able to pay money in advance to issue bonds to get a large one time sum of money and get far more aggressive in construction of affordable housing in the city. They can also subsides transportation needs. They need to improve their outreach relative to development of area plan. They need to involve more people in the community to make sure that they were meeting the needs of the neighborhood.

They had several projects that they had not been moving money on. Sage House, $153,635. Project for Victims of Family Violence $460,335, and Yvonne Richardson Center $104,000. This money was just sitting there. What the federal regulators have told them was that they needed to more aggressively move this money within a defined time frame or in affect the city will be penalized by reduced allocations in the future. They understood the issue they are facing and he believed the

council would begin to see more future on these projects.

Alderman Young asked how they would pay off the bonds.

Mr. Earnest stated they would use future allocations of community development block grant funds to service the debt. That was very preliminary discussion. Mr. Hunt, with Stevens, has serious concerns about that. He did not say not, but they needed to talk with their Hud representative.

NO ACTION TAKEN.

NEW BUSINESS

RZN 02-6.00: An ordinance approving rezoning request RZN 02-6.00 as submitted by Terry Carpenter of US Infrastructure, Inc. for property located at 415 Longview Street. The property is zoned A-1, Agricultural and contains approximately 38.6 acres. The request is to rezone to R-O, Residential Office.

Mr. Williams read the ordinance.

Alderman Davis stated his made perfect sense. He had not heard of any objections.

Mr. Conklin stated at the Planning Commission some of the residents had concerns about future access. He did not envision the street going into the subdivision. This property already is developed with Washington County Health Facility. The city had cost shared with Washington Regional Medical Center to extend that street through the property. The city has been involved in this project. It was an addition to North Hills Medical Park. It has turned into a regional medical area for Northwest Arkansas. Staff and Planning Commission has recommended approval.

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

Mr. Williams read the ordinance.

LEFT ON THE SECOND READING.

NEW WORLD SYSTEM: A resolution approving the purchase of the Fire Department's portion of the New World Technology upgrade for the Computer Aided Dispatching/Records Management System which will allow the Fire Department to interface with the current CAD/RMS system to provide accurate reporting information.

Chief Bosh stated the Fire Department had been using the New World Technology system about five

years ago, which was the system used in the Police Department. The Fire Department had opted to pull away from that system and to go with a stand alone system. Unfortunately, they had found that the FirePro system will not interface with this current CAD/RMS system. The new system will allow information sharing.

In response to questions, Chief Bosh stated this would fall under the Police Departments radio upgrade. They had $30,000 budgeted for that. This will require an additional $8,000 which they were going to pull out of the $60,000 that they saved on the pagers. They will show a savings of about $52,000 overall.

Alderman Young stated they had recently approved a lot of technology. Why was this not included in this.

Chief Bosh stated this was a separate system. The technology that they had approved was a separate system. This was specially for Police and Fire response.

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

RESOLUTION 58-02 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

SOLID WASTE MODIFICATION: Approval of the lift concept modification of vehicle configuration for the commercial route front load style sanitation vehicles. This will allow an upgrade to the newer style fork application and eliminate the triangle style lifts on vehicles as they are being replaced. This will also allow modifications to current containers and upgrade of containers as they are being replaced.

Ms. Carrol Hill, Solid Waste Director, stated this would save the city a lot of money on the purchase of containers and trucks. The triangle was extra and out dated. It was a simple modification to their current trucks. In the long run, there would be less maintenance. The triangle tended to break. The weight could be distributed more evenly with a fork system.

Alderman Reynolds stated they would no longer have to special order the triangle for the trucks and the containers. It should pay for itself within a year.

NO ACTION TAKEN.

Meeting adjourned at 8:30 p.m.

Communications Products Agreement

Motorola, Inc., a Delaware corporation, through its Commercial, Government, and Industrial Solutions Sector, North America Group ("Motorola"), having a place of business at 1301 E. Algonquin Rd., Schaumburg, IL 60196 and City of Fayetteville, ("Customer"), having a place of business at 100-A W. Rock, Fayetteville, AR 72701, enter into this Communications Products Agreement, pursuant to which Customer will purchase and Motorola will sell the Products, as described below. Seller and Customer may be referred to individually as "party" and collectively as "parties."

For good and valuable consideration, the parties agree as follows:

Section 1 EXHIBITS

The Exhibits listed below are incorporated into and made a part of this Agreement. In interpreting this Agreement and resolving any ambiguities, the main body of this Agreement will take precedence over the Exhibits and any inconsistency between the Exhibits will be resolved in the order in which they are listed below.

Exhibit A	Motorola "Software License Agreement"
Exhibit B	"Technical and Implementation Documents"
B-1	"List of Products" dated __4/10/02_____
B-2	"Statement of Work" dated _4/12/02____
B-3	"System Description" dated _4/12/02

Section 2 DEFINITIONS

Capitalized terms used in this Agreement shall have the following meanings:

"ADR" means alternative dispute resolution.

"Agreement" means this document, the exhibits listed above, and any amendments to this Agreement.

"Effective Date" means that date upon which the last party to sign this Agreement has executed the Agreement.

"Equipment" means the hardware listed in the List of Products.

"FCC" means the Federal Communications Commission.

"Force Majeure" means an event, circumstance, or act of a third party that is beyond a party's reasonable control, such as an act of God, an act of the public enemy, an act of a government entity, strikes or other labor disturbances, hurricanes, earthquakes, fires, floods, epidemics, embargoes, war, riots, or any other similar cause.

"Infringement Claim" means a claim that the Equipment manufactured by Motorola or the Motorola Software infringes a United States patent or copyright.

"Motorola Software" means Software that Motorola owns.

"Non-Motorola Software" means Software that a party other than Motorola owns.

"Products" mean the Equipment and Software provided by Motorola under this Agreement.

"Proprietary Rights" means the patents, patent applications, inventions, copyrights, trade secrets, trademarks, trade names, mask works, know-how, and other intellectual property rights in and to the Equipment and Software, including those created or produced by Motorola under this Agreement and any

corrections, bug fixes, enhancements, updates or modifications to or derivative works from the Software whether made by Motorola or another party.

"Purchase Price" means the price for the Products or for additional Products as permitted by Section 3.4 of this Agreement, exclusive of any applicable sales or similar taxes and freight charges.

"Software" means the Motorola and Non-Motorola Software in object code format that is furnished with the Products and which may be listed on the List of Products.

"Specifications" means the design, form, functionality, or performance requirements described in the Technical and Implementation Documents and any published descriptions of the Products.

Section 3 SCOPE OF AGREEMENT AND TERM

3.1. SCOPE OF WORK. Motorola will provide, ship, and install (if applicable) the Products, and perform its other contractual responsibilities, all in accordance with this Agreement. Customer will perform its contractual responsibilities in accordance with this Agreement.

3.2. CHANGE ORDERS. Either party may request changes within the general scope of this Agreement. Neither party is obligated to perform requested changes unless both parties execute a written change order.

3.3. TERM. Unless otherwise terminated in accordance with the provisions of this Agreement or extended by mutual agreement of the parties, the term of this Agreement shall begin on the Effective Date and shall continue until the expiration of the warranty period or three (3) years from the Effective Date, whichever occurs last.

3.4. ADDITIONAL EQUIPMENT OR SOFTWARE. During the Term of this Agreement, Customer may order additional Equipment or Software provided it is then available. Each order must refer to this Agreement. The applicable provisions of this Agreement (except for pricing, delivery, and payment terms) will govern the purchase and sale of the additional Equipment or Software. Unless otherwise expressly provided in this Agreement, the pricing and delivery terms will be Motorola's then published prices and standard delivery terms for such Equipment or Software, and payment is due within twenty (20) days after the invoice date. Motorola will send Customer an invoice as the additional Equipment is shipped or Software is licensed.

3.5. MAINTENANCE SERVICE. This Agreement does not cover maintenance or support of the Products except as provided under the warranty. If Customer wishes to purchase maintenance or support, Motorola will provide a separate maintenance and support proposal upon request.

3.6. MOTOROLA SOFTWARE. Any Motorola Software, including subsequent releases, is licensed to Customer solely in accordance with the Software License Agreement. Customer hereby accepts and agrees to abide by all of the terms and restrictions of the Software License Agreement.

3.7. NON-MOTOROLA SOFTWARE. Any Non-Motorola Software is licensed to Customer in accordance with the standard license, terms, and restrictions of the copyright owner on the Effective Date unless the copyright owner has granted to Motorola the right to sublicense the Non-Motorola Software pursuant to the Software License Agreement, in which case it applies. Motorola makes no representations or warranties of any kind regarding Non-Motorola Software.

Section 4 PERFORMANCE SCHEDULE

If this Agreement includes the performance of services, the Statement of Work will describe the performance schedule.

Section 5 PAYMENT OF PURCHASE PRICE

5.1. PURCHASE PRICE. The Purchase Price in U.S. dollars is $ 130,378.99. Motorola will submit to Customer invoices for Products when they are shipped and for services, if applicable, when they are performed. Customer will make payments to Motorola within thirty (30) days after the date of each invoice. Customer will make payments when due in the form of a check, cashier's check, or wire transfer drawn on a U.S. financial institution.

5.2. FREIGHT, TITLE, AND RISK OF LOSS. All freight charges will be pre-paid by Motorola and are included in the purchase price as indicated on Exhibit B-1. Title and risk of loss to the Equipment will pass to Customer upon receipt, except that title to Software will not pass to Customer at any time. Motorola will pack and ship all Equipment in accordance with good commercial practices.

Section 6 SITES AND SITE CONDITIONS

6.1. ACCESS TO SITES. If Motorola is providing installation or other services, Customer will provide all necessary construction and building permits, licenses, and the like; and access to the work sites or vehicles as reasonably requested by Motorola so that it may perform its contractual duties.

6.2. SITE CONDITIONS. If Motorola is providing installation or other services at Customer's sites, Customer will ensure that these work sites be safe, secure, and in compliance with all applicable industry (including R-56) and OSHA standards. To the extent applicable and unless the Statement of Work specifically states to the contrary, Customer will ensure that these work sites will have (i) adequate physical space for the installation, use and maintenance of the Products; (ii) adequate air conditioning and other environmental conditions; (iii) adequate electrical power outlets, distribution and equipment for the installation, use and maintenance of the Products; and (iv) adequate telephone or other communication lines for the installation, use and maintenance of the Products.

Section 7 ACCEPTANCE

Acceptance of the Products will occur upon delivery to Customer unless the Statement of Work provides for acceptance verification or testing, in which case acceptance of the Products will occur upon successful completion of the acceptance verification or testing. Notwithstanding the preceding sentence, Customer's use of the Products for their intended purpose will constitute acceptance.

Section 8 REPRESENTATIONS AND WARRANTIES

8.1. EQUIPMENT WARRANTY. For one (1) year from the date of shipment, Motorola warrants that the Equipment under normal use and service will operate in conformity with the manufacturer's published product specifications in all material respects and will be free from material defects in materials and workmanship.

8.2. MOTOROLA SOFTWARE WARRANTY. Unless otherwise stated in the Software License Agreement, for one (1) year from the date of shipment, Motorola warrants the Motorola Software in accordance with the terms of the Software License Agreement and the provisions of this Section applicable to the Motorola Software.

8.3. EXCLUSIONS TO EQUIPMENT AND MOTOROLA SOFTWARE WARRANTIES. These warranties do not apply to: (i) defects or damage resulting from use of the Equipment or Motorola Software in other than its normal, customary, and authorized manner; (ii) defects or damage occurring from misuse, accident, liquids, neglect, or acts of God; (iii) defects or damage occurring from testing, maintenance, disassembly, repair, installation, alteration, modification, or adjustment not provided or authorized in writing by Motorola; (iv) breakage of or damage to antennas unless caused directly by defects in material or workmanship; (vi) defects or damage caused by Customer's failure to comply with all applicable industry and OSHA standards; (vii) Equipment that has had the serial number removed or made illegible; (viii)

batteries (because they carry their own separate limited warranty); (ix) freight costs to ship Equipment to the repair depot; (x) scratches or other cosmetic damage to Equipment surfaces that does not affect the operation of the Equipment; and (xi) normal or customary wear and tear.

8.4. WARRANTY CLAIMS. Before the expiration of the warranty period, Customer must notify Motorola in writing if Equipment or Motorola Software does not conform to these warranties. Upon receipt of such notice, Motorola will investigate the warranty claim. If this investigation confirms a valid warranty claim, Motorola will (at its option and at no additional charge to Customer) repair the defective Equipment or Motorola Software, replace it with the same or equivalent product, or refund the price of the defective Equipment or Motorola Software. Such action will be the full extent of Motorola's liability hereunder. If this investigation indicates the warranty claim is not valid, then Motorola may invoice Customer for responding to the claim on a time and materials basis using Motorola's current labor rates. Repaired or replaced product is warranted for the balance of the original applicable Warranty Period. All replaced products or parts will become the property of Motorola.

8.5. ORIGINAL END USER IS COVERED. These express limited warranties are extended by Motorola to the original user purchasing the Products for commercial, industrial, or governmental use only, and are not assignable or transferable.

8.6. DISCLAIMER OF OTHER WARRANTIES. THESE WARRANTIES ARE THE COMPLETE WARRANTIES FOR THE EQUIPMENT AND MOTOROLA SOFTWARE PROVIDED UNDER THIS AGREEMENT AND ARE GIVEN IN LIEU OF ALL OTHER WARRANTIES. MOTOROLA DISCLAIMS ALL OTHER WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

Section 9 DELAYS

Neither party will be liable for its non-performance or delayed performance if caused by a Force Majeure. Each party will notify the other if it becomes aware of any Force Majeure that will significantly delay performance. The notifying party will give such notice promptly (but in no event later than fifteen days) after it discovers the Force Majeure. If a Force Majeure occurs, the parties will execute a change order to extend the performance schedule for a time period that is reasonable under the circumstances.

Section 10 DISPUTES

10.1. SETTLEMENT PREFERRED. Motorola and Customer will attempt to settle any claim or controversy arising from this Agreement (except for a claim relating to intellectual property) through consultation and negotiation in good faith and a spirit of mutual cooperation. The dispute will be escalated to appropriate higher-level managers of the parties, if necessary. If cooperative efforts fail, the dispute will be mediated by a mediator chosen jointly by Motorola and Customer within thirty days after notice by one of the parties demanding non-binding mediation. Motorola and Customer will not unreasonably withhold consent to the selection of a mediator, and they will share the cost of the mediation equally. The parties may postpone mediation until they have completed some specified but limited discovery about the dispute. The parties may also replace mediation with some other form of non-binding ADR.

10.2. LITIGATION. Any claim relating to intellectual property and any dispute that cannot be resolved between the parties through negotiation or mediation within two (2) months after the date of the initial demand for non-binding mediation shall then be submitted by either party to a court of competent jurisdiction in the state in which the Products are delivered. Each party consents to jurisdiction over it by such a court. The use of ADR procedures will not be considered under the doctrine of laches, waiver, or estoppel to affect adversely the rights of either party.

Section 11 DEFAULT AND TERMINATION

If a party fails to perform or otherwise breaches a material obligation under this Agreement, the other party may consider the non-performing party to be in default, unless a Force Majeure causes such failure. If the performing party asserts a default, it will give the non-performing party written and detailed notice of the default; and the non-performing party will have thirty (30) days thereafter either to dispute the assertion or provide a written plan to cure the default that is acceptable to the performing party. If the non-performing party provides a cure plan, it will begin implementing the cure plan immediately after receipt of the performing party's approval of the plan. If the non-performing party fails to cure the default, the performing party may terminate any unfulfilled portion of this Agreement and recover damages as permitted by law and this Agreement.

Section 12 PATENT AND COPYRIGHT INFRINGEMENT INDEMNIFICATION

12.1. Motorola will defend at its expense any suit brought against Customer to the extent that it is based on an Infringement Claim, and Motorola will indemnify Customer for those costs and damages finally awarded against Customer for an Infringement Claim. Motorola's duties to defend and indemnify are conditioned upon: (i) Customer promptly notifying Motorola in writing of such Infringement Claim; (ii) Motorola having sole control of the defense of such suit and all negotiations for its settlement or compromise; (iii) Customer providing to Motorola cooperation and, if requested by Motorola, reasonable assistance in the defense of the Infringement Claim.

12.2. If an Infringement Claim occurs, or in Motorola's opinion is likely to occur, Motorola may at its option and expense procure for Customer the right to continue using the Equipment or Motorola Software, replace or modify it so that it becomes non-infringing while providing functionally equivalent performance, or grant Customer a credit for such Equipment or Motorola Software as depreciated and accept its return. The depreciation amount will be calculated based upon generally accepted accounting standards for such Equipment and Software.

12.3. Motorola will have no duty to defend or indemnify for any Infringement Claim that is based upon (i) the combination of the Equipment or Motorola Software with any software, apparatus or device not furnished by Motorola; (ii) the use of ancillary equipment or software not furnished by Motorola and that is attached to or used in connection with the Equipment or Motorola Software; (iii) any Equipment that is not Motorola's design or formula; (iv) a modification of the Motorola Software by a party other than Motorola; or (v) the failure by Customer to install an enhancement release to the Motorola Software that is intended to correct the claimed infringement. The foregoing states the entire liability of Motorola with respect to infringement of patents and copyrights by the Equipment and Motorola Software or any parts thereof.

Section 13 LIMITATION OF LIABILITY

This limitation of liability provision shall apply notwithstanding any contrary provision in this Agreement. Except for personal injury or death, Motorola's total liability, whether for breach of contract, warranty, negligence, strict liability in tort, indemnification, or otherwise, will be limited to the direct damages recoverable under law, but not to exceed the price of the Equipment, Software, or services with respect to which losses or damages are claimed. ALTHOUGH THE PARTIES ACKNOWLEDGE THE POSSIBILITY OF SUCH LOSSES OR DAMAGES, THEY AGREE THAT MOTOROLA WILL NOT BE LIABLE FOR ANY COMMERCIAL LOSS; INCONVENIENCE; LOSS OF USE, TIME, DATA, GOOD WILL, REVENUES, PROFITS OR SAVINGS; OR OTHER SPECIAL, INCIDENTAL, INDIRECT, OR CONSEQUENTIAL DAMAGES IN ANY WAY RELATED TO OR ARISING FROM THIS AGREEMENT, THE SALE OR USE OF THE EQUIPMENT OR SOFTWARE, OR THE PERFORMANCE OF SERVICES BY MOTOROLA PURSUANT TO THIS AGREEMENT. This limitation of liability will survive the expiration or termination of this Agreement. No action for breach of this Agreement or otherwise relating to the transactions contemplated by this Agreement may be brought more than one (1) year after the accrual of such cause of action, except for money due upon an open account.

Section 14 CONFIDENTIALITY AND PROPRIETARY RIGHTS

14.1. CONFIDENTIAL INFORMATION.

14.1.1. During the term of this Agreement, the parties may provide the other with Confidential Information. For the purposes of this Agreement, "Confidential Information" is any information disclosed in written, graphic, verbal, or machine-recognizable form, and is marked, designated, labeled or identified at the time of disclosure as being confidential or its equivalent; or if in verbal form is identified as confidential or proprietary at the time of disclosure and confirmed in writing within thirty (30) days of such disclosure. Notwithstanding any other provisions of this Agreement, confidential information shall not include any information that: (i) is or becomes publicly known through no wrongful act of the receiving party; (ii) is already known to the receiving party without restriction when it is disclosed; (iii) is, or subsequently becomes, rightfully and without breach of this Agreement, in the receiving party's possession without any obligation restricting disclosure; (iv) is independently developed by the receiving party without breach of this Agreement; or (v) is explicitly approved for release by written authorization of the disclosing party.

14.1.2. Concerning the Confidential Information provided to it by the other party, each party will: (i) maintain the confidentiality of such Confidential Information and not disclose it to any third party, except as authorized by the disclosing party in writing or as required by a court of competent jurisdiction; (ii) restrict disclosure of Confidential Information to its employees who have a "need to know" and not copy or reproduce such Confidential Information; (iii) take necessary and appropriate precautions to guard the confidentiality of Confidential Information, including informing its employees who handle such Confidential Information that it is confidential and not to be disclosed to others, but such precautions shall be at least the same degree of care that the receiving party applies to its own confidential information and shall not be less than reasonable care; and (iv) use such Confidential Information only in furtherance of the performance of this Agreement. Confidential Information is and shall at all times remain the property of the disclosing party, and no grant of any proprietary rights in the Confidential Information is hereby given or intended, including any express or implied license, other than the limited right of the recipient to use the Confidential Information in the manner and to the extent permitted by this Agreement.

14.2. PRESERVATION OF MOTOROLA'S PROPRIETARY RIGHTS.

14.2.1. Motorola owns and retains all of its Proprietary Rights in the Equipment and Software. The third party manufacturer of any Equipment and the copyright owner of any Non-Motorola Software own and retain all of their Proprietary Rights in the Equipment and Software. Nothing in this Agreement is intended to restrict the Proprietary Rights of Motorola, any copyright owner of Non-Motorola Software, or any third party manufacturer of Equipment. All intellectual property developed, originated, or prepared by Motorola in connection with providing to Customer the Equipment, Software, or related services remain vested exclusively in Motorola, and this Agreement does not grant to Customer any shared development rights of intellectual property. This Agreement does not involve any Software that is a "work made for hire."

14.2.2. Except as explicitly provided in the Software License Agreement, nothing in this Agreement will be deemed to grant, either directly or by implication, estoppel, or otherwise, any right, title or interest in Motorola's Proprietary Rights. Concerning both the Motorola Software and the Non-Motorola Software, Customer agrees not to modify, disassemble, peel components, decompile, otherwise reverse engineer or attempt to reverse engineer, derive source code or create derivative works from, adapt, translate, merge with other software, reproduce, or export the Software, or permit or encourage any third party to do so.

Section 15 GENERAL

15.1. TAXES. The Purchase Price does include sales tax as indicated on Exhibit B-1. The Purchase price does not include any other amount for federal, state, or local excise, lease, service, rental, use, property, occupation, or other taxes, assessments or duties (other than federal, state, and local taxes based on Motorola's income or net worth), all of which will be paid by Customer except as exempt by law. If Motorola is required to pay or bear the burden of any such taxes, Motorola will send an invoice to Customer and Customer will pay to Motorola the amount of such taxes (including any applicable interest and penalties) within thirty (30) days after the date of the invoice. Customer will be solely responsible for reporting the Equipment for personal property tax purposes.

15.2. ASSIGNABILITY. Neither party may assign this Agreement without the prior written consent of the other party, except that Motorola may assign this Agreement to any of its affiliates or its right to receive payment without the prior consent of Customer.

15.3. SUBCONTRACTING. Motorola may subcontract any portion of the work, but such subcontracting will not relieve Motorola of its duties under this Agreement.

15.4 WAIVER. Failure or delay by either party to exercise any right or power under this Agreement will not operate as a waiver of such right or power. For a waiver of a right or power to be effective, it must be in writing signed by the waiving party. An effective waiver of a right or power shall not be construed as either (i) a future or continuing waiver of that same right or power, or (ii) the waiver of any other right or power.

15.5. SEVERABILITY. If a court of competent jurisdiction renders any provision of this Agreement (or portion of a provision) to be invalid or otherwise unenforceable, that provision or portion of the provision will be severed and the remainder of this Agreement will continue in full force and effect as if the invalid provision or portion of the provision were not part of this Agreement.

15.6. INDEPENDENT CONTRACTORS. Each party shall perform its activities and duties hereunder only as an independent contractor. The parties and their personnel shall not be considered to be an employee or agent of the other party. Nothing in this Agreement shall be interpreted as granting either party the right or authority to make commitments of any kind for the other. This Agreement shall not constitute, create, or in any way be interpreted as a joint venture, partnership or formal business organization of any kind.

15.7. HEADINGS AND SECTION REFERENCES; CONSTRUCTION. The section headings in this Agreement are inserted only for convenience and are not to be construed as part of this Agreement or as a limitation of the scope of the particular section to which the heading refers. This Agreement will be fairly interpreted in accordance with its terms and conditions and not for or against either party.

15.8. GOVERNING LAW. This Agreement and the rights and duties of the parties will be governed by and interpreted in accordance with the laws of the State in which the System is installed.

15.9. ENTIRE AGREEMENT. This Agreement, including all Exhibits, constitutes the entire agreement of the parties regarding the subject matter hereof and supersedes all previous agreements, proposals, and understandings, whether written or oral, relating to such subject matter. This Agreement may be altered, amended, or modified only by a written instrument signed by authorized representatives of both parties. The preprinted terms and conditions found on any Customer purchase order, acknowledgment or other form will not be considered an amendment or modification of this Agreement, even if a representative of each party signs such document.

15.10. NOTICES. Notices required under this Agreement to be given by one party to the other must be in writing and either delivered in person or sent to the address shown below by certified mail, return receipt requested and postage prepaid (or by a recognized courier service with an asset tracking system, such as Federal Express, UPS, or DHL), or by facsimile with correct answerback received, and shall be effective upon receipt:

City of Fayetteville	Motorola, Inc.
Attn: _Ms. Kathy Stocker_____	Attn: *Steve Kumrow*_____
100-A W. Rock_____	_2212 W. Nashville St._____
Fayetteville, AR 72701_____	_Broken Arrow, OK 74012_____
fax: _____	fax: _____

15.11. COMPLIANCE WITH APPLICABLE LAWS. Each party will comply with all applicable federal, state, and local laws, regulations and rules concerning the performance of this Agreement or use of the System. Customer will obtain and comply with all FCC licenses and authorizations required for the

installation, operation and use of the System before the scheduled installation of the Equipment. Although Motorola might assist Customer in the preparation of its FCC license applications, neither Motorola nor any of its employees is an agent or representative of Customer in FCC or other matters.

15.12. AUTHORITY TO EXECUTE AGREEMENT. Each party represents to the other that (i) it has obtained all necessary approvals, consents and authorizations to enter into this Agreement and to perform its duties under this Agreement; (ii) the person executing this Agreement on its behalf has the authority to do so; (iii) upon execution and delivery of this Agreement by the parties, it is a valid and binding contract, enforceable in accordance with its terms; and (iv) the execution, delivery, and performance of this Agreement does not violate any bylaw, charter, regulation, law or any other governing authority of the party.

15.13. SURVIVAL OF TERMS. The following provisions shall survive the expiration or termination of this Agreement for any reason: Sections 3.6 and 3.7 (concerning Software licensing); Section 10 (Disputes); Section 13 (Limitation of Liability); 14.1 (Confidential Information); and 14.2 (Preservation of Motorola's Proprietary Rights).

The parties hereby enter into this Agreement as of the Effective Date.

Motorola, Inc.	**Customer**
By: Steven Palm	By: _____
Name: STEVE PALM	Name: _____
Title: AREA CONTROLLER	Title: _____
Date: 4-21-02	Date: _____

Exhibit A

Software License Agreement

Software License Agreement

Motorola, Inc., a Delaware corporation, through its Commercial, Government, and Industrial Solutions Sector ("Motorola" or "Licensor") or Printrak International, Incorporated, a Motorola company ("Printrak" or "Licensor"), and City of Fayetteville ("Licensee"), hereby enter into this Software License Agreement ("Agreement"). Motorola and Printrak are each authorized to execute this Agreement on behalf of the other. For good and valuable consideration, the parties agree as follows:

Section 1 SCOPE

Licensor will provide proprietary software and/or radio communications, computer, or other electronic products ("Products") containing embedded or pre-loaded proprietary software to Licensee. All such software that is owned by Motorola or Printrak is referred to as "Software." Product and Software documentation that specifies technical and performance features and capabilities, and the user, operation and training manuals for the Software (including all physical or electronic media upon which this information is provided) are collectively referred to as "Documentation." This Agreement contains the terms and conditions pursuant to which Licensor will license, and Licensee may use, the Software and Documentation.

Section 2 GRANT OF LICENSE

Licensor hereby grants to Licensee a personal, non-transferable (except as permitted in Section 8 below), and non-exclusive license under Licensor's applicable proprietary rights to use the Software and related Documentation for the purposes for which they were designed and in accordance with the terms and conditions of this Agreement. The license granted authorizes Licensee to use the Software only in object code format and does not grant any rights to source code.

Section 3 LIMITATIONS ON USE

3.1. Licensee may use the Motorola Software only for Licensee's internal business purposes and only in accordance with the Documentation. Any other use of the Software is strictly prohibited. Licensee may not for any reason modify, disassemble, peel components, decompile, otherwise reverse engineer or attempt to reverse engineer, derive source code, create derivative works from, adapt, translate, merge with other software, copy, reproduce, or export any Software or permit or encourage any third party to do so, except that Licensee may make one copy of Software provided by Licensor to be used solely for archival or back-up purposes. Licensee must reproduce all copyright and trademark notices on all copies of the Software and Documentation.

3.2. Licensee may not copy onto or transfer Software installed in one Product device onto another device. Notwithstanding the preceding sentence, Licensee may temporarily transfer Software installed on one device onto another if the original device is inoperable or malfunctioning, provided that Licensee provides written notice to Licensor of such temporary transfer and such temporary transfer is discontinued when the original device is returned to operation. Upon Licensor's written request, Licensee must provide to Licensor a written list of all Product devices in which the Software is installed and being used by Licensee.

3.3. Licensee must purchase a copy for each site at which Licensee uses Motorola's Radio Service Software (if applicable). Licensee may make one additional copy for each computer owned or controlled by Licensee at each such site. Upon written Motorola's request, Licensee must provide a written list of all sites where Licensee uses or intends to use Radio Service Software.

Section 4 OWNERSHIP AND TITLE

Title to all copies of Software will not pass to Licensee at any time but remains vested exclusively in Licensor. Licensor owns and retains all of its proprietary rights in any form concerning the Software and Documentation, including all rights in patents, patent applications, inventions, copyrights, trade secrets, trademarks, trade names, and other intellectual properties (including any corrections, bug fixes, enhancements, updates, or modifications to or derivative works from the Software whether made by Licensor or another party). Nothing in this Agreement is intended to restrict the proprietary rights of Licensor or to grant by implication or estoppel any proprietary rights. All intellectual property developed, originated, or prepared by Licensor in connection with providing to Licensee Software, Products, or related services remain vested exclusively in Licensor, and this Agreement does not grant to Licensee any shared development rights of intellectual property. This Agreement does not involve any software that is a "work made for hire."

Section 5 CONFIDENTIALITY

Licensee acknowledges that the Software and Documentation contain Licensor's proprietary and confidential information and trade secrets. Licensee will take necessary and appropriate precautions to maintain and guard the confidentiality of the Software and Documentation, using at least the same degree of care that Licensee applies to its own confidential information but not less than reasonable care. Precautions will include informing Licensee's employees and agents who are authorized to use the Software and Documentation that such information is confidential and may not to be disclosed to others. Licensee will not disclose the Software and Documentation to any third party except as permitted by this Agreement or expressly in writing by Licensor. Licensee will limit access to the Software and Documentation to Licensee's employees and agents who need to know and are authorized to use the Software and Documentation as permitted by this Agreement.

Section 6 LIMITED WARRANTY

6.1. If the Software is provided pursuant to a Communications System Agreement, Printrak-Suncoast System Agreement, Communications Products Agreement, or Printrak-Suncoast Products Agreement between Licensor and Licensee, the warranty period for the Software shall commence as stated in such agreement and will continue for one (1) year except as otherwise provided in this Section. For all other transactions, the warranty period will commence upon shipment of the Software and will continue for 120 days. For Software that is owned by Suncoast Scientific Incorporated, a Motorola company; Printrak's Law Records Management System software products; and Printrak's Premier CAD SE™ software products, the warranty period for such Software shall commence as stated in the applicable agreement and will continue for 120 days. For Software that is application software, the warranty period for subsequent units licensed is the remainder (if any) of the initial warranty period or, if the initial warranty period has expired, the remainder (if any) of the term of the applicable Software Maintenance and Support Agreement.

6.2. During the applicable warranty period, Licensor warrants that the Software, when used properly and in accordance with this Agreement, will be free from a reproducible defect that eliminates the functionality or successful operation of a feature critical to the primary functionality or successful operation of the system. For Software owned by Printrak, whether such defect occurs will be determined solely with reference to the Documentation. For Software involving radio frequency systems and Products, the primary functionality of a voice communication system is subscriber-to-subscriber, subscriber-to-dispatcher, and dispatcher-to-subscriber voice communication; and the primary functionality of a data communication system is point-to-point data transmission. Licensor does not warrant that Licensee's use of the Software or Products will be uninterrupted or error-free or that the Software or the Products will meet Licensee's particular requirements.

6.3. Before the expiration of the applicable warranty period, Licensee must notify Licensor in writing if the Motorola Software does not conform to this warranty. Upon receipt of such notice, Licensor will investigate the warranty claim. If this investigation confirms a valid warranty claim, Licensor will (at its option and at no additional charge to Licensee) repair the defect, replace the defective Software with the

same or equivalent software, or refund the price of the defective Software or individual Product in which the Software is embedded or for which it was provided. Such action will be the full extent of Licensor's liability and Licensee's sole remedy for a breach of this warranty. If the investigation indicates the warranty claim is not valid, then Licensor may invoice Licensee for responding to the claim on a time and materials basis using Licensor's current labor rates.

6.4. THIS WARRANTY EXTENDS ONLY TO THE FIRST LICENSEE. SUBSEQUENT TRANSFEREES MUST ACCEPT THE SOFTWARE "AS IS" AND WITH NO WARRANTIES OF ANY KIND. LICENSOR DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

Section 7 LIMITATION OF LIABILITY

EXCEPT FOR PERSONAL INJURY OR DEATH, LICENSOR'S TOTAL LIAIBLITY, WHETHER FOR BREACH OF CONTRACT, WARRANTY, NEGLIGENCE, STRICT LIABILTY IN TORT, OR OTHERWISE, WILL BE LIMITED TO LICENSEE'S DIRECT DAMAGES RECOVERABLE UNDER LAW, BUT NOT TO EXCEED THE PRICE FOR THE SOFTWARE, THE PRODUCTS PROVIDED BY LICENSOR IN WHICH THE SOFTWARE IS EMBEDDED OR INSTALLED, OR THE SERVICES SPECIFICALLY RELATED TO THE SOFTWARE WITH RESPECT TO WHICH LOSSES OR DAMAGES ARE CLAIMED. ALTHOUGH THE PARTIES ACKNOWLEDGE THE POSSIBILITY OF SUCH LOSSES OR DAMAGES, THEY AGREE THAT LICENSOR WILL NOT BE LIABLE FOR ANY COMMERCIAL LOSS, INCONVENIENCE; LOSS OF USE, TIME, DATA, GOOD WILL, REVENUES, PROFITS OR SAVINGS; OR OTHER SPECIAL, INCIDENTAL, INDIRECT, OR CONSEQUENTIAL DAMAGES ARISING FROM THIS AGREEMENT OR THE SALE OR USE OF ANY SOFTWARE OR PRODUCTS. This Limitation of Liability provision will survive the termination of this Agreement. Licensee must bring any action under this Agreement within one (1) year after the cause of action arises.

Section 8 TRANSFERS

Licensee may not transfer Software to any third party without Licensor's prior written consent, which consent may be withheld in Licensor's reasonable discretion and may be conditioned upon the transferee paying all applicable license fees and agreeing to be bound by this Agreement. Notwithstanding the preceding sentence, if Licensee transfers ownership of radio Products to a third party, Licensee may assign its rights to use the Software (other than Radio Service Software and Motorola's FLASHport® Software) embedded in or furnished for use with those radio Products; provided that Licensee transfers all copies of such Software and the related Documentation to the transferee, and the transferee executes a transfer form to be provided by Licensor upon request (which form obligates the transferee to be bound by this Agreement).

Section 9 TERM AND TERMINATION

Licensee's right to use the Software will begin when this Agreement is mutually executed by both parties and will continue in perpetuity unless terminated without notice by Licensor upon Licensee's breach of this Agreement. Licensee acknowledges that its breach of this Agreement will result in irreparable harm to Licensor for which monetary damages would be inadequate. Upon termination of this Agreement, Licensor will be entitled to immediate injunctive relief. Within thirty (30) days after termination of this Agreement, Licensee must certify in writing to Licensor that all copies of the Software and Documentation have been returned to Licensor or destroyed and are no longer in use by Licensee.

Section 10 NOTICES

Notices required under this Agreement to be given by one party to the other must be in writing and either delivered in person or sent to the address shown below by certified mail, return receipt requested and postage prepaid (or by a recognized courier service with an asset tracking system, such as Federal

Express, UPS, or DHL), and shall be effective upon receipt. Change of address must be in writing to the other party.

Licensee	Licensor
Attn: _____	Attn: _____
_____	_____
_____	_____

Section 11 GENERAL

11.1. COPYRIGHT NOTICES. The existence of a copyright notice on the Software will not be construed as an admission or presumption that public disclosure of the Software or any trade secrets associated with the Software has occurred.

11.2. COMPLIANCE WITH LAWS. Licensee will comply with all applicable laws and regulations, including export laws and regulations of the United States. Licensee will not, without the prior authorization of Licensor and the appropriate governmental authority of the United States, in any form export or re-export, sell or resell, ship or reship, or divert, through direct or indirect means, any item or technical data or direct or indirect products sold or otherwise furnished to any person within any territory for which the Unites States Government, or any agency thereof, at the time of such action, requires an export license or other governmental approval. Violation of this provision shall be a material breach of this Agreement, permitting immediate termination by Licensor.

11.3. WAIVERS. Failure or delay by either party to exercise any right or power under this Agreement will not operate as a waiver of such right or power. For a waiver of a right or power to be effective, it must be in writing signed by the waiving party. An effective waiver of a right or power shall not be construed as either a future or continuing waiver of that same right or power, or the waiver of any other right or power.

11.4. ASSIGNMENTS. Licensor may assign any of its rights or subcontract any of its obligations under this Agreement, or encumber or sell any of its rights in any Software, without prior notice to or consent of Licensee.

11.5. ENTIRE AGREEMENT AND AMENDMENT. This Agreement constitutes the entire agreement of the parties regarding Licensee's use of the Software and may be altered, amended, or modified only by a written instrument signed by an authorized representative of each party, except that Licensor may modify this Agreement as necessary to comply with applicable laws and regulations. This Agreement will be fairly interpreted in accordance with its terms and conditions and not for or against either party.

11.6. GOVERNING LAW. This Agreement will be governed by the laws of the United States to the extent that they apply and otherwise by the laws of the State to which the Software or Products are shipped.

11.7. SEVERABILITY. If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid or otherwise unenforceable, that provision will be severed and the remainder of this Agreement will remain in full force and effect.

In witness whereof, the parties have caused duly authorized representatives to execute this Software License Agreement on the dates set forth below.

Licensee	Licensor
By: _____	By: Steve Palm
Name: _____	Name: STEVE PALM
Title: _____	Title: AREA CONTROLLER
Date: _____	Date: 4-26-02

Exhibit B

Technical and Implementation Documents

ORDINANCE NO. _____

AN ORDINANCE AUTHORIZING THE ISSUANCE AND SALE OF NOT TO EXCEED $25,000,000 OF SALES AND USE TAX CAPITAL IMPROVEMENT BONDS, SERIES 2002, BY THE CITY OF FAYETTEVILLE, ARKANSAS FOR THE PURPOSE OF FINANCING A PORTION OF THE COST OF IMPROVEMENTS TO THE CITY'S WASTEWATER TREATMENT, SEWERAGE AND RELATED FACILITIES; AUTHORIZING THE EXECUTION AND DELIVERY OF A TRUST INDENTURE PURSUANT TO WHICH THE BONDS WILL BE ISSUED AND SECURED; AUTHORIZING THE EXECUTION AND DELIVERY OF AN OFFICIAL STATEMENT PURSUANT TO WHICH THE BONDS WILL BE OFFERED; AUTHORIZING THE EXECUTION AND DELIVERY OF A BOND PURCHASE AGREEMENT PROVIDING FOR THE SALE OF THE BONDS; AUTHORIZING THE EXECUTION AND DELIVERY OF A CONTINUING DISCLOSURE AGREEMENT; AND PRESCRIBING OTHER MATTERS RELATING THERETO.

WHEREAS, the City Council of the City of Fayetteville, Arkansas (the "City") has determined that there is a great need for a source of revenue to finance the costs of acquisition, construction, reconstruction, extension, improving and equipping of wastewater treatment plants, sewerage and related facilities (the "Project"); and

WHEREAS, the City is authorized and empowered under the provisions of the Constitution and laws of the State of Arkansas, including particularly Amendment 62 to the Constitution of the State of Arkansas ("Amendment 62") and Arkansas Code Annotated (1998 Repl. & 2001 Supp.) Sections 14-164-301 *et seq.* (as from time to time amended, the "Local Government Bond Act"), to issue and sell its capital improvement bonds to finance the costs of various capital improvements such as those comprising the Project, which capital improvement bonds may be secured by and payable from the receipts of the special city-wide sales and use tax authorized by the Local Government Bond Act; and

WHEREAS, pursuant to the provisions of Ordinance No. 4327 of the City, adopted and approved on August 7, 2001 (the "Election Ordinance"), there was submitted to the qualified electors of the City the question of the issuance of not to exceed $125,000,000 in aggregate principal amount of capital improvement bonds pursuant to Amendment 62 and the Local Government Bond Act to finance the Project improvements described in the Election Ordinance, said bonds to be secured by a pledge of and lien upon all of the receipts of a special city-wide sales and use tax levied at the rate of three-quarters of one percent (0.75%) pursuant to the Local Government Bond Act (the "Sales and Use Tax"); and

WHEREAS, at a special election held November 6, 2001, a majority of the qualified electors of the City voting on the question approved the issuance of said capital improvement bonds (and the corresponding levy of the Sales and Use Tax and the pledge of Sales and Use Tax receipts to the payment of the capital improvement bonds); and

WHEREAS, as authorized under the provisions of Amendment 62 and the Local Government Bond Act and as approved by the qualified electors of the City, the City has now determined to issue and sell its Sales and Use Tax Capital Improvement Bonds, Series 2002, in the principal amount of not to exceed $25,000,000 (the "Bonds"), in order to provide for the funding of a portion of the Project; and

WHEREAS, as authorized by the provisions of the Election Ordinance, the City has previously made arrangements for the sale of the Bonds to Stephens Inc., Little Rock, Arkansas (the "Underwriter"), pursuant to the terms of a Bond Purchase Agreement between the City and the Underwriter (the "Bond Purchase Agreement") in substantially the form presented to the City Council before this meeting;

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Fayetteville, Arkansas that:

Section 1. Under the authority of the Constitution and laws of the State of Arkansas, including particularly Amendment 62 to the Constitution of the State of Arkansas and the Local Government Bond Act, there is hereby authorized the issuance of bonds of the City to be designated as "Sales and Use Tax Capital Improvement Bonds, Series 2002" (the "Bonds"). The Bonds shall be issued in the original aggregate principal amount of not to exceed Twenty-Five Million Dollars ($25,000,000), shall mature not later than December 31, 2009, and shall bear interest at the rates specified in the Bond Purchase Agreement. The average yield on the Bonds as a whole shall not exceed 4.00% per annum, and the yield on no single Bond shall exceed 4.00%. The proceeds of the Bonds will be utilized to finance a portion of the cost of the acquisition, construction, reconstruction, extension, improving and equipping of the Project, to establish a debt service reserve for the Bonds or purchase a surety bond for reserve purposes, to pay a premium for bond insurance, if deemed economically beneficial, and to pay printing, underwriting, legal and other expenses incidental to the issuance of the Bonds. The Bonds shall be issued in the forms and denominations, shall be dated, shall be numbered, shall mature, shall be subject to redemption prior to maturity, and shall contain such other terms, covenants and conditions, all as set forth in the Trust Indenture submitted at this meeting.

The Mayor is hereby authorized and directed to execute and deliver the Bonds in one or more series, each series to be in substantially the form thereof contained in the Trust Indenture submitted to this meeting, and the City Clerk is hereby authorized and directed to execute and deliver the Bonds and to affix the seal of the City thereto, and the Mayor and City Clerk are hereby authorized and directed to cause the Bonds to be accepted and authenticated by the Trustee. The Mayor is hereby authorized to confer with the Trustee, the Underwriter and Kutak Rock LLP, Little Rock, Arkansas ("Bond Counsel"), in order to complete the Bonds in substantially the form contained in the Trust Indenture submitted at this meeting, with such changes as shall be approved by such persons executing the Bonds, their execution to constitute conclusive evidence of such approval.

Section 2. In order to pay the principal of and interest on the Bonds as they mature or are called for redemption prior to maturity, there is hereby pledged all of the receipts of the Sales and Use Tax levied by the Election Ordinance. The levy and collection of the Sales and Use Tax shall continue until such time as the Bonds are no longer outstanding or sufficient funds are on

deposit with the Trustee under the Trust Indenture to redeem the Bonds in full. The City covenants and agrees that all receipts from the Sales and Use Tax will be accounted for separately as special funds on the books of the City, and receipts of said Sales and Use Tax will be deposited and will be used solely as provided in the Trust Indenture.

Section 3. To prescribe the terms and conditions upon which the Bonds are to be executed, authenticated, issued, accepted, held and secured, the Mayor is hereby authorized and directed to execute and acknowledge a Trust Indenture (the "Trust Indenture"), by and between the City and Simmons First Trust Company, N.A., Pine Bluff, Arkansas (the "Trustee"), and the City Clerk is hereby authorized and directed to execute and acknowledge the Trust Indenture and to affix the seal of the City thereto, and the Mayor and the City Clerk are hereby authorized and directed to cause the Trust Indenture to be accepted, executed and acknowledged by the Trustee. The Trust Indenture is hereby approved in substantially the form submitted at this meeting, including, without limitation, the provisions thereof pertaining to the pledge of Sales and Use Tax receipts and the terms of the Bonds. The Mayor is hereby authorized to confer with the Trustee, the Underwriter and Bond Counsel in order to complete the Trust Indenture in substantially the form submitted at this meeting, with such changes as shall be approved by such persons executing the Trust Indenture, their execution to constitute conclusive evidence of such approval.

(Advice is given that a copy of the Trust Indenture in substantially the form authorized to be executed is on file with the City Clerk and is available for inspection by any interested person.)

Section 4. There is hereby authorized and approved a Preliminary Official Statement of the City, including the cover page and appendices attached thereto, relating to the Bonds. The Preliminary Official Statement is hereby "deemed final" by the City within the meaning of U.S. Securities and Exchange Commission Rule 15c2-12. The distribution of the Preliminary Official Statement is hereby approved. The Preliminary Official Statement, as amended to conform to the terms of the Bond Purchase Agreement, including Exhibit A thereto, and with such other changes and amendments as are mutually agreed to by the City and the Underwriter, is herein referred to as the "Official Statement," and the Mayor is hereby authorized to execute the Official Statement for and on behalf of the City. The Official Statement is hereby approved in substantially the form of the Preliminary Official Statement submitted at this meeting, and the Mayor is hereby authorized to confer with the Trustee, the Underwriter and Bond Counsel in order to complete the Official Statement in substantially the form of the Preliminary Official Statement submitted to this meeting, with such changes as shall be approved by such persons, the Mayor's execution to constitute conclusive evidence of such approval.

(Advice is given that a copy of the Preliminary Official Statement is on file with the City Clerk and is available for inspection by any interested person.)

Section 5. In order to prescribe the terms and conditions upon which the Bonds are to be sold to the Underwriter, the Mayor is hereby authorized and directed to execute a Bond Purchase Agreement on behalf of the City, to be dated as of the date of its execution (the "Bond Purchase Agreement"), by and between the City and the Underwriter, and the Bond Purchase Agreement is hereby approved in substantially the form submitted at this meeting, and the Mayor

is hereby authorized to confer with the Underwriter and Bond Counsel in order to complete the Bond Purchase Agreement in substantially the form submitted at this meeting, with such changes as shall be approved by such persons executing the Bond Purchase Agreement, their execution to constitute conclusive evidence of such approval.

(Advice is given that a copy of the Bond Purchase Agreement in substantially the form authorized to be executed is on file with the City Clerk and is available for inspection by any interested person.)

Section 6. In order to provide for continuing disclosure of certain financial and operating information with respect to the Sales and Use Tax and the City in compliance with the provisions of Rule 15c2-12 of the U. S. Securities and Exchange Commission, the Mayor is hereby authorized and directed to execute a Continuing Disclosure Agreement to be dated as of the date of its execution (the "Continuing Disclosure Agreement"), by and between the City and the Trustee, and the Mayor is hereby authorized and directed to cause the Continuing Disclosure Agreement to be executed by the Trustee. The Continuing Disclosure Agreement is hereby approved in substantially the form submitted at this meeting, and the Mayor is hereby authorized to confer with the Trustee, the Underwriter and Bond Counsel in order to complete the Continuing Disclosure Agreement in substantially the form submitted at this meeting, with such changes as shall be approved by such persons executing the Continuing Disclosure Agreement, their execution to constitute conclusive evidence of such approval.

(Advice is given that a copy of the Continuing Disclosure Agreement in substantially the form authorized to be executed is on file with the City Clerk and is available for inspection by any interested person.)

Section 7. In order to secure lower interest rates on the Bonds, the Underwriter has proposed that the City consider the purchase of a policy of bond insurance with a portion of the proceeds of the Bonds, which policy would guarantee the payment of the principal of and interest on the Bonds when due. If deemed economically advantageous by the Mayor, upon the advice of the Underwriter, the Mayor is hereby authorized to execute an insurance commitment and to do any and all things necessary to accomplish the delivery of a bond insurance policy with respect to the Bonds.

Section 8. The Mayor and City Clerk, for and on behalf of the City, are hereby authorized and directed to do any and all things necessary to effect the issuance, sale, execution and delivery of the Bonds and to effect the execution and delivery of the Trust Indenture, the Bond Purchase Agreement, the Official Statement, the Continuing Disclosure Agreement and a Tax Regulatory Agreement relating to the tax exemption of interest on the Bonds, and to perform all of the obligations of the City under and pursuant thereto. The Mayor and the City Clerk are further authorized and directed, for and on behalf of the City, to execute all papers, documents, certificates and other instruments that may be required for the carrying out of such authority or to evidence the exercise thereof.

Section 9. As previously provided in the Election Ordinance, Kutak Rock LLP, Little Rock, Arkansas, is hereby confirmed as Bond Counsel on behalf of the City in connection with the issuance and sale of the Bonds.

Section 10. The provisions of this Ordinance are hereby declared to be severable, and if any section, phrase or provision shall for any reason be declared to be illegal or invalid, such declaration shall not affect the validity of the remainder of the sections, phrases or provisions of this Ordinance.

Section 11. All ordinances, resolutions and parts thereof in conflict herewith are hereby repealed to the extent of such conflict.

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

APPROVED:

By: _____
DAN COODY, Mayor

ATTEST:

By: _____
Heather Woodruff, City Clerk

FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

113 W. Mountain St.
Fayetteville, AR 72701
Telephone: (479) 575-8264

PLANNING DIVISION CORRESPONDENCE

TO: Fayetteville City Council
FROM: Tim Conklin, City Planner
THRU: Hugh Earnest
DATE: April 30, 2002

BACKGROUND

RZN 02-9.00 was submitted by Julian & Jane Archer for property located at 2231 Markham Road. The property is zoned R-1, Low Density Residential and contains approximately 18.80 acres. RZN 02-12.00 was submitted by Julian & Jane Archer for property located at 2231 Markham Road. Both properties are zoned R-1, Low Density Residential and contain approximately 4.10 acres. The request is to rezone both to A-1, Agricultural.

The subject property was an area which housed horses and other barnyard animals for many generations until the late 1990's. At that time, the owners decided not to maintain horses on the property until a new barn could be constructed to replace one that was in poor repair. Because the property, as well as the acreage surrounding it, was zoned R-1 in 1970, once the animals were removed and six months passed, the non-conforming condition of permitting the animals in a residential zoning district was no longer a grandfathered right for the property owners.

Recently, a building permit was requested for a new barn for this applicant. The intent is to replace the old barn and to reestablish the use of the property for boarding and running horses owned by the property owners. Because of the current zoning of the property, staff made the applicants aware that the uses that they were proposing were not permitted and that a rezoning would be necessary. They have further offered a Bill of Assurance in order to guarantee that the property is not used for purposes in the future which may be undesirable, such as chicken houses, feed or hog lots, trailer park, cemetery, crematorium, mausoleum, hospital and convalescent home.

CURRENT STATUS

The Planning Commission voted 8-0-0 to recommend approval of the rezoning to the City Council subject to the Bill of Assurance offered by the applicant.

RECOMMENDATION

Staff and the Planning Commission recommend approval of the requested rezonings.

5. 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, I, _____, as the owner, developer or buyer (Petitioner) voluntarily offer all such assurances and sign my name below.

Julian Archer

April 29 '02
(1.) Date 2115 Markham
Fayetteville, AR 72701.

Jane Archer
Printed Name

(2.) 402-29th Street
Address
Des Moines, Ia. 50312

Signature

NOTARY OATH

STATE OF ARKANSAS)
COUNTY OF WASHINGTON)

And now on this the 29 day of April, 2002 appeared before me, Julian and Jane Archer and after being placed upon his/her oath swore or affirmed that he/she agreed with the terms of the above Bill of Assurance and signed his/her name above.

Commission Number 703111
My Commission Expires
Monica L. Bailey 4-29-02
NOTARY PUBLIC

My Commission Expires:
MAY 09, 2003

give us your name and go ahead and give us your presentation.

Winston: I don't have a presentation. My name is Winston and Winston and I live on the top of Markham Hill. Dr. Archer asked me to come and represent him. I have talked to him about the issue and I am really here to just answer any questions if I can if you have any.

Hoffman: Ok, thank you very much. Is there any member of the public that would wish to address us on this item? I don't see anybody so I will bring it back to the Commission and to the applicant for further discussion.

Hoover: I have got a question for staff, maybe just because I've never looked clearly at a Bill of Assurance. Shouldn't we be filling out item one and two with what the property shall be limited to? It seems to me it opens us up to a lot of things.

Conklin: Number three states specific activities will not be allowed on the Petitioner's property including...that is how it reads. This is a form that we give to the applicants to get into a form that is enforceable by the City of Fayetteville. That is how they filled it out.

Hoover: We don't fill out item number one?

Conklin: We can't ask for a Bill of Assurance. We give them a standard form and they fill it out, which states the activities will not include commercial chicken houses and the other items that were listed.

Hoover: So usually when we get a Bill of Assurance it doesn't have all the items categorized.

Warrick: In many situations an applicant will offer to limit the uses to a certain thing and in other situations they will offer to allow a certain thing on the property. It is basically up to the applicant as to how they choose to make an offering to the City with regard to restrictions. In this case they have chosen to restrict certain uses as opposed to limit to a certain thing.

Hoover: Does that open us up to other uses that we are not thinking about?

Conklin: I will read you what is in unit six. Agriculture, agricultural uses and services, Farm: Crop-Egg-Truck, Services: Hay baling, smoking, curing and selling of smoked or cured poultry and livestock, Sorting- packing and selling fruits, vegetables and flowers, Threshing. We removed cemetery, crematorium , mausoleum, Institutional Use: hospital, convalescent home. Unit Seven, animal husbandry, animal farms for show, breeding and training. Farms with livestock, livestock services, animal hospitals,

Conklin: They did not fill out that form in that manner. I would be more than happy to talk with Julian and Jane Archer regarding the concerns. I know they are in a hurry and I am not asking you to forward this if you would like me to talk to them further about that.

Motion:

Estes: The two rezoning requests before us, if we take dispositive action it will be forwarded to the City Council, our action is advisory only. This is just to restore the use as it previously existed. For those reasons I would move for approval of RZN 02-9.00 and 02-12.00.

Marr: I will second.

Hoffman: I have a motion by Commissioner Estes and a second by Commissioner Marr and I will add that in agreement I went up to the property today and I can remember back when it was a horse facility and it seems that that is a great use for it to get replaced. With that being said, if the staff could possibly work with the applicants on these other concerns as it goes forward through the process, before it gets to City Council.

Conklin: Sure, we will do that. I would like for the record to be clear which item you are voting on.

Hoffman: We are going to vote on them separately. We have a motion on both but I will go ahead and vote separately on each. Can I ask the motion and the second if that is ok to split your motions or did you intend to have them go forward together?

Estes: The movement will separate the motions into two different items, RZN 02-9.00 move for approval and then RZN 02-12.00 move for approval.

Hoffman: Thank you. Commissioner Marr?

Marr: I will second that.

Hoffman: Renee, would you call the roll?

Hoover: I have a question for our City Attorney because I want to understand. The letter that we have submitted with the Bill of Assurance, does that have any legal binding?

Whitaker: It would not because it is below the signature, it is not part of the Bill of Assurance. The signature boxes here are known as subscriptions on the Bill of Assurance. Anything coming after that would not be considered as

Conklin: Just one other aspect to this Bill of Assurance. When they met with City staff we did not tell them they had to do a Bill of Assurance. They asked us how, this rezoning how they could help alleviate some of the neighbor's concerns. We mentioned to them that other applicants have used a Bill of Assurance to avoid having concerns over some of the uses allowed in zoning districts and so that is exactly what I would be trying to do is to express to them some of your concerns and say "Is there any way?" I know what they want to do. They have plans and they have it all drawn up. They would like to have some horses up on that piece of property. Thank you.

Hoffman: Renee, would you call the roll please?

Roll Call: Upon the completion of roll call the motion to forward RZN 02-9.00 was approved by a vote of 8-0-0.

Hoffman: Thank you. The motion carries unanimously and it will be forwarded to the City Council at their next meeting.

April 25, 2002

To the members of the Fayetteville City Council:

We want very much to be present at the City Council meeting to which our rezoning request is being submitted, especially since the barn project and having horses is very important to us, but it would entail canceling my, Julian's, classes at Drake University where I teach, and a fast turnaround trip from Des Moines to Fayetteville for a few minutes of appearance before the Council.

We trust that our proposal will speak for itself and have, further, appointed as our representative Mr. Winston Winston who, as overseer of our property in Fayetteville, is knowledgeable and can answer most of the questions and concerns you may have. If you would like to visit the property before the zoning request is brought up at the May 7 Council meeting, please telephone Mr. Winston at 575-0136. He would be delighted to show you around. For your information, most of the property in question is not visible from the street, so the only possible way to see it is arrange for a visit.

Sincerely,

Julian Archer

Jane Archer

Jane Archer

April 25, 2002

To the members of the Fayetteville City Council:

We would like to request reimbursement for one of the two $325 fees we have paid to process our rezoning request. Since the two pastures for which we are requesting rezoning from R-1 to A-1 represent one combined proposal for the Planning Staff, one set of notices, one combined hearing by the Planning Commission and the City Council with little, if any, additional effort and expense than would have been required for just one of them, we are requesting a refund of the second $325 for the second pasture. The fee of $325 for one is already quite substantial, but $650 for essentially the same amount of work seems very steep indeed.

Sincerely,

Julian Archer

Jane Archer

PC Meeting of March 25, 2002

Appeal
C. 7. Page 1

FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS
113 W. Mountain St.
Fayetteville, AR 72701

Dandy/Schmitt, LSD

TO: Fayetteville City Council
THRU: Hugh Earnest, Urban Development Director
FROM: Tim Conklin, City Planner
DATE: April 30, 2002

BACKGROUND

LSD 02-7.00 was submitted by Glenn Carter of Carter & Associates on behalf of Brian Dandy and Robert Schmitt for property located at the southwest corner of Fletcher Avenue & Rodgers Drive. The property is zoned R-2, Medium Density Residential and contains approximately 1.01 acres with 9 units proposed.

TIME LINE FOR ROBERT SCHMITT

April 23, 2001 — **Planning Commission-** This property was before the Planning Commission on April 23, 2001 with a request not to provide the required street frontage for lots in an R-2 zone. Right-of-way for Center Street exists directly in front of this property and runs parallel to Fletcher Street. This waiver was **approved** subject to the project being processed as a large scale development and limited to six units.

June 14, 2001 — **Subdivision Committee-** The large scale development originally went to Subdivision Committee on June 14, 2001, there were six, four bedroom units on one half acre. The item was **tabled** due to design issues.

June 28, 2001 — **Subdivision Committee** - The item was reheard at the June 28, 2001 Subdivision Committee and was **forwarded** to Planning Commission. The applicant then decided to redesign the project which required a new review.

August 16, 2001 — **Subdivision Committee** - This new site plan included twelve units with 22 bedrooms and 22 parking spaces and was heard at the August 16, 2001 Subdivision Committee where it was **tabled** due to concerns over the proposed lift station.

November 1, 2001 — **Subdivision Committee** - The item was then heard at the November 1, 2001 Subdivision Committee meeting and was **forwarded** to the Planning Commission.

November 12, 2001 **Planning Commission** - The item was heard at the November 12, 2001 Planning Commission, where it was **tabled** pending a traffic study.

November 15, 2001 **Subdivision Committee** - The adjacent half acre parcel was heard at the November 15, 2001 Subdivision Committee, where it was **tabled** pending receipt of additional information.

March 25, 2002 **Planning Commission** - Both projects were then combined and redesigned into three single family dwellings and three duplexes for a total of nine, three bedroom units with 30 to 35 parking spaces for the entire 1 acre site. The project was **denied** by the Planning Commission as a result of a motion to approve the project failing to receive a majority vote with a vote of 4-5-0.

CURRENT STATUS

The applicant's have appealed the Planning Commission's denial of the large scale development to the City Council.

RECOMMENDATION

Staff recommended approval and the Planning Commission voted to approve the project failed on a vote of 4-5-0.

MEMBERS OF THE COUNCIL:

I AM JERRY HAVENS, AND I LIVE AT 809 LIGHTON TRAIL. I AM CONCERNED ABOUT THE INCREASED POTENTIAL FOR SERIOUS TRAFFIC ACCIDENTS IN THE VICINITY OF THE INTERSECTION OF LIGHTON TRAIL, OKLAHOMA WAY, FLETCHER STREET, AND RODGERS DRIVE ON MOUNT SEQUOYAH THAT I BELIEVE WILL RESULT FROM THE PROPOSED DEVELOPMENT BY MR. SCHMITT.

THE CITY ENGINEER'S OFFICE PREPARED FOR ME THE ATTACHED AERIAL PHOTOGRAPH OF THE INTERSECTION IN QUESTION AS WELL AS A TOPOGRAPHIC MAP OF THE INTERSECTION ON WHICH I HAVE DESIGNATED THE AREA PROPOSED FOR DEVELOPMENT.

I WISH TO CALL YOUR ATTENTION TO SEVERAL POINTS TO ENSURE THAT THE COUNCIL HAS THE INFORMATION WHICH I BELIEVE IT NEEDS TO ADDRESS THIS POTENTIAL SAFETY ISSUE.

1. THE INTERSECTION IS VERY COMPLEX BECAUSE NONE OF THE FOUR STREETS (EXCEPT, ARGUABLY, FLETCHER) COMES INTO THE INTERSECTION IN THE DIRECTION OF THE INTERSECTION'S CENTER. REGARDLESS OF WHICH DIRECTION YOU ENTER FROM, AND WHICH DIRECTION YOU DEPART IN, YOU MUST EXECUTE A TURN OR "JOG" TO NEGOTIATE THE INTERSECTION.

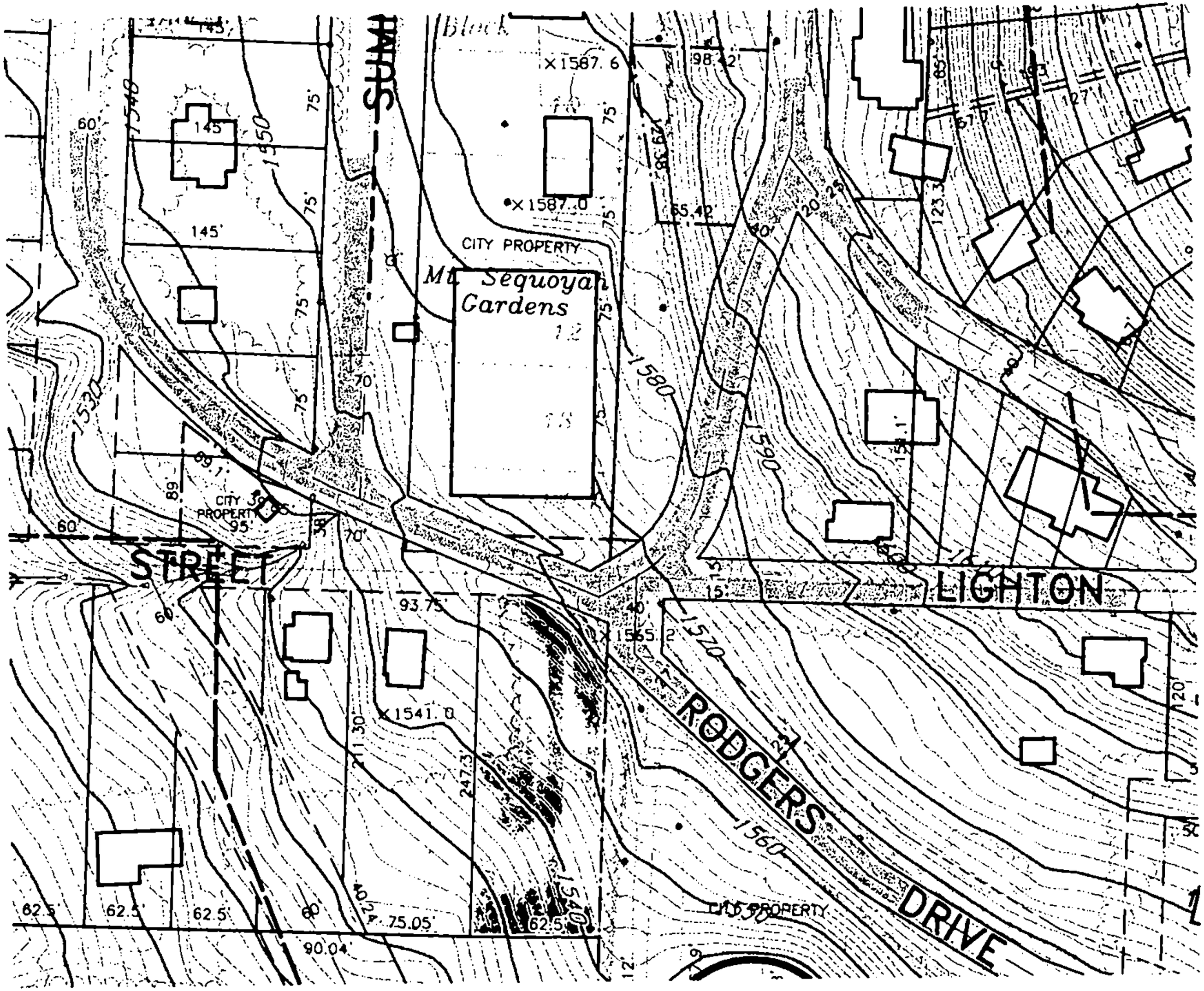
2. THE COMPLEXITY OF THE INTERSECTION IS MADE MORE DANGEROUS BY THE STEEP GRADES OF THE STREETS, PARTICULARLY OKLAHOMA WAY AND LIGHTON TRAIL. THE TOPO MAP SHOWS 2 FEET AND 10 FEET ELEVATION CONTOUR LEVELS IN THE AREA. BOTH OKLAHOMA WAY AND LIGHTON TRAIL BEGIN RISING IMMEDIATELY FROM THE INTERSECTION, AND BOTH STREETS RISE APPROXIMATELY 50 FEET IN THE APPROXIMATELY 350 FEET DISTANCE TO THE NEXT LEVEL GROUND – AN APPROXIMATE 15 PERCENT GRADE. THESE GRADES ARE STEEP, AND THEY MAKE IT DIFFICULT TO STOP A VEHICLE UNDER RAIN-SLICK CONDITIONS, AND PRACTICALLY IMPOSSIBLE TO STOP WITH SNOW/ICE COVER.

3. THE TOPOGRAPHICAL FEATURES RESULT IN POOR VISIBILITY OF THE INTERSECTION AND THE ROADS WHICH LEAD INTO IT.

4. THE ACTUAL STREET WIDTH IS SHADED (GRAY) THE OUTER "LIMITS" ARE THE RIGHT-OF-WAY. FOR EXAMPLE THE LIGHTON TRAIL RIGHT-OF-WAY IS 30 FEET WIDE, BUT THE STREET IS ONLY APPROXIMATELY 15 FEET WIDE.

5. THE DEVELOPMENT IN QUESTION, SHADED (ORANGE) FOR IDENTIFICATION, IS LOCATED IMMEDIATELY ADJACENT TO THE INTERSECTION.

6. IN MY OPINION, THE ADDITION OF THIRTY OR MORE VEHICLES TO THIS LOCATION, ALL OF WHICH I UNDERSTAND WILL HAVE TO DEPART AND ENTER THE PROPERTY IN THE IMMEDIATE VICINITY OF THIS INTERSECTION, WILL SERIOUSLY INCREASE AN EXISTING TRAFFIC HAZARD. I BELIEVE THAT IS UNACCEPTABLE.


SUMM
Block
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98.42'
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CITY PROPERTY
Mt. Sequoyah
Gardens
145'
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1548
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CITY PROPERTY
95'
STREET
93.75'
X1565.2
X1541.0
247.3
211.30'
40.24'
75.05'
90.04'
62.5'
62.5'
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CITY PROPERTY
RODGERS
DRIVE
LIGHTON
123.3'
127'
67.0'
85'
63'
20.25'
40'
15.1'
20'

ORDINANCE NO. _____

AN ORDINANCE AUTHORIZING THE ISSUANCE AND SALE OF NOT TO EXCEED $25,000,000 OF SALES AND USE TAX CAPITAL IMPROVEMENT BONDS, SERIES 2002, BY THE CITY OF FAYETTEVILLE, ARKANSAS FOR THE PURPOSE OF FINANCING A PORTION OF THE COST OF IMPROVEMENTS TO THE CITY'S WASTEWATER TREATMENT, SEWERAGE AND RELATED FACILITIES; AUTHORIZING THE EXECUTION AND DELIVERY OF A TRUST INDENTURE PURSUANT TO WHICH THE BONDS WILL BE ISSUED AND SECURED; AUTHORIZING THE EXECUTION AND DELIVERY OF AN OFFICIAL STATEMENT PURSUANT TO WHICH THE BONDS WILL BE OFFERED; AUTHORIZING THE EXECUTION AND DELIVERY OF A BOND PURCHASE AGREEMENT PROVIDING FOR THE SALE OF THE BONDS; AUTHORIZING THE EXECUTION AND DELIVERY OF A CONTINUING DISCLOSURE AGREEMENT; AND PRESCRIBING OTHER MATTERS RELATING THERETO.

WHEREAS, the City Council of the City of Fayetteville, Arkansas (the "City") has determined that there is a great need for a source of revenue to finance the costs of acquisition, construction, reconstruction, extension, improving and equipping of wastewater treatment plants, sewerage and related facilities (the "Project"); and

WHEREAS, the City is authorized and empowered under the provisions of the Constitution and laws of the State of Arkansas, including particularly Amendment 62 to the Constitution of the State of Arkansas ("Amendment 62") and Arkansas Code Annotated (1998 Repl. & 2001 Supp.) Sections 14-164-301 *et seq.* (as from time to time amended, the "Local Government Bond Act"), to issue and sell its capital improvement bonds to finance the costs of various capital improvements such as those comprising the Project, which capital improvement bonds may be secured by and payable from the receipts of the special city-wide sales and use tax authorized by the Local Government Bond Act; and

WHEREAS, pursuant to the provisions of Ordinance No. 4327 of the City, adopted and approved on August 7, 2001 (the "Election Ordinance"), there was submitted to the qualified electors of the City the question of the issuance of not to exceed $125,000,000 in aggregate principal amount of capital improvement bonds pursuant to Amendment 62 and the Local Government Bond Act to finance the Project improvements described in the Election Ordinance, said bonds to be secured by a pledge of and lien upon all of the receipts of a special city-wide sales and use tax levied at the rate of three-quarters of one percent (0.75%) pursuant to the Local Government Bond Act (the "Sales and Use Tax"); and

WHEREAS, at a special election held November 6, 2001, a majority of the qualified electors of the City voting on the question approved the issuance of said capital improvement bonds (and the corresponding levy of the Sales and Use Tax and the pledge of Sales and Use Tax receipts to the payment of the capital improvement bonds); and

WHEREAS, as authorized under the provisions of Amendment 62 and the Local Government Bond Act and as approved by the qualified electors of the City, the City has now determined to issue and sell its Sales and Use Tax Capital Improvement Bonds, Series 2002, in the principal amount of not to exceed $25,000,000 (the "Bonds"), in order to provide for the funding of a portion of the Project; and

WHEREAS, as authorized by the provisions of the Election Ordinance, the City has previously made arrangements for the sale of the Bonds to Stephens Inc., Little Rock, Arkansas (the "Underwriter"), pursuant to the terms of a Bond Purchase Agreement between the City and the Underwriter (the "Bond Purchase Agreement") in substantially the form presented to the City Council before this meeting;

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Fayetteville, Arkansas that:

Section 1. Under the authority of the Constitution and laws of the State of Arkansas, including particularly Amendment 62 to the Constitution of the State of Arkansas and the Local Government Bond Act, there is hereby authorized the issuance of bonds of the City to be designated as "Sales and Use Tax Capital Improvement Bonds, Series 2002" (the "Bonds"). The Bonds shall be issued in the original aggregate principal amount of not to exceed Twenty-Five Million Dollars ($25,000,000), shall mature not later than December 31, 2009, and shall bear interest at the rates specified in the Bond Purchase Agreement. The average yield on the Bonds as a whole shall not exceed 4.00% per annum, and the yield on no single Bond shall exceed 4.00%. The proceeds of the Bonds will be utilized to finance a portion of the cost of the acquisition, construction, reconstruction, extension, improving and equipping of the Project, to establish a debt service reserve for the Bonds or purchase a surety bond for reserve purposes, to pay a premium for bond insurance, if deemed economically beneficial, and to pay printing, underwriting, legal and other expenses incidental to the issuance of the Bonds. The Bonds shall be issued in the forms and denominations, shall be dated, shall be numbered, shall mature, shall be subject to redemption prior to maturity, and shall contain such other terms, covenants and conditions, all as set forth in the Trust Indenture submitted at this meeting.

The Mayor is hereby authorized and directed to execute and deliver the Bonds in one or more series, each series to be in substantially the form thereof contained in the Trust Indenture submitted to this meeting, and the City Clerk is hereby authorized and directed to execute and deliver the Bonds and to affix the seal of the City thereto, and the Mayor and City Clerk are hereby authorized and directed to cause the Bonds to be accepted and authenticated by the Trustee. The Mayor is hereby authorized to confer with the Trustee, the Underwriter and Kutak Rock LLP, Little Rock, Arkansas ("Bond Counsel"), in order to complete the Bonds in substantially the form contained in the Trust Indenture submitted at this meeting, with such changes as shall be approved by such persons executing the Bonds, their execution to constitute conclusive evidence of such approval.

Section 2. In order to pay the principal of and interest on the Bonds as they mature or are called for redemption prior to maturity, there is hereby pledged all of the receipts of the Sales and Use Tax levied by the Election Ordinance. The levy and collection of the Sales and Use Tax shall continue until such time as the Bonds are no longer outstanding or sufficient funds are on

deposit with the Trustee under the Trust Indenture to redeem the Bonds in full. The City covenants and agrees that all receipts from the Sales and Use Tax will be accounted for separately as special funds on the books of the City, and receipts of said Sales and Use Tax will be deposited and will be used solely as provided in the Trust Indenture.

Section 3. To prescribe the terms and conditions upon which the Bonds are to be executed, authenticated, issued, accepted, held and secured, the Mayor is hereby authorized and directed to execute and acknowledge a Trust Indenture (the "Trust Indenture"), by and between the City and Simmons First Trust Company, N.A., Pine Bluff, Arkansas (the "Trustee"), and the City Clerk is hereby authorized and directed to execute and acknowledge the Trust Indenture and to affix the seal of the City thereto, and the Mayor and the City Clerk are hereby authorized and directed to cause the Trust Indenture to be accepted, executed and acknowledged by the Trustee. The Trust Indenture is hereby approved in substantially the form submitted at this meeting, including, without limitation, the provisions thereof pertaining to the pledge of Sales and Use Tax receipts and the terms of the Bonds. The Mayor is hereby authorized to confer with the Trustee, the Underwriter and Bond Counsel in order to complete the Trust Indenture in substantially the form submitted at this meeting, with such changes as shall be approved by such persons executing the Trust Indenture, their execution to constitute conclusive evidence of such approval.

(Advice is given that a copy of the Trust Indenture in substantially the form authorized to be executed is on file with the City Clerk and is available for inspection by any interested person.)

Section 4. There is hereby authorized and approved a Preliminary Official Statement of the City, including the cover page and appendices attached thereto, relating to the Bonds. The Preliminary Official Statement is hereby "deemed final" by the City within the meaning of U.S. Securities and Exchange Commission Rule 15c2-12. The distribution of the Preliminary Official Statement is hereby approved. The Preliminary Official Statement, as amended to conform to the terms of the Bond Purchase Agreement, including Exhibit A thereto, and with such other changes and amendments as are mutually agreed to by the City and the Underwriter, is herein referred to as the "Official Statement," and the Mayor is hereby authorized to execute the Official Statement for and on behalf of the City. The Official Statement is hereby approved in substantially the form of the Preliminary Official Statement submitted at this meeting, and the Mayor is hereby authorized to confer with the Trustee, the Underwriter and Bond Counsel in order to complete the Official Statement in substantially the form of the Preliminary Official Statement submitted to this meeting, with such changes as shall be approved by such persons, the Mayor's execution to constitute conclusive evidence of such approval.

(Advice is given that a copy of the Preliminary Official Statement is on file with the City Clerk and is available for inspection by any interested person.)

Section 5. In order to prescribe the terms and conditions upon which the Bonds are to be sold to the Underwriter, the Mayor is hereby authorized and directed to execute a Bond Purchase Agreement on behalf of the City, to be dated as of the date of its execution (the "Bond Purchase Agreement"), by and between the City and the Underwriter, and the Bond Purchase Agreement is hereby approved in substantially the form submitted at this meeting, and the Mayor

is hereby authorized to confer with the Underwriter and Bond Counsel in order to complete the Bond Purchase Agreement in substantially the form submitted at this meeting, with such changes as shall be approved by such persons executing the Bond Purchase Agreement, their execution to constitute conclusive evidence of such approval.

(Advice is given that a copy of the Bond Purchase Agreement in substantially the form authorized to be executed is on file with the City Clerk and is available for inspection by any interested person.)

Section 6. In order to provide for continuing disclosure of certain financial and operating information with respect to the Sales and Use Tax and the City in compliance with the provisions of Rule 15c2-12 of the U. S. Securities and Exchange Commission, the Mayor is hereby authorized and directed to execute a Continuing Disclosure Agreement to be dated as of the date of its execution (the "Continuing Disclosure Agreement"), by and between the City and the Trustee, and the Mayor is hereby authorized and directed to cause the Continuing Disclosure Agreement to be executed by the Trustee. The Continuing Disclosure Agreement is hereby approved in substantially the form submitted at this meeting, and the Mayor is hereby authorized to confer with the Trustee, the Underwriter and Bond Counsel in order to complete the Continuing Disclosure Agreement in substantially the form submitted at this meeting, with such changes as shall be approved by such persons executing the Continuing Disclosure Agreement, their execution to constitute conclusive evidence of such approval.

(Advice is given that a copy of the Continuing Disclosure Agreement in substantially the form authorized to be executed is on file with the City Clerk and is available for inspection by any interested person.)

Section 7. In order to secure lower interest rates on the Bonds, the Underwriter has proposed that the City consider the purchase of a policy of bond insurance with a portion of the proceeds of the Bonds, which policy would guarantee the payment of the principal of and interest on the Bonds when due. If deemed economically advantageous by the Mayor, upon the advice of the Underwriter, the Mayor is hereby authorized to execute an insurance commitment and to do any and all things necessary to accomplish the delivery of a bond insurance policy with respect to the Bonds.

Section 8. The Mayor and City Clerk, for and on behalf of the City, are hereby authorized and directed to do any and all things necessary to effect the issuance, sale, execution and delivery of the Bonds and to effect the execution and delivery of the Trust Indenture, the Bond Purchase Agreement, the Official Statement, the Continuing Disclosure Agreement and a Tax Regulatory Agreement relating to the tax exemption of interest on the Bonds, and to perform all of the obligations of the City under and pursuant thereto. The Mayor and the City Clerk are further authorized and directed, for and on behalf of the City, to execute all papers, documents, certificates and other instruments that may be required for the carrying out of such authority or to evidence the exercise thereof.

Section 9. As previously provided in the Election Ordinance, Kutak Rock LLP, Little Rock, Arkansas, is hereby confirmed as Bond Counsel on behalf of the City in connection with the issuance and sale of the Bonds.

Section 10. The provisions of this Ordinance are hereby declared to be severable, and if any section, phrase or provision shall for any reason be declared to be illegal or invalid, such declaration shall not affect the validity of the remainder of the sections, phrases or provisions of this Ordinance.

Section 11. All ordinances, resolutions and parts thereof in conflict herewith are hereby repealed to the extent of such conflict.

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

APPROVED:

By: _____
DAN COODY, Mayor

ATTEST:

By: _____
Heather Woodruff, City Clerk

FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

ADMINISTRATIVE SERVICES DEPARTMENTAL CORRESPONDENCE

To: Mayor and City Council

From: Ted H. Webber, Director of Administrative Services

Date: April 19, 2002

Subject: Sales and Use Tax Bond Ordinance for the Wastewater System Improvements Project

Background

On November 6, 2001, voters of the City of Fayetteville approved a Sales and Use Tax to repay up to $125 million of sales tax bonds whose proceeds will, in turn, be used pay for the planning and construction of wastewater system improvements. The Arkansas Soil and Water Conservation Commission has earmarked up to $100 million for a State Revolving Fund (SRF) loan, at an interest rate of 3%, to partially finance the cost of these improvements. On the SRF application, the City requested funding for the entire project cost. However, the State agency did not award the entire requested amount and it cannot guarantee that future SRF funding will be available for the project cost not already set aside. This requires the City to consider the use of non-SRF financing for the remaining cost of the project.

The City's Financial Advisor, Stephens, Inc., has recommended that the City at this time issue additional bonds on the open market to cover this remaining cost and provide the City with the greatest flexibility to finance this project. The recommended approach is to issue $25 million in short term sales tax bonds and subsequently downsize the $100 million SRF loan as dictated by actual project costs. This short term approach is at very competitive interest rates and results in less overall interest costs for the project.

Why formulate a bond issue at this time? Amendment 62 to the Arkansas Constitution places a limit on the amount of interest that the City can pay on bonds that it issues. For any sales tax bonds issued to finance the costs of the Wastewater System Improvement Project, the constitution places a limit on bond interest paid, which is a maximum of 2% above the Federal Discount Rate on the date of the election when the tax collections were authorized by the voters. The election for the Water and Sewer Sales and Use Tax Bonds was November 6, 2001 and the Federal Discount Rate on that day was 2%. This means that, per the Arkansas Constitution, any bond issue that the City sells pursuant to the election on November 8, 2001, must have a coupon rate less than the mandated ceiling of 4%

Due to the uncertainties of the financial markets and their volatility, the City's ability to place these bonds within the constraints of Amendment 62 of the State Constitution may become severely limited. When bond rates rise, under these constitutional usury limits, the City is very limited in how much capital it can raise beyond the SRF loan proceeds which may be needed for the remaining unfunded Wastewater Systems Improvement Project cost. Therefore, the City has a real need to pursue a bond issue at this time. If the City does not pursue this in the immediate future, depending on the speed with which the bond rates rise, then the City may be prohibited forever from selling bonds that can be repaid by the Sales and Use Tax proceeds.

The project's implementation plan, as being developed by the Public Works Department, anticipates that significant expenditures will be required in the near term as the design, segmented construction and priority items of the project are completed. The $100 million SRF loan proceeds are not available to the City until the loan is closed, following the formal approval of the project's design and the bidding of the resultant contracts. Accordingly, the sale of this portion of the bonds now will provide interim funding for these required activities and will also be used to pay those costs that are not allowable under the SRF rules (these costs are generally for real estate easements and right-of-way acquisitions).

Recommendation:

On May 7, 2002, we recommend that the City Council pass the attached Bond Ordinance which will ensure that this bond issue can be sold expeditiously, thereby mitigating the negative impact of any rise in the bond rates that may be announced by the Federal Reserve Board in the future. The City's best financial interests are served by getting this bond issue to the market without delay.

ORDINANCE NO. _____

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WHEREAS, the City Council of the City of Fayetteville, Arkansas (the "City") has determined that there is a great need for a source of revenue to finance the costs of acquisition, construction, reconstruction, extension, improving and equipping of wastewater treatment plants, sewerage and related facilities (the "Project"); and

WHEREAS, the City is authorized and empowered under the provisions of the Constitution and laws of the State of Arkansas, including particularly Amendment 62 to the Constitution of the State of Arkansas ("Amendment 62") and Arkansas Code Annotated (1998 Repl. & 2001 Supp.) Sections 14-164-301 *et seq.* (as from time to time amended, the "Local Government Bond Act"), to issue and sell its capital improvement bonds to finance the costs of various capital improvements such as those comprising the Project, which capital improvement bonds may be secured by and payable from the receipts of the special city-wide sales and use tax authorized by the Local Government Bond Act; and

WHEREAS, pursuant to the provisions of Ordinance No. 4327 of the City, adopted and approved on August 7, 2001 (the "Election Ordinance"), there was submitted to the qualified electors of the City the question of the issuance of not to exceed $125,000,000 in aggregate principal amount of capital improvement bonds pursuant to Amendment 62 and the Local Government Bond Act to finance the Project improvements described in the Election Ordinance, said bonds to be secured by a pledge of and lien upon all of the receipts of a special city-wide sales and use tax levied at the rate of three-quarters of one percent (0.75%) pursuant to the Local Government Bond Act (the "Sales and Use Tax"); and

WHEREAS, at a special election held November 6, 2001, a majority of the qualified electors of the City voting on the question approved the issuance of said capital improvement bonds (and the corresponding levy of the Sales and Use Tax and the pledge of Sales and Use Tax receipts to the payment of the capital improvement bonds); and

WHEREAS, as authorized under the provisions of Amendment 62 and the Local Government Bond Act and as approved by the qualified electors of the City, the City has now determined to issue and sell its Sales and Use Tax Capital Improvement Bonds, Series 2002, in the principal amount of not to exceed $25,000,000 (the "Bonds"), in order to provide for the funding of a portion of the Project; and

WHEREAS, as authorized by the provisions of the Election Ordinance, the City has previously made arrangements for the sale of the Bonds to Stephens Inc., Little Rock, Arkansas (the "Underwriter"), pursuant to the terms of a Bond Purchase Agreement between the City and the Underwriter (the "Bond Purchase Agreement") in substantially the form presented to the City Council before this meeting;

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Fayetteville, Arkansas that:

Section 1. Under the authority of the Constitution and laws of the State of Arkansas, including particularly Amendment 62 to the Constitution of the State of Arkansas and the Local Government Bond Act, there is hereby authorized the issuance of bonds of the City to be designated as "Sales and Use Tax Capital Improvement Bonds, Series 2002" (the "Bonds"). The Bonds shall be issued in the original aggregate principal amount of not to exceed Twenty-Five Million Dollars ($25,000,000), shall mature not later than December 31, 2009, and shall bear interest at the rates specified in the Bond Purchase Agreement. The average yield on the Bonds as a whole shall not exceed 4.00% per annum, and the yield on no single Bond shall exceed 4.00%. The proceeds of the Bonds will be utilized to finance a portion of the cost of the acquisition, construction, reconstruction, extension, improving and equipping of the Project, to establish a debt service reserve for the Bonds or purchase a surety bond for reserve purposes, to pay a premium for bond insurance, if deemed economically beneficial, and to pay printing, underwriting, legal and other expenses incidental to the issuance of the Bonds. The Bonds shall be issued in the forms and denominations, shall be dated, shall be numbered, shall mature, shall be subject to redemption prior to maturity, and shall contain such other terms, covenants and conditions, all as set forth in the Trust Indenture submitted at this meeting.

The Mayor is hereby authorized and directed to execute and deliver the Bonds in one or more series, each series to be in substantially the form thereof contained in the Trust Indenture submitted to this meeting, and the City Clerk is hereby authorized and directed to execute and deliver the Bonds and to affix the seal of the City thereto, and the Mayor and City Clerk are hereby authorized and directed to cause the Bonds to be accepted and authenticated by the Trustee. The Mayor is hereby authorized to confer with the Trustee, the Underwriter and Kutak Rock LLP, Little Rock, Arkansas ("Bond Counsel"), in order to complete the Bonds in substantially the form contained in the Trust Indenture submitted at this meeting, with such changes as shall be approved by such persons executing the Bonds, their execution to constitute conclusive evidence of such approval.

Section 2. In order to pay the principal of and interest on the Bonds as they mature or are called for redemption prior to maturity, there is hereby pledged all of the receipts of the Sales and Use Tax levied by the Election Ordinance. The levy and collection of the Sales and Use Tax shall continue until such time as the Bonds are no longer outstanding or sufficient funds are on

deposit with the Trustee under the Trust Indenture to redeem the Bonds in full. The City covenants and agrees that all receipts from the Sales and Use Tax will be accounted for separately as special funds on the books of the City, and receipts of said Sales and Use Tax will be deposited and will be used solely as provided in the Trust Indenture.

Section 3. To prescribe the terms and conditions upon which the Bonds are to be executed, authenticated, issued, accepted, held and secured, the Mayor is hereby authorized and directed to execute and acknowledge a Trust Indenture (the "Trust Indenture"), by and between the City and a bank or other entity to be named having corporate trust powers (the "Trustee"), and the City Clerk is hereby authorized and directed to execute and acknowledge the Trust Indenture and to affix the seal of the City thereto, and the Mayor and the City Clerk are hereby authorized and directed to cause the Trust Indenture to be accepted, executed and acknowledged by the Trustee. The Trust Indenture is hereby approved in substantially the form submitted at this meeting, including, without limitation, the provisions thereof pertaining to the pledge of Sales and Use Tax receipts and the terms of the Bonds. The Mayor is hereby authorized to confer with the Trustee, the Underwriter and Bond Counsel in order to complete the Trust Indenture in substantially the form submitted at this meeting, with such changes as shall be approved by such persons executing the Trust Indenture, their execution to constitute conclusive evidence of such approval.

(Advice is given that a copy of the Trust Indenture in substantially the form authorized to be executed is on file with the City Clerk and is available for inspection by any interested person.)

Section 4. There is hereby authorized and approved a Preliminary Official Statement of the City, including the cover page and appendices attached thereto, relating to the Bonds. The Preliminary Official Statement is hereby "deemed final" by the City within the meaning of U.S. Securities and Exchange Commission Rule 15c2-12. The distribution of the Preliminary Official Statement is hereby approved. The Preliminary Official Statement, as amended to conform to the terms of the Bond Purchase Agreement, including Exhibit A thereto, and with such other changes and amendments as are mutually agreed to by the City and the Underwriter, is herein referred to as the "Official Statement," and the Mayor is hereby authorized to execute the Official Statement for and on behalf of the City. The Official Statement is hereby approved in substantially the form of the Preliminary Official Statement submitted at this meeting, and the Mayor is hereby authorized to confer with the Trustee, the Underwriter and Bond Counsel in order to complete the Official Statement in substantially the form of the Preliminary Official Statement submitted to this meeting, with such changes as shall be approved by such persons, the Mayor's execution to constitute conclusive evidence of such approval.

(Advice is given that a copy of the Preliminary Official Statement is on file with the City Clerk and is available for inspection by any interested person.)

Section 5. In order to prescribe the terms and conditions upon which the Bonds are to be sold to the Underwriter, the Mayor is hereby authorized and directed to execute a Bond Purchase Agreement on behalf of the City, to be dated as of the date of its execution (the "Bond Purchase Agreement"), by and between the City and the Underwriter, and the Bond Purchase Agreement is hereby approved in substantially the form submitted at this meeting, and the Mayor

is hereby authorized to confer with the Underwriter and Bond Counsel in order to complete the Bond Purchase Agreement in substantially the form submitted at this meeting, with such changes as shall be approved by such persons executing the Bond Purchase Agreement, their execution to constitute conclusive evidence of such approval.

(Advice is given that a copy of the Bond Purchase Agreement in substantially the form authorized to be executed is on file with the City Clerk and is available for inspection by any interested person.)

Section 6. In order to provide for continuing disclosure of certain financial and operating information with respect to the Sales and Use Tax and the City in compliance with the provisions of Rule 15c2-12 of the U. S. Securities and Exchange Commission, the Mayor is hereby authorized and directed to execute a Continuing Disclosure Agreement to be dated as of the date of its execution (the "Continuing Disclosure Agreement"), by and between the City and the Trustee, and the Mayor is hereby authorized and directed to cause the Continuing Disclosure Agreement to be executed by the Trustee. The Continuing Disclosure Agreement is hereby approved in substantially the form submitted at this meeting, and the Mayor is hereby authorized to confer with the Trustee, the Underwriter and Bond Counsel in order to complete the Continuing Disclosure Agreement in substantially the form submitted at this meeting, with such changes as shall be approved by such persons executing the Continuing Disclosure Agreement, their execution to constitute conclusive evidence of such approval.

(Advice is given that a copy of the Continuing Disclosure Agreement in substantially the form authorized to be executed is on file with the City Clerk and is available for inspection by any interested person.)

Section 7. In order to secure lower interest rates on the Bonds, the Underwriter has proposed that the City consider the purchase of a policy of bond insurance with a portion of the proceeds of the Bonds, which policy would guarantee the payment of the principal of and interest on the Bonds when due. If deemed economically advantageous by the Mayor, upon the advice of the Underwriter, the Mayor is hereby authorized to execute an insurance commitment and to do any and all things necessary to accomplish the delivery of a bond insurance policy with respect to the Bonds.

Section 8. The Mayor and City Clerk, for and on behalf of the City, are hereby authorized and directed to do any and all things necessary to effect the issuance, sale, execution and delivery of the Bonds and to effect the execution and delivery of the Trust Indenture, the Bond Purchase Agreement, the Official Statement, the Continuing Disclosure Agreement and a Tax Regulatory Agreement relating to the tax exemption of interest on the Bonds, and to perform all of the obligations of the City under and pursuant thereto. The Mayor and the City Clerk are further authorized and directed, for and on behalf of the City, to execute all papers, documents, certificates and other instruments that may be required for the carrying out of such authority or to evidence the exercise thereof.

Section 9. As previously provided in the Election Ordinance, Kutak Rock LLP, Little Rock, Arkansas, is hereby confirmed as Bond Counsel on behalf of the City in connection with the issuance and sale of the Bonds.

Section 10. The provisions of this Ordinance are hereby declared to be severable, and if any section, phrase or provision shall for any reason be declared to be illegal or invalid, such declaration shall not affect the validity of the remainder of the sections, phrases or provisions of this Ordinance.

Section 11. All ordinances, resolutions and parts thereof in conflict herewith are hereby repealed to the extent of such conflict.

PASSED and **APPROVED** this the day of May, 2002.

APPROVED:

By: _____
DAN COODY, Mayor

ATTEST:

By: _____
Heather Woodruff, City Clerk

MINUTES OF A MEETING OF THE CITY COUNCIL MARCH 19, 2002

A meeting of the City Council was held on March 19, 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 Santos, Jordan, Reynolds, Thiel, Young, and Davis, City Attorney Kit Williams, City Clerk Heather Woodruff, Staff, Press and Audience.

Mayor Coody stated Tim Conklin had been recognized at the 2002 Planner of the Year by the Arkansas Chapter of the American Planning Association.

NOMINATING COMMITTEE REPORT

REMOVED FROM THE AGENDA.

CONSENT

APPROVAL OF THE MINUTES

BID 02-12: A resolution awarding Bid No. 02-12, Item No. 1, 5000 lb. Forklift, to Yale Materials Handling Gammon Inc.

RESOLUTION 43-02 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

I-540 SEWER REPAIR: A resolution awarding the construction contract to 4-D Construction in the amount of $182,520 with a 15% contingency for a total of $209,898 and approval of a budget adjustment for sanitary sewer main replacement and repairs, I-540 crossing.

RESOLUTION 44-02 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

LIBRARY: A resolution approving a contract with Robert Kohler for owner's representative services for the construction of the new Fayetteville Public Library. The amount to be paid to the owner's representative shall not exceed $3000 monthly. The contract will expire on the date of final completion of the building.

RESOLUTION 45-02 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

ROLL-OFF CONTAINERS: A resolution approving the purchase of roll-off style containers for use by Solid Waste Customers from WasteQuip-MayFab. Purchase up to $50,000.

SW CLERK: A resolution authorizing to add part-time temporary clerk in Solid Waste.

RESOLUTION 46-02 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

POLICIES AND PROCEDURES: A resolution amending the Rules of Order and Procedure - Mayor / City Council, pertaining to the selection process for members of citizen committees.

RESOLUTION 48-02 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

BID 01-55: A resolution awarding the Item No. 1,2,3,4,5,7,9 and 10 in the amount of $991,835 to Ron Blackwell Ford and Item No. 8 and 11 in the amount of $105,622.80 to Landers Ford and approval of a budget adjustment.

RESOLUTION 49-02 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

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

OLD BUSINESS

RZN 02-1.00: An ordinance approving request RZN 02-1.00 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 rezone to R-1.5, Moderate Density Residential. The ordinance was tabled on the second reading at the March 5, 2002 meeting.

Alderman Davis moved to take the item off the table. Alderman Santos seconded. Upon roll call the motion carried unanimously.

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

Mr. Williams read the ordinance.

Mr. Brock Thompson, property owner, stated they had spent about six month evaluating where they wanted to do this project. He had family in Fayetteville, Arkansas. They had looked at the zoning. They had received a letter from the city stating this property was R-1.5 which would work for his project. He had held a neighborhood meeting in which twenty to twenty-five neighbors came along with several aldermen. At least fifty percent of the neighbors had changed their minds and were in favor of the project. With all the expansion going on in Fayetteville, it was only a matter of time before this property developed. He was not a professional builder or contractor. He was adding a lot of extras because he was trying to heighten the professionalism of the tenants that he wanted. Seventy-five percent of each unit would be brick. He was asking for a total of nine units. They were going to be nice. They were going to go above and beyond in the landscaping and the interiors. He presented a picture of the proposed project with landscaping.

Ms. Hanna stated the neighborhood association was requesting the property be left as R-1. They had met with Mr. Thompson at that meeting they had agreed unanimously that they would request the council to leave the property at R-1. She read a letter from Ms. Richards objecting the rezoning. She expressed concern about the increase in traffic. She had lived on Stevens for thirty years. There were a lot of others who had lived there twenty-five and thirty years. They were a permanent neighborhood.

Ms. Jeanie Sanderland, an area resident, stated she was concerned about the possible of triplexes. She was also concerned about the traffic and the destruction of trees on the property. She would like to see the property stay at its current zoning.

Mr. Palmer Alice, an area resident, stated he had lived there for approximately six years. This last year two triplexes had gone up. His concern with this project was that it would open the door for more properties to be developed. If there were the case, then he would ask them not to rezone this property. However, he understood that this was a mistake and that Mr. Thompson had purchased property understanding that the zoning was R-1.5. If that was the case, then he was entitled to build what he wanted to build. He did not have a problem with him and he liked what Mr. Thompson was proposing. He thought it would improve the neighborhood.

Mr. Conklin stated most of the rezoning activity that they had seen in that area had been on property that had been vacant or used for non-residential purposes in the past. They have not seen too much activity. The likelihood was not very high, when they had lots already developed with single-family homes. Garland Avenue was classified as a principle arterial. In the future, it was planned to be a four lane road and State highway. Typically, they did see a transition of different types of residential uses. Also, within their comprehensive plan it did talk about a mixture of residential type uses.

Mr. John David Lindsey, Lindsey and Associates, they had the property listed for sale. Their information had been that this property was R-1.5. Mr. Thompson had bought the property under that assumption. There was a second ingress and egress to this subdivision on the Mt. Comfort Road. He thought that would help with traffic, but this property being right on the corner of Garland, the R-1.5 zoning would be a perfect fit. This project will not affect the property values in that neighborhood.

Ms. Carla Grey, an area resident, stated this had been a mistake, but there were a lot of strong feelings over this issue. The neighborhood association was against spot rezoning, but they were divided on whether or not they believe that it should be left R-1 or if they should go R-1.5 as part of a larger plan. She asked what they could do about the existing triplex that was also a mistake.

Mr. Conklin stated what has occurred was that back in 1995 they took a 1970's map and digitized it. During that process, R-1.5 had been entered into that area. With regard to the previous triplexes being build, the error had not been discovered. This mistake had not been discovered until now. What they were doing now was going back and reviewing the rezoning. They were going to go back and look at thirty-two years worth of ordinances. From there they were going to bring back a zoning map for adoption. They have not address the issue of the triplexes in the R-1 zoning district. They were there, they were permitted, they were built and occupied. He did not have the answers on how to justify the past mistakes.

Alderman Jordan stated the neighbors were concerned about how this area was going to be rezoned.

Mr. Conklin stated in their General Plan, that the council adopted in 1995 it stated they would look at industrial, Heavy Industrial area, identify them and determine whether or not those need to remain I-1. The first neighborhood that they had looked at was west of the square. It has transitioned from two active rail lines to one active rail lines. The process was to work with the neighborhood

associations to identify. He was concerned with them saying they were going to rezone the entire city. There were many areas that were not zoned industrial that were currently zoned. It was not his intention to rezone the entire city. They were working with neighborhoods. This was going to come from the neighborhoods to them. It was not going to be them telling the industrial neighborhoods what to do. It was a pilot process, they have not done this in thirty-two years. They will improve on the process and they will continue the process. He may need more help in the future too. This was going to take more and more staff time.

Ms. Mona York, an area resident, stated her property adjoined this property on the east side. She had originally signed the petition, since then she has seen what was proposed. She did not object to this at all. She did not see how this was going to harm her. She thought it might make the area a little more beautiful. She did not have any problem getting out onto Garland.

Ms. Sawyer, an area resident, stated she supported the development. The area was going to develop anyway. She hoped that it would be an improvement to the neighborhood.

Ms. Ada Washington, an area resident, stated she would love to see something come in as pretty as this in their neighborhood. She had lived there twenty years and she had not see anything positive happen there. She was definitely for the development. The last ten years had been terrible. This seemed positive to him.

Mr. Scott Roberts, an area resident, stated Mr. Thompson had purchased the property based on it being R-1.5, information that had been given out by the city. He wanted to be able to trust the system. He wanted to be able to make investments in the future himself. He wanted to be able to rely on the information given to him.

Mr. Greg Henry, an area resident, stated he was relying on the city's records of zoning to invest in property. He did not believe they should be able to change what has been committed to Mr. Thompson. He was in favor of this project.

Ms. Terry Faylyn, an area resident, stated she has lived here for sixteen years. The city had made a mistake and she felt for Mr. Thompson, but she wanted to remind the council that the other people in the neighborhood also purchased their property with the understanding that neighborhood was zoned R-1.

Ms. Bolin, an area resident, stated that the other property owners had purchased their property with the assurance that it was R-1. When Mayor Coody ran for office, he had stated that he would support neighborhood associations and he would listen to them. This association was opposed to this. No every one in the neighborhood was at the meeting, but those that vote decide for the rest of them. They were opposed to this. They would like to keep this neighborhood a post-war expansion neighborhood with affordable housing.

Mr. Osburn stated a vote on this rezoning was not setting a precedent on any other rezoning. He felt if the same mistake had not happen on the triplexes, they would not be facing so much opposition. R-1.5 made perfect since as a transition from Garland to the neighborhood.

Mr. Thompson stated he had made every effort to talk to as many people as possible. He has

proposed a Bill of Assurance on some of things that he has committed to. He had previously committed to a Bill of Assurance saying nine units. He was now committing to other things that they talked about at the neighborhood meeting that he could make work for the bank. Which was all the extras, single level, with landscaping, trees, privacy fence, and security system.

Mayor Coody asked if that included using the design that he was presenting tonight?

Mr. Thompson replied he was trying to elevate the amount of professionalism that he was going to attract into that area. These will rent from a thousand to eleven hundred per month.
He had spent $160,000 on this property that for the past eight years been zoned R-1.5. If he reduced the number of units he would not be able to spend as much money on materials. He would not be able to do brick and put in as many sixteen foot trees as he wanted or the security system.

Mr. Williams stated it would require five affirmative votes for this to pass. He noted there were two members missing.

Mr. Thompson stated he would be in favor of waiting two more weeks.

Alderman Davis moved to table the item for two more weeks. Alderman Santos seconded.

Alderman Young stated he would like to see from both sides of the homeowners. It appeared to him that the neighborhood was split. He would like to hear from every one.

Upon roll call the motion carried unanimously.

ORDINANCE WAS TABLED ON THE THIRD READING.

CIVIL SERVICE: An ordinance adding two additional members to the Fayetteville Civil Service Commission. The ordinance was tabled on the third reading at the March 5, 2002 meeting.

Alderman Santos moved to take the item off the table. Alderman Jordan seconded. The motion carried unanimously.

Alderman Thiel stated she thought adding two commissioners would better reflect their increase size and the diversity of our city. Commissioners had six-year terms and they had five commissioners. They had seven applicants for the one open position. People were willing and qualified and had the time.

Alderman Davis stated he was opposed to it because trying to get that many people together would be more difficult. He had spoken to three of the commissioners. They had all told him that there was no reason to add any more members. It was hard enough now to get meeting times arranged. There were times when they had to meet for three or four consecutive days, all day. They had very good applicants, but there were a few who were surprised when they told them they would need two or three days. He had not heard from the police force.

Alderman Thiel stated she had spoken with Tad Scott, FOP, and stated he was in favor of this. They were still supporting this.

Alderman Reynolds stated he could not support this. What they had now was working well.

Mayor Coody asked shall the ordinance pass. Upon roll call the ordinance passed by a vote of 5-2, Reynolds and Davis voting nay and Mayor Coody voting yea.

ORDINANCE 4379 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

INDUSTRIAL PARK LANDS: An ordinance amending the ordinance establishing the formal process for the sale of municipally owned real property by defining industrial park lands. The ordinance was left on the second reading at the March 5, 2002 meeting.

Mr. Williams read the ordinance as amended.

Alderman Young stated the only thing that bothered him was that this amended the first ordinance. When they passed that ordinance, it had been represented to the council that there was a map with prices of lots on it. He had asked for that and never gotten that.

Mayor Coody stated they were currently selling the property for $20,000 per acre.

Alderman Young requested an official map with the prices.

Mayor Coody stated one of the problems that they had run into was that they would try and sell some acreage, but as soon as they buy the lot, the city would require them to build sidewalk or to put in sewer lines. They have run into situation where they might have to rethink their position, where they had to change the price of the acre to $23,000 and include in that the price of getting the work done, so they would not have to pay to get the work done.

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

ORDINANCE 4380 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

ADM 01-47.00: A resolution to approve ADM 01-47.00 to update census data; the community facilities section; and an annexation policy; and reorganize the General Plan 2020 for easier use. The resolution was tabled at the March 5, 2002 meeting.

Mr. Conklin introduced Ms. Shelly Rushing from the Planning Division who was responsible for their long range planning, ordinances that implement their General Plan, and has worked with Tree and Trails Task Force. She will be presenting the General Plan 2020 update and the annexation policy.

Ms. Rushing presented the major changes to the plan. The majority of the changes were in the census data and the housing data. She explained the purpose of the plan and the new annexation policy. The purpose of the annexation section was to introduce policy regarding annexations. They were taking a more proactive approach to their annexation by identifying potential annexation areas and establishing policy and criteria for reviewing those requests.

In response to Alderman Young's request to replace "should" with "shall", Mr. Williams stated this was a guiding plan. Most guiding plans did not require things, they recommended things. He thought "shall" might be a little misleading. He did not believe they could give a directive with just a plan.

Alderman Young stated they were guiding policies, but he questioned how often it would be done, occasionally or every time.

Mr. Williams stated if the city did not follow this, it would not be fatal to their annexation, however, it might give someone an opportunity to try and attack them.

Alderman Young stated he was looking at from the view point of information provided to the Planning Commission, the council and the public.

Mr. Conklin stated the planning staff had made sure that annexation went to different divisions. They were pretty much doing a study. They will formalize the process as they go forward. They wanted to make sure that they understood that they understand what they were doing with regard to annexation. These are the things the council asked staff to bring forward to them to consider. They should make their decisions based on these policies. He added they will see these reports as annexations occur.

Alderman Young moved to change the word, "should" to "shall" in 11.6.b. Alderman Reynolds seconded. Upon roll call the motion failed by a vote of 3-3, Santos, Thiel and Davis voting nay.

Alderman Santos moved to pass the resolution. Alderman Jordan seconded. The motion carried unanimously.

RESOLUTION 50-02 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

MCCLELLAND ENGINEERING: A resolution authorizing McClelland Engineering to proceed with their contract for I-540 Business/Technology Park. The original resolution was passed at the February 5, 2002 meeting.

Mayor Coody gave a presentation updating the progress of the project. He stated the Arkansas Game and Fish Commission was very interested in locating their regional facility out here. They would want to have an educational component built in. The city would also be able to build some trails.

Mr. Emmanuel Barns, EGIS, stated the proposed conservation area was about one hundred acres that would be set aside by Corp of Engineers permit and by the conservation agreement from the U.S. Fish and Wildlife service. A large portion of the area would be newly created wetlands. He thought this was very proactive. In response to questions from Alderman Thiel, Mr. Barns stated the total area delineated and confirmed by the Corp of Engineers was approximately eighty-four acres of wetlands. About forty-five acres would be impacted. There was about thirty-five to thirty-seven acres that was wetland that must be mitigated. If that impact did not occur, then the whole concept of having a conservation area.

Alderman Thiel stated it would not cost them as much if they just left it and did not mitigate it.

Mr. Barns stated of they just preserved the area it would not give them the opportunity to take Clabbar Creek and recreate more stream habitat rather than a lake.

Mr. Tom McKinney stated he had found an area that looked like prairie grass land. It was very rare. He suggested that they try and preserve the area.

Mr. Dumas stated they were asking the council to let them proceed with their preliminary plat work. McClelland will come up with at least three designs which would be presented to the council for review. From there they would prepare a final preliminary plat.

Alderman Thiel stated she would like to see three proposals that showed a broad diversity. She wanted to see this project move forward. She noted in their contract there was a budget item of $1,380 for a field trip to observe a similar wetland project.

In response to questions, Mr. Dumas stated McClelland would be drawing up three preliminary designs with preliminary costs.

Mr. Tom McKinney, Sierra Club, stated they had some concerns. It was very difficult to find where things were on the property. There were no markers or way to tell exactly where they were and what was planned to be developed. They were concerned about the area close to Wilson Springs. They also wanted to preserve the prairie they had found.

Ms. Andrea Radwell, an area resident, expressed concern about the wetlands and the floodplain. She questioned what they planned to mitigate.

Mr. Jeff Erf, an area resident, questioned why the city wanted to be able to open bids in October of 2002.

Mayor Coody stated they had two grants that had be obligated within one year.

Mr. Erf stated he had not been able to find the terms and conditions of the grant and had not been provided the information. He had called the administrator of the grant. There was no time limit on the money, according the person he talked to. He wanted to see the documentation that if in fact that was the case. He was also concerned that there was no business plan for this project. It had also gone from the Technology Park to a Business Technology park. What kind of tentants did they expect. What kind of jobs were going to be provided out there.

Mayor Coody stated they were coming up with three different options. If they did not know what the plan was, how could they estimate what it was going to cost. They did not have the information yet because they kept taking it back to the public input process. They had gone completely back to the drawing board. They already had one client interested, the Arkansas Game and Fish Commission.

Mr. Robert Ferrel, Chamber of Commerce, stated the Chamber of Commerce had been working with the city and had been trying to find common grounds on this 540 park. It was a great opportunity to preserve nature and combine the business together.

Mr. Jim Bemis, an area resident, stated they wanted to have the research and business people together. He asked how they were going to further develop the site as a business park. He asked who was going to pay for the infrastructure.

Mr. Bill Ramsey, Chamber of Commerce, stated the Fish and Game people were meeting here tomorrow. They were waiting on the City. They would be a great draw for what they were trying to do out there.

Ms. Barbara Moorman, an area resident, stated they were relying on people who had a financial interest. They had hired someone to advise them on what to do and they were the same people who would be doing the work. She felt this was on the fast tract. They were starting something before they knew what they were doing. In the past officials had denied that there were problems with the land at all. She quoted from minutes stating that there were no problems with flooding on the property. The residents opposed to the rezoning of this property were the only ones who noted the problems with the flooding and the wetland. There were still unanswered questions.

Ms. Fran Alexander, an area resident, stated the environmental community has not been included.

Ms. Radwell stated she felt it had been very difficult for them to be involved in this process. They had never been consulted.

Ms. Alexander stated she quoted from the February 5, 2002 minutes regarding "team". She felt they had been left off the team. The team was not happening. They were just saying that it was.
Mr. Barns stated he could recall a number of meetings that they had had with Andrea and several other agencies. He had seen an evolution of this project. They had opened their arms up to the environmental community. He was totally for environmental protection, but they wanted to live in reality. They had to work together.

In response to questions from Alderman Thiel, Mr. Dumas stated they would make several places on the site so people could orientate themselves on the site.

Mr. Joe Tarban, McClelland, stated they were the implementers of what the city and EGIS come up with. They had no preconceived notations of how this should be done. They did not want to make a mistake any more than they did. They had not gotten to the part in the contract where they look at soils. So they really did not know what was out there. They had looked at some county soils maps. They had abandoned conventional means. The only problem that he could see was that someone had to referee. Someone had to make decisions. They could meet and discuss for a long time, but someone had to decide what they were going to do. If they get bogged down trying to decide what the options were, that could become a problem. He was very open to meeting with anyone who wanted to be apart of this thing. They wanted to come up with something they could all be proud of.

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

RESOLUTION 51-02 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

NEW BUSINESS

RZN 02-5.00: An ordinance approving rezoning request RZN 02-5 as submitted by Shawki Al-Madoun of Northstar Engineering Consultants on behalf of Fadil Bayyari for property located west of I-540 and south of Point West Phase I and east of Pine Valley Phase I. The property is zoned I-1, Heavy Commercial / Light Industrial and R-2, Medium Density Residential and contains approximately 14.84 acres. The request is to rezone to R-1.5, Moderate Density Residential.

Mr. Williams read the ordinance for the first time.

Alderman Jordan asked for them to leave this on the first reading, since most of the public had left.

Ms. Sue Jenson, an area resident, stated her association was concerned about drainage and traffic. Thirty-four lots had been planned for a total of sixty-eight units. They would like to have some definite feelings from the city about how they were going to handle this. They were asking the council to table this issue until they had time to find out more information.

Mr. Chad Calson, an area resident, stated typically he would agree that down zoning from an industrial to a residential would be a good thing. They had originally proposed duplexes and connecting his neighborhood and this neighborhood. They were asking for some assurances that there would be some minimum standards set for those duplexes. He has refused to do that. He questioned what kind of duplexes they were going to have. They were going to see those duplexes from 540.

Mr. Fidal Bayyari, owner, stated his proposal was for 1200 square foot per side for these duplexes. They were going to be brick. Some of the lots were going to be small. He would be doing two story duplexes out there. Because of the price of the land the extra cost in development that by the time the duplexes were finished the property values in the neighborhood would increase. The traffic issue was a concern to the neighbors but it would be an enhancement to the city because they were going to open that road to take Shiloh all the way to Hwy 16. He proposed to the neighbors a set of covenants that would be put in place to protect their interest. They would have control over the builders. The neighbors were asking for a set of assurances from him to go with the land. In the past, he gave a bill of assurance and it came to haunt him later. The property now was useless.

Mr. Conklin stated they could have restrictive covenants , they can be filed. The property owners could vote to change them. There was no guarantee that what they see today may not be the same tomorrow. The city did not enforce covenants.

An area resident, questioned why Mr. Bayyari was not willing to give them a bill of assurance. They were willing to work with them.

Mr. Williams stated they could not dictate to developers once the property is zoned meet the minimum requirements.

Mr. Conklin stated the staff's job once the zoning decision was made was to tell the developer what

they had to do to comply with their ordinances. Once they complied with those ordinances, then they would recommend approval. Their job was to tell them how to get their developments approved based on their current ordinances. They could not negotiate.

Mr. Jim Owen, an area resident, stated he was concerned that they had only seen a draft of covenance. Those could only be enforced by an attorney that they would hire. They would have no power after it was written. It could be changed. He also requested a bill of assurance.

ORDINANCE WAS LEFT ON THE FIRST READING.

WATER AND SEWER REVENUE BONDS: An ordinance authorizing the issuance of $10,250,000 of Water and Sewer Revenue Bonds to refund the City's 1994 and 2000 Water and Sewer Revenue Bonds and authorizing the issuance and execution of a Trust Indenture, and Official Statement, a Bond Purchase Agreement, an Escrow Agreement, and a Continuing Disclosure Agreement.

Mr. Hunt stated the ordinance attempted to accomplish three things. The first was that the city had outstanding debt, Gross Revenue Rate, during the time they were working with them on the sales tax issue, the subject came up. Basically, it required them to increase rates much more than they would have too if they had a Net Revenue Rate. Secondly, it was to provide fixed rate financing on some of their short-term variable rate financing that they had issued in the past. We believe short-term rates were going to go up fairly significantly in the short term and they believed now was the time to lock in. Third, they had an issue of which the interest rate by reissuing at this point in time will be reduced from the current rate that was outstanding. They had three issues that were outstanding for Water and Sewer Revenue Bonds: Series 1994 ($3,215,000), Series 1999 ($7,350,000), and Series 2000 (10,000,000). This ordinance would address the Series 1994 and the Series 2000. Approximately May 2004 they will want to address their 1999 issue. Each of those bond issues have a gross revenue covenant.

Mr. Williams read the ordinance for the first time.

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

Mr. Williams read the ordinance for the second time.

Alderman Davis 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 for the third and final time.

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

ORDINANCE 4381 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

BULK TRASH DISPOSAL: An ordinance amending collection charges for bulk brush disposal.

Mr. Williams read the ordinance.

Alderman Young 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.

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

Mr. Williams read the ordinance.

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

ORDINANCE 4382 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

DDEP: A resolution awarding the construction contract to Township Builders based upon the result of March 5, 2002 construction contract bid opening for Dickson Street Improvements.

Mr. Boettcher, Public Works Director, stated they had five bids on March 5. Three were not responsive. Two were. The low bid was by Township Builders of Little Rock. Their base bid was $3,011,368.30 with two deductive alternates that eliminated scoring concrete and welcome mats at the buildings. If they take the alternates the bid becomes $2,948,590.30. The funds that they had on hand includes city funds, Dickson Street Improvement District and the Razorback Foundations, so they ended up with $3,068,864 available for the project. All parties involved are recommending an award of the contract to Township Builders with the deductive alternates.

Randy Richy, Atkins Benham, stated Township Builders had worked on a couple projects in Fort Smith, very similar to this project in which traffic was minimally affect. They have also done a similar project for the city of Little Rock and they had been well pleased with them.

Mr. Williams asked Mr. Richy if he had checked into the legalities of the bids and if it was his opinion that they were not allowed to accept some of the other bids.

Mr. Richy stated there were other bids that were numerically lower, but they had been rendered non responsive. Certain Federally required documents had not been submitted. Their hands were tied. It was a mandate.

Alderman Jordan asked how much business will be brought in because of this investment.

Ms. Ackerman stated the project itself was a response to about 65 million dollars of private investment on the street in the last ten years, since the building of the Walton Art Center.

Alderman Young questioned the phasing the project.

Mr. Richy stated they had presented the contract with a suggested sequence of construction. Their purpose of that was to make them aware going into the bid that they could not treat this job as an interstate. They were not going to hold them to it. They were going to ask them for a plan. Their main purpose was to keep the district open and working. It was going to difficult, but if they could keep those work areas short and finish the work section completely, then the merchants and users can see the finished product.

Alderman Davis moved to award the bid to Township Builders. Alderman Santos seconded. Upon roll call the motion carried unanimously.

RESOLUTION 52-02 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

CDBG: A resolution accepting the 2002 Community Development Block Grant in the amount of $647,000 and approval of the sub-recipient grant agreements with the Fayetteville Boys and Girls Club, Fayetteville Public Library, and Habitat for Humanity.

Mr. Ernest stated what they were being asked to approve was three of four sub-recipient grant agreements. They had some questions with the South Fayetteville Development Corporation. They had met with them and they could resolve those issue with respect to reporting and conformance with Federal and city regulations.

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

RESOLUTION 53-02 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

BOYS AND GIRLS CLUB: An ordinance waiving the requirements of competitive bidding and approving a contractual agreement between the City of Fayetteville and the Fayetteville Youth Center, Inc. in the amount of $68,000 to provide water service to Donald W. Reynolds Boys and Girls Club facility and $17,900 for a temporary haul road.

Mr. Williams read the ordinance.

Alderman Davis 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.

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

Mr. Williams read the ordinance.

Mayor Coody asked shall the ordinance pass. Upon roll call the motion carried unanimously.
ORDINANCE 4383 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

Meeting adjourned at 11:50 p.m.

PC Meeting of March 25, 2002

FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS
113 W. Mountain St.
Fayetteville, AR 72701

Dandy/Schmitt, LSD

TO: Fayetteville City Council
THRU: Hugh Earnest, Urban Development Director
FROM: Tim Conklin, City Planner
DATE: April 30, 2002

BACKGROUND

LSD 02-7.00 was submitted by Glenn Carter of Carter & Associates on behalf of Brian Dandy and Robert Schmitt for property located at the southwest corner of Fletcher Avenue & Rodgers Drive. The property is zoned R-2, Medium Density Residential and contains approximately 1.01 acres with 9 units proposed.

TIME LINE FOR ROBERT SCHMITT

April 23, 2001 — **Planning Commission-** This property was before the Planning Commission on April 23, 2001 with a request not to provide the required street frontage for lots in an R-2 zone. Right-of-way for Center Street exists directly in front of this property and runs parallel to Fletcher Street. This waiver was **approved** subject to the project being processed as a large scale development and limited to six units.

June 14, 2001 — **Subdivision Committee-** The large scale development originally went to Subdivision Committee on June 14, 2001, there were six, four bedroom units on one half acre. The item was **tabled** due to design issues.

June 28, 2001 — **Subdivision Committee** - The item was reheard at the June 28, 2001 Subdivision Committee and was **forwarded** to Planning Commission. The applicant then decided to redesign the project which required a new review.

August 16, 2001 — **Subdivision Committee** - This new site plan included twelve units with 22 bedrooms and 22 parking spaces and was heard at the August 16, 2001 Subdivision Committee where it was **tabled** due to concerns over the proposed lift station.

November 1, 2001 — **Subdivision Committee** - The item was then heard at the November 1, 2001 Subdivision Committee meeting and was **forwarded** to the Planning Commission.

November 12, 2001 **Planning Commission** - The item was heard at the November 12, 2001 Planning Commission, where it was **tabled** pending a traffic study.

November 15, 2001 **Subdivision Committee** - The adjacent half acre parcel was heard at the November 15, 2001 Subdivision Committee, where it was **tabled** pending receipt of additional information.

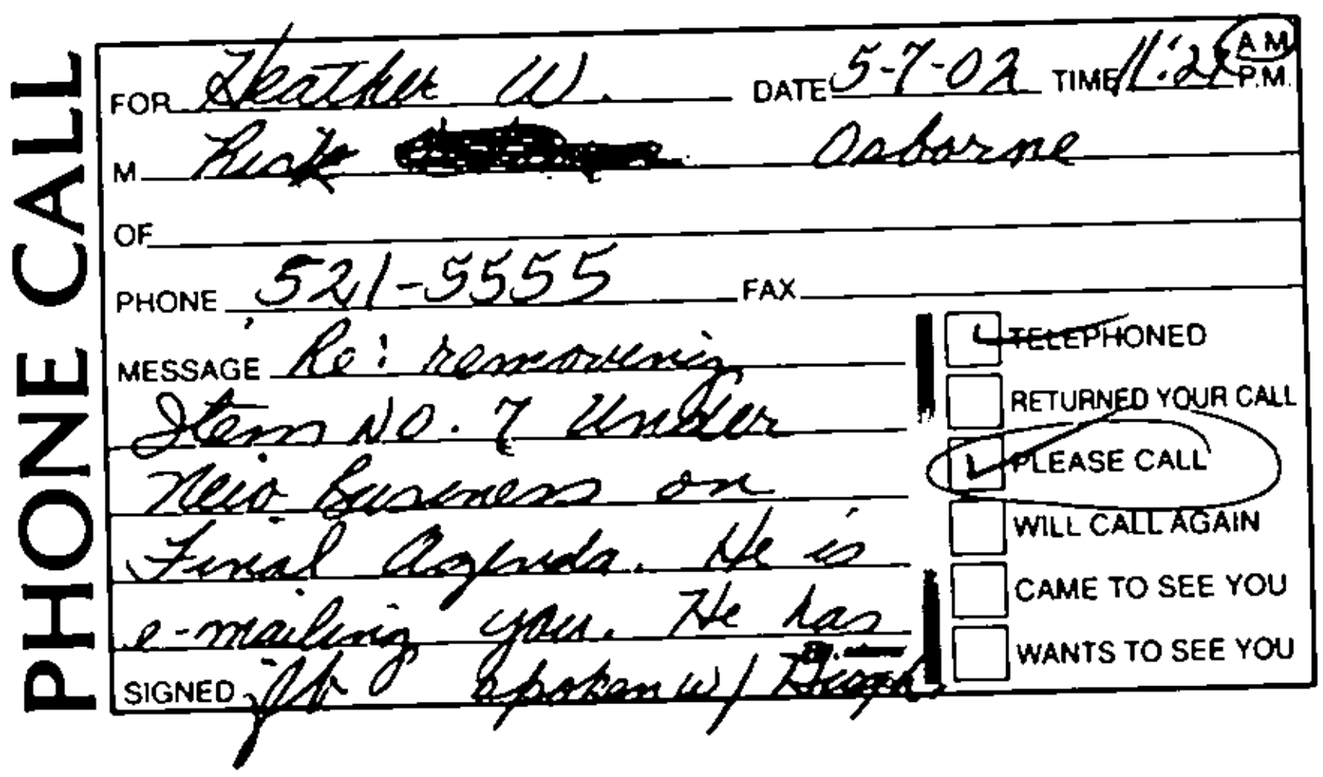
March 25, 2002 **Planning Commission** - Both projects were then combined and redesigned into three single family dwellings and three duplexes for a total of nine, three bedroom units with 30 to 35 parking spaces for the entire 1 acre site. The project was **denied** by the Planning Commission as a result of a motion to approve the project failing to receive a majority vote with a vote of 4-5-0.

CURRENT STATUS

The applicant's have appealed the Planning Commission's denial of the large scale development to the City Council.

RECOMMENDATION

- Staff recommended approval and the Planning Commission voted to approve the project failed on a vote of 4-5-0.


PHONE CALL
FOR Heather W. DATE 5-7-02 TIME 11:21 A.M. P.M.
M Rick [redacted] Osborne
OF
PHONE 521-5555 FAX
MESSAGE Re: removing Item No. 7 Under New Business on Final Agenda. He is e-mailing you. He has
SIGNED JB spoken w/ Diego
TELEPHONED
RETURNED YOUR CALL
PLEASE CALL
WILL CALL AGAIN
CAME TO SEE YOU
WANTS TO SEE YOU

From: "Richard P. Osborne" <RPOLaw@Lawyer.com>
To: "Fayetteville City Clerk" <hwoodruff@ci.fayetteville.ar.us>
Date: 5/7/02 12:02PM
Subject: Schmitt Appeal

Hon. Heather Woodruff
Fayetteville City Clerk
By E-Mail

Re: Schmitt Appeal

Dear Ms. Woodruff:

Based on the need for additional research and unavailability of witnesses, we respectfully request a continuance in the hearing of our appeal until the second meeting in June, 2002.

Rick

Richard P. Osborne, Attorney
26 East Center Street
Fayetteville, AR 72701

Office 479-521-5555
Fax 479-444-0000

From: "Richard P. Osborne" <RPOLaw@Lawyer.com>
To: "Fayetteville City Clerk" <hwoodruff@ci.fayetteville.ar.us>
Date: 5/7/02 12:02PM
Subject: Schmitt Appeal

Hon. Heather Woodruff
Fayetteville City Clerk
By E-Mail

Re: Schmitt Appeal

Dear Ms. Woodruff:

Based on the need for additional research and unavailability of witnesses, we respectfully request a continuance in the hearing of our appeal until the second meeting in June, 2002.

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FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

113 W. Mountain St.
Fayetteville, AR 72701
Telephone: (479) 575-8264

PLANNING DIVISION CORRESPONDENCE

TO: Fayetteville City Council
FROM: Tim Conklin, City Planner
THRU: Hugh Earnest
DATE: April 30, 2002

BACKGROUND

RZN 02-9.00 was submitted by Julian & Jane Archer for property located at 2231 Markham Road. The property is zoned R-1, Low Density Residential and contains approximately 18.80 acres. RZN 02-12.00 was submitted by Julian & Jane Archer for property located at 2231 Markham Road. Both properties are zoned R-1, Low Density Residential and contain approximately 4.10 acres. The request is to rezone both to A-1, Agricultural.

The subject property was an area which housed horses and other barnyard animals for many generations until the late 1990's. At that time, the owners decided not to maintain horses on the property until a new barn could be constructed to replace one that was in poor repair. Because the property, as well as the acreage surrounding it, was zoned R-1 in 1970, once the animals were removed and six months passed, the non-conforming condition of permitting the animals in a residential zoning district was no longer a grandfathered right for the property owners.

Recently, a building permit was requested for a new barn for this applicant. The intent is to replace the old barn and to reestablish the use of the property for boarding and running horses owned by the property owners. Because of the current zoning of the property, staff made the applicants aware that the uses that they were proposing were not permitted and that a rezoning would be necessary. They have further offered a Bill of Assurance in order to guarantee that the property is not used for purposes in the future which may be undesirable, such as chicken houses, feed or hog lots, trailer park, cemetery, crematorium, mausoleum, hospital and convalescent home.

CURRENT STATUS

The Planning Commission voted 8-0-0 to recommend approval of the rezoning to the City Council subject to the Bill of Assurance offered by the applicant.

RECOMMENDATION

Staff and the Planning Commission recommend approval of the requested rezonings.

5. 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, I, _____, as the owner, developer or buyer (Petitioner) voluntarily offer all such assurances and sign my name below.

Julian Archer

April 29 '02
(1.) Date 2115 Markham Fayetteville, AR 72701.

Jane Archer
Printed Name

(2.) 402-29th Street
Address
Des Moines, Ia. 50312

Jane Archer
Signature

NOTARY OATH

STATE OF ARKANSAS)
COUNTY OF WASHINGTON)

And now on this the 29 day of April, 2002 appeared before me, Julian and Jane Archer and after being placed upon his/her oath swore or affirmed that he/she agreed with the terms of the above Bill of Assurance and signed his/her name above.

Commission Number 700111
My Commission Expires
Marcia L. Burley 4-29-02
NOTARY PUBLIC

My Commission Expires:
MAY 09, 2003

give us your name and go ahead and give us your presentation.

Winston: I don't have a presentation. My name is Winston and Winston and I live on the top of Markham Hill. Dr. Archer asked me to come and represent him. I have talked to him about the issue and I am really here to just answer any questions if I can if you have any.

Hoffman: Ok, thank you very much. Is there any member of the public that would wish to address us on this item? I don't see anybody so I will bring it back to the Commission and to the applicant for further discussion.

Hoover: I have got a question for staff, maybe just because I've never looked clearly at a Bill of Assurance. Shouldn't we be filling out item one and two with what the property shall be limited to? It seems to me it opens us up to a lot of things.

Conklin: Number three states specific activities will not be allowed on the Petitioner's property including...that is how it reads. This is a form that we give to the applicants to get into a form that is enforceable by the City of Fayetteville. That is how they filled it out.

Hoover: We don't fill out item number one?

Conklin: We can't ask for a Bill of Assurance. We give them a standard form and they fill it out, which states the activities will not include commercial chicken houses and the other items that were listed.

Hoover: So usually when we get a Bill of Assurance it doesn't have all the items categorized.

Warrick: In many situations an applicant will offer to limit the uses to a certain thing and in other situations they will offer to allow a certain thing on the property. It is basically up to the applicant as to how they choose to make an offering to the City with regard to restrictions. In this case they have chosen to restrict certain uses as opposed to limit to a certain thing.

Hoover: Does that open us up to other uses that we are not thinking about?

Conklin: I will read you what is in unit six. Agriculture, agricultural uses and services, Farm: Crop-Egg-Truck, Services: Hay baling, smoking, curing and selling of smoked or cured poultry and livestock, Sorting- packing and selling fruits, vegetables and flowers, Threshing. We removed cemetery, crematorium , mausoleum, Institutional Use: hospital, convalescent home. Unit Seven, animal husbandry, animal farms for show, breeding and training. Farms with livestock, livestock services, animal hospitals,

Conklin: They did not fill out that form in that manner. I would be more than happy to talk with Julian and Jane Archer regarding the concerns. I know they are in a hurry and I am not asking you to forward this if you would like me to talk to them further about that.

Motion:

Estes: The two rezoning requests before us, if we take dispositive action it will be forwarded to the City Council, our action is advisory only. This is just to restore the use as it previously existed. For those reasons I would move for approval of RZN 02-9.00 and 02-12.00.

Marr: I will second.

Hoffman: I have a motion by Commissioner Estes and a second by Commissioner Marr and I will add that in agreement I went up to the property today and I can remember back when it was a horse facility and it seems that that is a great use for it to get replaced. With that being said, if the staff could possibly work with the applicants on these other concerns as it goes forward through the process, before it gets to City Council.

Conklin: Sure, we will do that. I would like for the record to be clear which item you are voting on.

Hoffman: We are going to vote on them separately. We have a motion on both but I will go ahead and vote separately on each. Can I ask the motion and the second if that is ok to split your motions or did you intend to have them go forward together?

Estes: The movement will separate the motions into two different items, RZN 02-9.00 move for approval and then RZN 02-12.00 move for approval.

Hoffman: Thank you. Commissioner Marr?

Marr: I will second that.

Hoffman: Renee, would you call the roll?

Hoover: I have a question for our City Attorney because I want to understand. The letter that we have submitted with the Bill of Assurance, does that have any legal binding?

Whitaker: It would not because it is below the signature, it is not part of the Bill of Assurance. The signature boxes here are known as subscriptions on the Bill of Assurance. Anything coming after that would not be considered as

Conklin: Just one other aspect to this Bill of Assurance. When they met with City staff we did not tell them they had to do a Bill of Assurance. They asked us how, this rezoning how they could help alleviate some of the neighbor's concerns. We mentioned to them that other applicants have used a Bill of Assurance to avoid having concerns over some of the uses allowed in zoning districts and so that is exactly what I would be trying to do is to express to them some of your concerns and say "Is there any way?" I know what they want to do. They have plans and they have it all drawn up. They would like to have some horses up on that piece of property. Thank you.

Hoffman: Renee, would you call the roll please?

Roll Call: Upon the completion of roll call the motion to forward RZN 02-9.00 was approved by a vote of 8-0-0.

Hoffman: Thank you. The motion carries unanimously and it will be forwarded to the City Council at their next meeting.

April 25, 2002

To the members of the Fayetteville City Council:

We want very much to be present at the City Council meeting to which our rezoning request is being submitted, especially since the barn project and having horses is very important to us, but it would entail canceling my, Julian's, classes at Drake University where I teach, and a fast turnaround trip from Des Moines to Fayetteville for a few minutes of appearance before the Council.

We trust that our proposal will speak for itself and have, further, appointed as our representative Mr. Winston Winston who, as overseer of our property in Fayetteville, is knowledgeable and can answer most of the questions and concerns you may have. If you would like to visit the property before the zoning request is brought up at the May 7 Council meeting, please telephone Mr. Winston at 575-0136. He would be delighted to show you around. For your information, most of the property in question is not visible from the street, so the only possible way to see it is arrange for a visit.

Sincerely,

Julian Archer

Jane Archer

Jane Archer

April 25, 2002

To the members of the Fayetteville City Council:

We would like to request reimbursement for one of the two $325 fees we have paid to process our rezoning request. Since the two pastures for which we are requesting rezoning from R-1 to A-1 represent one combined proposal for the Planning Staff, one set of notices, one combined hearing by the Planning Commission and the City Council with little, if any, additional effort and expense than would have been required for just one of them, we are requesting a refund of the second $325 for the second pasture. The fee of $325 for one is already quite substantial, but $650 for essentially the same amount of work seems very steep indeed.

Sincerely,

Julian Archer

Jane Archer

PC Meeting of March 25, 2002

Appeal
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FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS
113 W. Mountain St.
Fayetteville, AR 72701

Dandy/Schmitt, LSD

TO: Fayetteville City Council
THRU: Hugh Earnest, Urban Development Director
FROM: Tim Conklin, City Planner
DATE: April 30, 2002

BACKGROUND

LSD 02-7.00 was submitted by Glenn Carter of Carter & Associates on behalf of Brian Dandy and Robert Schmitt for property located at the southwest corner of Fletcher Avenue & Rodgers Drive. The property is zoned R-2, Medium Density Residential and contains approximately 1.01 acres with 9 units proposed.

TIME LINE FOR ROBERT SCHMITT

April 23, 2001 — **Planning Commission-** This property was before the Planning Commission on April 23, 2001 with a request not to provide the required street frontage for lots in an R-2 zone. Right-of-way for Center Street exists directly in front of this property and runs parallel to Fletcher Street. This waiver was **approved** subject to the project being processed as a large scale development and limited to six units.

June 14, 2001 — **Subdivision Committee-** The large scale development originally went to Subdivision Committee on June 14, 2001, there were six, four bedroom units on one half acre. The item was **tabled** due to design issues.

June 28, 2001 — **Subdivision Committee** - The item was reheard at the June 28, 2001 Subdivision Committee and was **forwarded** to Planning Commission. The applicant then decided to redesign the project which required a new review.

August 16, 2001 — **Subdivision Committee** - This new site plan included twelve units with 22 bedrooms and 22 parking spaces and was heard at the August 16, 2001 Subdivision Committee where it was **tabled** due to concerns over the proposed lift station.

November 1, 2001 — **Subdivision Committee** - The item was then heard at the November 1, 2001 Subdivision Committee meeting and was **forwarded** to the Planning Commission.

November 12, 2001 **Planning Commission** - The item was heard at the November 12, 2001 Planning Commission, where it was **tabled** pending a traffic study.

November 15, 2001 **Subdivision Committee** - The adjacent half acre parcel was heard at the November 15, 2001 Subdivision Committee, where it was **tabled** pending receipt of additional information.

March 25, 2002 **Planning Commission** - Both projects were then combined and redesigned into three single family dwellings and three duplexes for a total of nine, three bedroom units with 30 to 35 parking spaces for the entire 1 acre site. The project was **denied** by the Planning Commission as a result of a motion to approve the project failing to receive a majority vote with a vote of 4-5-0.

CURRENT STATUS

The applicant's have appealed the Planning Commission's denial of the large scale development to the City Council.

RECOMMENDATION

Staff recommended approval and the Planning Commission voted to approve the project failed on a vote of 4-5-0.

MINUTES OF A MEETING OF THE CITY COUNCIL MARCH 19, 2002

A meeting of the City Council was held on March 19, 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 Santos, Jordan, Reynolds, Thiel, Young, and Davis, City Attorney Kit Williams, City Clerk Heather Woodruff, Staff, Press and Audience.

Mayor Coody stated Tim Conklin had been recognized at the 2002 Planner of the Year by the Arkansas Chapter of the American Planning Association.

NOMINATING COMMITTEE REPORT

REMOVED FROM THE AGENDA.

CONSENT

APPROVAL OF THE MINUTES

BID 02-12: A resolution awarding Bid No. 02-12, Item No. 1, 5000 lb. Forklift, to Yale Materials Handling Gammon Inc.

RESOLUTION 43-02 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

I-540 SEWER REPAIR: A resolution awarding the construction contract to 4-D Construction in the amount of $182,520 with a 15% contingency for a total of $209,898 and approval of a budget adjustment for sanitary sewer main replacement and repairs, I-540 crossing.

RESOLUTION 44-02 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

LIBRARY: A resolution approving a contract with Robert Kohler for owner's representative services for the construction of the new Fayetteville Public Library. The amount to be paid to the owner's representative shall not exceed $3000 monthly. The contract will expire on the date of final completion of the building.

RESOLUTION 45-02 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

ROLL-OFF CONTAINERS: A resolution approving the purchase of roll-off style containers for use by Solid Waste Customers from WasteQuip-MayFab. Purchase up to $50,000.

SW CLERK: A resolution authorizing to add part-time temporary clerk in Solid Waste.

RESOLUTION 46-02 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

5. **RZN 02-12.00:** An ordinance approving rezoning request RZN 02-12.00 as submitted by Julian and Jan Archer for property located at 2231 Markham Road. The property is zoned R-1, Low Density Residential and contains approximately 4.10 acres. The request is to rezone to A-1, Agricultural.

6. **VA 02-1.00:** An ordinance submitted by Greg Brockman for property located north of 15th Street and west of Duncan Streets the request is to vacate a 30' side portion of an unimproved Price Avenue right-of-way.

7. **PLANNING COMMISSION APPEAL:** Appeal of a Planning Commission Decision regarding LSD 02-7.00 for property located at the southwest corner of Fletcher Avenue and Rodgers Drive.

8. **WATER MAIN REPLACEMENT:** A resolution to budget the 1.5 million of Water and Sewer Operating Funds reimbursed from Bond Proceeds, towards accelerated water main replacement activities, including approval of a budget adjustment and an addition to the fiscal year 2002 Capital Improvements Program.

9. **BURNS AND MCDONNELL:** A resolution to approve an agreement with Burns and McDonnell to perform program management services in connection with the Wastewater System Improvement Project. New contract. →

10. **RAZE AND REMOVAL:** A resolution approving a raze and removal of house at 1200 S. Roberts as per Ordinance 3948. ← public hearing. —

11. **RURAL FIRE CONTRACTS:** An ordinance amending the Code of Fayetteville to establish annual fees for Rural Fire Contracts for a two year period from June 1, 2002 through May 31, 2004. new ordinance →

POLICIES AND PROCEDURES: A resolution amending the Rules of Order and Procedure - Mayor / City Council, pertaining to the selection process for members of citizen committees.

RESOLUTION 48-02 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

BID 01-55: A resolution awarding the Item No. 1,2,3,4,5,7,9 and 10 in the amount of $991,835 to Ron Blackwell Ford and Item No. 8 and 11 in the amount of $105,622.80 to Landers Ford and approval of a budget adjustment.

RESOLUTION 49-02 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

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

OLD BUSINESS

RZN 02-1.00: An ordinance approving request RZN 02-1.00 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 rezone to R-1.5, Moderate Density Residential. The ordinance was tabled on the second reading at the March 5, 2002 meeting.

Alderman Davis moved to take the item off the table. Alderman Santos seconded. Upon roll call the motion carried unanimously.

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

Mr. Williams read the ordinance.

Mr. Brock Thompson, property owner, stated they had spent about six month evaluating where they wanted to do this project. He had family in Fayetteville, Arkansas. They had looked at the zoning. They had received a letter from the city stating this property was R-1.5 which would work for his project. He had held a neighborhood meeting in which twenty to twenty-five neighbors came along with several aldermen. At least fifty percent of the neighbors had changed their minds and were in favor of the project. With all the expansion going on in Fayetteville, it was only a matter of time before this property developed. He was not a professional builder or contractor. He was adding a lot of extras because he was trying to heighten the professionalism of the tenants that he wanted. Seventy-five percent of each unit would be brick. He was asking for a total of nine units. They were going to be nice. They were going to go above and beyond in the landscaping and the interiors. He presented a picture of the proposed project with landscaping.

Ms. Hanna stated the neighborhood association was requesting the property be left as R-1. They had met with Mr. Thompson at that meeting they had agreed unanimously that they would request the council to leave the property at R-1. She read a letter from Ms. Richards objecting the rezoning. She expressed concern about the increase in traffic. She had lived on Stevens for thirty years. There were a lot of others who had lived there twenty-five and thirty years. They were a permanent neighborhood.

Ms. Jeanie Sanderland, an area resident, stated she was concerned about the possible of triplexes. She was also concerned about the traffic and the destruction of trees on the property. She would like to see the property stay at its current zoning.

Mr. Palmer Alice, an area resident, stated he had lived there for approximately six years. This last year two triplexes had gone up. His concern with this project was that it would open the door for more properties to be developed. If there were the case, then he would ask them not to rezone this property. However, he understood that this was a mistake and that Mr. Thompson had purchased property understanding that the zoning was R-1.5. If that was the case, then he was entitled to build what he wanted to build. He did not have a problem with him and he liked what Mr. Thompson was proposing. He thought it would improve the neighborhood.

Mr. Conklin stated most of the rezoning activity that they had seen in that area had been on property that had been vacant or used for non-residential purposes in the past. They have not seen too much activity. The likelihood was not very high, when they had lots already developed with single-family homes. Garland Avenue was classified as a principle arterial. In the future, it was planned to be a four lane road and State highway. Typically, they did see a transition of different types of residential uses. Also, within their comprehensive plan it did talk about a mixture of residential type uses.

Mr. John David Lindsey, Lindsey and Associates, they had the property listed for sale. Their information had been that this property was R-1.5. Mr. Thompson had bought the property under that assumption. There was a second ingress and egress to this subdivision on the Mt. Comfort Road. He thought that would help with traffic, but this property being right on the corner of Garland, the R-1.5 zoning would be a perfect fit. This project will not affect the property values in that neighborhood.

Ms. Carla Grey, an area resident, stated this had been a mistake, but there were a lot of strong feelings over this issue. The neighborhood association was against spot rezoning, but they were divided on whether or not they believe that it should be left R-1 or if they should go R-1.5 as part of a larger plan. She asked what they could do about the existing triplex that was also a mistake.

Mr. Conklin stated what has occurred was that back in 1995 they took a 1970's map and digitized it. During that process, R-1.5 had been entered into that area. With regard to the previous triplexes being build, the error had not been discovered. This mistake had not been discovered until now. What they were doing now was going back and reviewing the rezoning. They were going to go back and look at thirty-two years worth of ordinances. From there they were going to bring back a zoning map for adoption. They have not address the issue of the triplexes in the R-1 zoning district. They were there, they were permitted, they were built and occupied. He did not have the answers on how to justify the past mistakes.

Alderman Jordan stated the neighbors were concerned about how this area was going to be rezoned.

Mr. Conklin stated in their General Plan, that the council adopted in 1995 it stated they would look at industrial, Heavy Industrial area, identify them and determine whether or not those need to remain I-1. The first neighborhood that they had looked at was west of the square. It has transitioned from two active rail lines to one active rail lines. The process was to work with the neighborhood

associations to identify. He was concerned with them saying they were going to rezone the entire city. There were many areas that were not zoned industrial that were currently zoned. It was not his intention to rezone the entire city. They were working with neighborhoods. This was going to come from the neighborhoods to them. It was not going to be them telling the industrial neighborhoods what to do. It was a pilot process, they have not done this in thirty-two years. They will improve on the process and they will continue the process. He may need more help in the future too. This was going to take more and more staff time.

Ms. Mona York, an area resident, stated her property adjoined this property on the east side. She had originally signed the petition, since then she has seen what was proposed. She did not object to this at all. She did not see how this was going to harm her. She thought it might make the area a little more beautiful. She did not have any problem getting out onto Garland.

Ms. Sawyer, an area resident, stated she supported the development. The area was going to develop anyway. She hoped that it would be an improvement to the neighborhood.

Ms. Ada Washington, an area resident, stated she would love to see something come in as pretty as this in their neighborhood. She had lived there twenty years and she had not see anything positive happen there. She was definitely for the development. The last ten years had been terrible. This seemed positive to him.

Mr. Scott Roberts, an area resident, stated Mr. Thompson had purchased the property based on it being R-1.5, information that had been given out by the city. He wanted to be able to trust the system. He wanted to be able to make investments in the future himself. He wanted to be able to rely on the information given to him.

Mr. Greg Henry, an area resident, stated he was relying on the city's records of zoning to invest in property. He did not believe they should be able to change what has been committed to Mr. Thompson. He was in favor of this project.

Ms. Terry Faylyn, an area resident, stated she has lived here for sixteen years. The city had made a mistake and she felt for Mr. Thompson, but she wanted to remind the council that the other people in the neighborhood also purchased their property with the understanding that neighborhood was zoned R-1.

Ms. Bolin, an area resident, stated that the other property owners had purchased their property with the assurance that it was R-1. When Mayor Coody ran for office, he had stated that he would support neighborhood associations and he would listen to them. This association was opposed to this. No every one in the neighborhood was at the meeting, but those that vote decide for the rest of them. They were opposed to this. They would like to keep this neighborhood a post-war expansion neighborhood with affordable housing.

Mr. Osburn stated a vote on this rezoning was not setting a precedent on any other rezoning. He felt if the same mistake had not happen on the triplexes, they would not be facing so much opposition. R-1.5 made perfect since as a transition from Garland to the neighborhood.

Mr. Thompson stated he had made every effort to talk to as many people as possible. He has

proposed a Bill of Assurance on some of things that he has committed to. He had previously committed to a Bill of Assurance saying nine units. He was now committing to other things that they talked about at the neighborhood meeting that he could make work for the bank. Which was all the extras, single level, with landscaping, trees, privacy fence, and security system.

Mayor Coody asked if that included using the design that he was presenting tonight?

Mr. Thompson replied he was trying to elevate the amount of professionalism that he was going to attract into that area. These will rent from a thousand to eleven hundred per month.
He had spent $160,000 on this property that for the past eight years been zoned R-1.5. If he reduced the number of units he would not be able to spend as much money on materials. He would not be able to do brick and put in as many sixteen foot trees as he wanted or the security system.

Mr. Williams stated it would require five affirmative votes for this to pass. He noted there were two members missing.

Mr. Thompson stated he would be in favor of waiting two more weeks.

Alderman Davis moved to table the item for two more weeks. Alderman Santos seconded.

Alderman Young stated he would like to see from both sides of the homeowners. It appeared to him that the neighborhood was split. He would like to hear from every one.

Upon roll call the motion carried unanimously.

ORDINANCE WAS TABLED ON THE THIRD READING.

CIVIL SERVICE: An ordinance adding two additional members to the Fayetteville Civil Service Commission. The ordinance was tabled on the third reading at the March 5, 2002 meeting.

Alderman Santos moved to take the item off the table. Alderman Jordan seconded. The motion carried unanimously.

Alderman Thiel stated she thought adding two commissioners would better reflect their increase size and the diversity of our city. Commissioners had six-year terms and they had five commissioners. They had seven applicants for the one open position. People were willing and qualified and had the time.

Alderman Davis stated he was opposed to it because trying to get that many people together would be more difficult. He had spoken to three of the commissioners. They had all told him that there was no reason to add any more members. It was hard enough now to get meeting times arranged. There were times when they had to meet for three or four consecutive days, all day. They had very good applicants, but there were a few who were surprised when they told them they would need two or three days. He had not heard from the police force.

Alderman Thiel stated she had spoken with Tad Scott, FOP, and stated he was in favor of this. They were still supporting this.

Alderman Reynolds stated he could not support this. What they had now was working well.

Mayor Coody asked shall the ordinance pass. Upon roll call the ordinance passed by a vote of 5-2, Reynolds and Davis voting nay and Mayor Coody voting yea.

ORDINANCE 4379 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

INDUSTRIAL PARK LANDS: An ordinance amending the ordinance establishing the formal process for the sale of municipally owned real property by defining industrial park lands. The ordinance was left on the second reading at the March 5, 2002 meeting.

Mr. Williams read the ordinance as amended.

Alderman Young stated the only thing that bothered him was that this amended the first ordinance. When they passed that ordinance, it had been represented to the council that there was a map with prices of lots on it. He had asked for that and never gotten that.

Mayor Coody stated they were currently selling the property for $20,000 per acre.

Alderman Young requested an official map with the prices.

Mayor Coody stated one of the problems that they had run into was that they would try and sell some acreage, but as soon as they buy the lot, the city would require them to build sidewalk or to put in sewer lines. They have run into situation where they might have to rethink their position, where they had to change the price of the acre to $23,000 and include in that the price of getting the work done, so they would not have to pay to get the work done.

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

ORDINANCE 4380 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

ADM 01-47.00: A resolution to approve ADM 01-47.00 to update census data; the community facilities section; and an annexation policy; and reorganize the General Plan 2020 for easier use. The resolution was tabled at the March 5, 2002 meeting.

Mr. Conklin introduced Ms. Shelly Rushing from the Planning Division who was responsible for their long range planning, ordinances that implement their General Plan, and has worked with Tree and Trails Task Force. She will be presenting the General Plan 2020 update and the annexation policy.

Ms. Rushing presented the major changes to the plan. The majority of the changes were in the census data and the housing data. She explained the purpose of the plan and the new annexation policy. The purpose of the annexation section was to introduce policy regarding annexations. They were taking a more proactive approach to their annexation by identifying potential annexation areas and establishing policy and criteria for reviewing those requests.

In response to Alderman Young's request to replace "should" with "shall", Mr. Williams stated this was a guiding plan. Most guiding plans did not require things, they recommended things. He thought "shall" might be a little misleading. He did not believe they could give a directive with just a plan.

Alderman Young stated they were guiding policies, but he questioned how often it would be done, occasionally or every time.

Mr. Williams stated if the city did not follow this, it would not be fatal to their annexation, however, it might give someone an opportunity to try and attack them.

Alderman Young stated he was looking at from the view point of information provided to the Planning Commission, the council and the public.

Mr. Conklin stated the planning staff had made sure that annexation went to different divisions. They were pretty much doing a study. They will formalize the process as they go forward. They wanted to make sure that they understood that they understand what they were doing with regard to annexation. These are the things the council asked staff to bring forward to them to consider. They should make their decisions based on these policies. He added they will see these reports as annexations occur.

Alderman Young moved to change the word, "should" to "shall" in 11.6.b. Alderman Reynolds seconded. Upon roll call the motion failed by a vote of 3-3, Santos, Thiel and Davis voting nay.

Alderman Santos moved to pass the resolution. Alderman Jordan seconded. The motion carried unanimously.

RESOLUTION 50-02 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

MCCLELLAND ENGINEERING: A resolution authorizing McClelland Engineering to proceed with their contract for I-540 Business/Technology Park. The original resolution was passed at the February 5, 2002 meeting.

Mayor Coody gave a presentation updating the progress of the project. He stated the Arkansas Game and Fish Commission was very interested in locating their regional facility out here. They would want to have an educational component built in. The city would also be able to build some trails.

Mr. Emmanuel Barns, EGIS, stated the proposed conservation area was about one hundred acres that would be set aside by Corp of Engineers permit and by the conservation agreement from the U.S. Fish and Wildlife service. A large portion of the area would be newly created wetlands. He thought this was very proactive. In response to questions from Alderman Thiel, Mr. Barns stated the total area delineated and confirmed by the Corp of Engineers was approximately eighty-four acres of wetlands. About forty-five acres would be impacted. There was about thirty-five to thirty-seven acres that was wetland that must be mitigated. If that impact did not occur, then the whole concept of having a conservation area.

Alderman Thiel stated it would not cost them as much if they just left it and did not mitigate it.

Mr. Barns stated of they just preserved the area it would not give them the opportunity to take Clabbar Creek and recreate more stream habitat rather than a lake.

Mr. Tom McKinney stated he had found an area that looked like prairie grass land. It was very rare. He suggested that they try and preserve the area.

Mr. Dumas stated they were asking the council to let them proceed with their preliminary plat work. McClelland will come up with at least three designs which would be presented to the council for review. From there they would prepare a final preliminary plat.

Alderman Thiel stated she would like to see three proposals that showed a broad diversity. She wanted to see this project move forward. She noted in their contract there was a budget item of $1,380 for a field trip to observe a similar wetland project.

In response to questions, Mr. Dumas stated McClelland would be drawing up three preliminary designs with preliminary costs.

Mr. Tom McKinney, Sierra Club, stated they had some concerns. It was very difficult to find where things were on the property. There were no markers or way to tell exactly where they were and what was planned to be developed. They were concerned about the area close to Wilson Springs. They also wanted to preserve the prairie they had found.

Ms. Andrea Radwell, an area resident, expressed concern about the wetlands and the floodplain. She questioned what they planned to mitigate.

Mr. Jeff Erf, an area resident, questioned why the city wanted to be able to open bids in October of 2002.

Mayor Coody stated they had two grants that had be obligated within one year.

Mr. Erf stated he had not been able to find the terms and conditions of the grant and had not been provided the information. He had called the administrator of the grant. There was no time limit on the money, according the person he talked to. He wanted to see the documentation that if in fact that was the case. He was also concerned that there was no business plan for this project. It had also gone from the Technology Park to a Business Technology park. What kind of tentants did they expect. What kind of jobs were going to be provided out there.

Mayor Coody stated they were coming up with three different options. If they did not know what the plan was, how could they estimate what it was going to cost. They did not have the information yet because they kept taking it back to the public input process. They had gone completely back to the drawing board. They already had one client interested, the Arkansas Game and Fish Commission.

Mr. Robert Ferrel, Chamber of Commerce, stated the Chamber of Commerce had been working with the city and had been trying to find common grounds on this 540 park. It was a great opportunity to preserve nature and combine the business together.

Mr. Jim Bemis, an area resident, stated they wanted to have the research and business people together. He asked how they were going to further develop the site as a business park. He asked who was going to pay for the infrastructure.

Mr. Bill Ramsey, Chamber of Commerce, stated the Fish and Game people were meeting here tomorrow. They were waiting on the City. They would be a great draw for what they were trying to do out there.

Ms. Barbara Moorman, an area resident, stated they were relying on people who had a financial interest. They had hired someone to advise them on what to do and they were the same people who would be doing the work. She felt this was on the fast tract. They were starting something before they knew what they were doing. In the past officials had denied that there were problems with the land at all. She quoted from minutes stating that there were no problems with flooding on the property. The residents opposed to the rezoning of this property were the only ones who noted the problems with the flooding and the wetland. There were still unanswered questions.

Ms. Fran Alexander, an area resident, stated the environmental community has not been included.

Ms. Radwell stated she felt it had been very difficult for them to be involved in this process. They had never been consulted.

Ms. Alexander stated she quoted from the February 5, 2002 minutes regarding "team". She felt they had been left off the team. The team was not happening. They were just saying that it was.
Mr. Barns stated he could recall a number of meetings that they had had with Andrea and several other agencies. He had seen an evolution of this project. They had opened their arms up to the environmental community. He was totally for environmental protection, but they wanted to live in reality. They had to work together.

In response to questions from Alderman Thiel, Mr. Dumas stated they would make several places on the site so people could orientate themselves on the site.

Mr. Joe Tarban, McClelland, stated they were the implementers of what the city and EGIS come up with. They had no preconceived notations of how this should be done. They did not want to make a mistake any more than they did. They had not gotten to the part in the contract where they look at soils. So they really did not know what was out there. They had looked at some county soils maps. They had abandoned conventional means. The only problem that he could see was that someone had to referee. Someone had to make decisions. They could meet and discuss for a long time, but someone had to decide what they were going to do. If they get bogged down trying to decide what the options were, that could become a problem. He was very open to meeting with anyone who wanted to be apart of this thing. They wanted to come up with something they could all be proud of.

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

RESOLUTION 51-02 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

NEW BUSINESS

RZN 02-5.00: An ordinance approving rezoning request RZN 02-5 as submitted by Shawki Al-Madoun of Northstar Engineering Consultants on behalf of Fadil Bayyari for property located west of I-540 and south of Point West Phase I and east of Pine Valley Phase I. The property is zoned I-1, Heavy Commercial / Light Industrial and R-2, Medium Density Residential and contains approximately 14.84 acres. The request is to rezone to R-1.5, Moderate Density Residential.

Mr. Williams read the ordinance for the first time.

Alderman Jordan asked for them to leave this on the first reading, since most of the public had left.

Ms. Sue Jenson, an area resident, stated her association was concerned about drainage and traffic. Thirty-four lots had been planned for a total of sixty-eight units. They would like to have some definite feelings from the city about how they were going to handle this. They were asking the council to table this issue until they had time to find out more information.

Mr. Chad Calson, an area resident, stated typically he would agree that down zoning from an industrial to a residential would be a good thing. They had originally proposed duplexes and connecting his neighborhood and this neighborhood. They were asking for some assurances that there would be some minimum standards set for those duplexes. He has refused to do that. He questioned what kind of duplexes they were going to have. They were going to see those duplexes from 540.

Mr. Fidal Bayyari, owner, stated his proposal was for 1200 square foot per side for these duplexes. They were going to be brick. Some of the lots were going to be small. He would be doing two story duplexes out there. Because of the price of the land the extra cost in development that by the time the duplexes were finished the property values in the neighborhood would increase. The traffic issue was a concern to the neighbors but it would be an enhancement to the city because they were going to open that road to take Shiloh all the way to Hwy 16. He proposed to the neighbors a set of covenants that would be put in place to protect their interest. They would have control over the builders. The neighbors were asking for a set of assurances from him to go with the land. In the past, he gave a bill of assurance and it came to haunt him later. The property now was useless.

Mr. Conklin stated they could have restrictive covenants , they can be filed. The property owners could vote to change them. There was no guarantee that what they see today may not be the same tomorrow. The city did not enforce covenants.

An area resident, questioned why Mr. Bayyari was not willing to give them a bill of assurance. They were willing to work with them.

Mr. Williams stated they could not dictate to developers once the property is zoned meet the minimum requirements.

Mr. Conklin stated the staff's job once the zoning decision was made was to tell the developer what

they had to do to comply with their ordinances. Once they complied with those ordinances, then they would recommend approval. Their job was to tell them how to get their developments approved based on their current ordinances. They could not negotiate.

Mr. Jim Owen, an area resident, stated he was concerned that they had only seen a draft of covenance. Those could only be enforced by an attorney that they would hire. They would have no power after it was written. It could be changed. He also requested a bill of assurance.

ORDINANCE WAS LEFT ON THE FIRST READING.

WATER AND SEWER REVENUE BONDS: An ordinance authorizing the issuance of $10,250,000 of Water and Sewer Revenue Bonds to refund the City's 1994 and 2000 Water and Sewer Revenue Bonds and authorizing the issuance and execution of a Trust Indenture, and Official Statement, a Bond Purchase Agreement, an Escrow Agreement, and a Continuing Disclosure Agreement.

Mr. Hunt stated the ordinance attempted to accomplish three things. The first was that the city had outstanding debt, Gross Revenue Rate, during the time they were working with them on the sales tax issue, the subject came up. Basically, it required them to increase rates much more than they would have too if they had a Net Revenue Rate. Secondly, it was to provide fixed rate financing on some of their short-term variable rate financing that they had issued in the past. We believe short-term rates were going to go up fairly significantly in the short term and they believed now was the time to lock in. Third, they had an issue of which the interest rate by reissuing at this point in time will be reduced from the current rate that was outstanding. They had three issues that were outstanding for Water and Sewer Revenue Bonds: Series 1994 ($3,215,000), Series 1999 ($7,350,000), and Series 2000 (10,000,000). This ordinance would address the Series 1994 and the Series 2000. Approximately May 2004 they will want to address their 1999 issue. Each of those bond issues have a gross revenue covenant.

Mr. Williams read the ordinance for the first time.

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

Mr. Williams read the ordinance for the second time.

Alderman Davis 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 for the third and final time.

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

ORDINANCE 4381 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

BULK TRASH DISPOSAL: An ordinance amending collection charges for bulk brush disposal.

Mr. Williams read the ordinance.

Alderman Young 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.

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

Mr. Williams read the ordinance.

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

ORDINANCE 4382 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

DDEP: A resolution awarding the construction contract to Township Builders based upon the result of March 5, 2002 construction contract bid opening for Dickson Street Improvements.

Mr. Boettcher, Public Works Director, stated they had five bids on March 5. Three were not responsive. Two were. The low bid was by Township Builders of Little Rock. Their base bid was $3,011,368.30 with two deductive alternates that eliminated scoring concrete and welcome mats at the buildings. If they take the alternates the bid becomes $2,948,590.30. The funds that they had on hand includes city funds, Dickson Street Improvement District and the Razorback Foundations, so they ended up with $3,068,864 available for the project. All parties involved are recommending an award of the contract to Township Builders with the deductive alternates.

Randy Richy, Atkins Benham, stated Township Builders had worked on a couple projects in Fort Smith, very similar to this project in which traffic was minimally affect. They have also done a similar project for the city of Little Rock and they had been well pleased with them.

Mr. Williams asked Mr. Richy if he had checked into the legalities of the bids and if it was his opinion that they were not allowed to accept some of the other bids.

Mr. Richy stated there were other bids that were numerically lower, but they had been rendered non responsive. Certain Federally required documents had not been submitted. Their hands were tied. It was a mandate.

Alderman Jordan asked how much business will be brought in because of this investment.

Ms. Ackerman stated the project itself was a response to about 65 million dollars of private investment on the street in the last ten years, since the building of the Walton Art Center.

Alderman Young questioned the phasing the project.

Mr. Richy stated they had presented the contract with a suggested sequence of construction. Their purpose of that was to make them aware going into the bid that they could not treat this job as an interstate. They were not going to hold them to it. They were going to ask them for a plan. Their main purpose was to keep the district open and working. It was going to difficult, but if they could keep those work areas short and finish the work section completely, then the merchants and users can see the finished product.

Alderman Davis moved to award the bid to Township Builders. Alderman Santos seconded. Upon roll call the motion carried unanimously.

RESOLUTION 52-02 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

CDBG: A resolution accepting the 2002 Community Development Block Grant in the amount of $647,000 and approval of the sub-recipient grant agreements with the Fayetteville Boys and Girls Club, Fayetteville Public Library, and Habitat for Humanity.

Mr. Ernest stated what they were being asked to approve was three of four sub-recipient grant agreements. They had some questions with the South Fayetteville Development Corporation. They had met with them and they could resolve those issue with respect to reporting and conformance with Federal and city regulations.

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

RESOLUTION 53-02 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

BOYS AND GIRLS CLUB: An ordinance waiving the requirements of competitive bidding and approving a contractual agreement between the City of Fayetteville and the Fayetteville Youth Center, Inc. in the amount of $68,000 to provide water service to Donald W. Reynolds Boys and Girls Club facility and $17,900 for a temporary haul road.

Mr. Williams read the ordinance.

Alderman Davis 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.

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

Mr. Williams read the ordinance.

Mayor Coody asked shall the ordinance pass. Upon roll call the motion carried unanimously.
ORDINANCE 4383 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

Meeting adjourned at 11:50 p.m.

MINUTES OF A MEETING OF THE CITY COUNCIL APRIL 2, 2002

A meeting of the Fayetteville City Council will be held on April 2, 2002 at 6:30 p.m. in Room 219 of the City Administration Building located at 113 West Mountain, Fayetteville, Arkansas.

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

The meeting began with a moment of silence in remembrance of Alderman Trent Trumbo.

NOMINATING COMMITTEE REPORT

ADVERTISING AND PROMOTION COMMISSION
Pat Gazzola - Re-appointed to fill term ending 04/01/06

BOARD OF ADJUSTMENTS/BOARD OF SIGN APPEALS
Robert A. Nickle - One five-year Public-at-Large term ending 03/31/07

CIVIL SERVICE COMMISSION
Merlin Augustine - One six-year Full term ending 03/31/08

CONSTRUCTION BOARD OF ADJUSTMENTS AND APPEALS
Stanley P. Johnson - One five-year Full term ending 03/31/07
Dennis Becker - One five-year Full term ending 03/31/07
Owen Eudell Luttrell - One one-year Alternate term ending 03/31/03

TELECOMMUNICATIONS BOARD
Susan Cromwell - One unexpired term ending 06/30/03

Alderman Davis stated he would like to discuss the Planning Commission and Library Board.

Alderman Santos moved to approve the report with the exception of the Planning Commission and the Library Board. Alderman Jordan seconded. Upon roll call the motion carried unanimously.

CONSENT

BOYS AND GIRLS CLUB: A resolution authorizing a lease agreement with the Fayetteville Boys and Girls Club for 8.16 acres of park land to be used for recreational purposes for the future Fayetteville Boys and Girls Club.

RESOLUTION 54-02 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

PAGERS: A resolution increasing the City's annual pager/cell phone allotment by $2,810.16. The increase will allow the Fire Department to save approximately $60,000 in the 2002 CIP Budget scheduled for an upgrade to the High Band Paging System.

RESOLUTION 55-02 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

PROPERTY SALE: A resolution approving the sale of City owned property in the Fayetteville Industrial Park identified as a lot split of Parcel R containing approximately 7.75 acres for $20,000 per acre or an amount not to exceed $155,000 and approval of a budget adjustment.

RESOLUTION 56-02 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

SAGE HOUSE: A resolution approving a lease agreement between the City of Fayetteville and Sage House.

RESOLUTION 57-02 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

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

OLD BUSINESS

RZN 02-1.00: An ordinance approving rezoning request RZN 02-1.00 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. The ordinance was tabled on the third reading at the March 5, 2002 meeting.

Alderman Davis moved to remove the item from the table. Alderman Santos seconded. Upon roll call the motion carried unanimously.

Mr. James Parish, an area resident, stated he had lived in this neighborhood for thirty years. The area had been R-1. He asked why the neighborhood should pay for their mistake. The neighborhood was totally against this. This was a good neighborhood. People were starting to bring the area back up.

Ms. Joyce Richards, an area resident, stated as president of the neighborhood association, she would be the only one speaking against the rezoning. The association had meet and taken a vote. The majority of the residents in attendance said "no" to the rezoning. There were five votes for a conditional "yes", however the conditions were not stated at that time. There were nineteen votes "no". The council had received their petition with approximately 116 names from residences in the

area. The others were to the southwest of them, but they were affect by the traffic. They were against this rezoning. She asked them to help them maintain the character of their neighborhood. They already had transition zones. Hendrix was on the city's schedule to be repaved in 2003. Their neighborhood did not need more traffic. The law could not be changed by a clerk making a mistake on a computer. They were not breaking the faith with the ones who would get the benefit of the mistake. They were breaking faith with the voters who for years thought this was R-1. They needed to protect this neighborhood.

Ms. Terry Faylyn, an area resident, stated she had been on Maxwell since 1985. Mr. Thompson had presented a bidder with a petition. The petition did not have addresses written on them. She had looked at some of the signers. Some of them were across town and out in the county. She believed that the significance of opinion regarding the rezoning should be weighted in favor of those that actually live the neighborhood association area since they would be the ones most affected. She did not believe the city should favor one developer over a neighborhood when the fault lies with the city. Mayor Coody had reportedly told a class that they were going to make it right. She believed that the residents of the neighborhood association all purchased their property in good faith and that the neighborhood should stay R-1.

Ms. Valerie Sawyer, an area resident, stated she was a renter. She was concerned by what trees would get left. There were some really nice trees that she would like to see saved. There should be some kind of compromise. Her son wanted to come to the meeting tonight because his favorite tree was a big red bud. He wanted to see the trees saved more than he cared what got built there. She realized Fayetteville was going to need more housing. She was more or less in favor of the rezoning, but there should be some conditions.

Mr. Scott Roberts, an area resident, stated he had lived here for three years. He thought Mr. Thompson had bent over backward in terms of the presentation that he had put together as well as what he was trying to do with the land he was developing. This person was investing in a community that was a great place to live and a great place to invest in. He was also looking to purchase some property in the area. If they voted against this thing, the word of the city would be no good. He wanted to be able to trust the city and the system. If something had been done wrong, then they should do the right thing.

Ms. Mona York, an area resident, stated Mr. Thompson's project was in her back yard. She did not have any problems with it. She supported it.

Mr. Brock Thompson, applicant, stated he had provided books last week which provided a lot of information. He was at Harps last week and he did go door to door. He tried to get out to the community in terms of getting people to understand exactly the situation that happened with his project. He did not represent that he got all those signatures at Harps. They were going to see some conflicting houses that were covered. He spoke with Ms. Brown last night. She had lived on the property for seventeen years. She did not plan on moving anywhere. She understood about the

expansion on Garland. She signed the petition. Her indication was that they were bringing something new to their property. She was in favor. The owner across the street was in favor of this. He brought one neighbor tonight who was in favor of this.

Mr. Osburn stated some residents were concerned about traffic. There was no reason for the traffic from this development to go to the west. They were going to go east, north or south.

Ms. Sharon Davidson, an area resident, stated they needed to realized property owners have been getting ran over by single individuals who come in and buy property for development. As a community they were drained on all of their services, yet they were being run over by people who came in, not to be part of our community, but to profit. They were going to approve this because they were afraid of a law suit from a single individual who was trying to manipulate their whole community. They should be worried about law suit from collective groups, such as neighborhoods.

Ms. Carla Grey, an area resident, stated they had been presented with two conflicting maps. So that they did not get the wrong idea, they were both correct. The original petition, when it went around, she signed it. When the sign first went up in the corner lot, they did all think that it was apartments. After the triplexes were built on Hendrix, the idea of apartments on that corner was freighting because it looked like their neighborhood was being sliced up like a pie. A lot of information had come out since the first petition was circulated. Mr. Thompson had purchased the property thinking that it was zoned R-1.5. He did not buy residential lots trying to rezone them. She did not understand until after the last city council meeting that the triplex behind her was R-1, with improper use. One of the biggest fears that the neighborhood had collectively was triplex in the middle of the street, triplexes on the corner. How could anyone say no to triplexes in between. After she found out that the triplexes in the middle of the street were R-1 with improper use, they can not be used as leverage to rezone anything else on that block. She felt that her neighborhood was protected. Garland was scheduled to be a five-lane highway at some point. There were two houses there now that had been on the market for a very long time because no one wants to live where a large highway is going to be put. She did not believe single family homes would ever have a chance of being owner occupied. More and more neighbors have dropped out on the opposition to this rezoning. She was one of them. The right thing for this lot was R-1.5.

Alderman Davis asked how many years had it been that the city had showed this on the city map as being R-1.5.

Mr. Conklin stated the map had been converted in 1995.

Alderman Davis stated so for the past seven years it had been showed incorrectly. How long ago was the prior triplex built on Hendrix.

Mr. Conklin stated it was last summer.

Alderman Davis asked if he had not brought this to their attention, would they be here tonight. The property would still be shown as R-1.5.

Mr. Conklin stated that was correct. That was what happened to the last one. He wanted to make sure that there was an actual ordinance for this one. They could not find one. After they could not find one, twenty-four hours later the map was changed on the website and their office. He then advised Mr. Thompson. And recommended that he go through the rezoning process.

Alderman Davis stated it was his understanding that someone on the city staff wrote a letter confirming that this was a R-1.5 to a financial institution.

Mr. Conklin stated a letter had been written.

Alderman Davis stated neighborhood associations needed to come to city hall from time to time to check their zoning.

Mr. Conklin stated he did not want this to ever happen again. He had been through the map once. He was in the process of looking at thirty-two years of ordinances. He would be bring forward a map. He wanted to make sure. They now have better technology. This area zoning classification was done by arrows. It was very difficult to see that from the 1970 zoning map which had been hand done with crayon.

Alderman Davis stated it had been seven years. The city has written him and given their word that it was zoned R-1.5. as neighbors needed to check from time to time to make sure that the city had the zoning on the map as they believe is correct. He did not see how they could back and tell him tough luck. If they did that, how could the citizens ever trust them on anything again.

Alderman Jordan stated they talked about the word of the city to Mr. Thompson, but what about the word of the city to the individuals that lived inside the city limits. The neighbors bought their property in good faith, believing that this was R-1 zoning. They expected to finish their lives out in that neighborhood. That neighborhood has come forth and stated they wanted the city to stand by them and protect their neighborhood and quality of life.

Alderman Theil stated the organized association had made a statement, but the people closer to where this was going to be built were for it. In her mind they weighed heavier than the others. Those were the neighbors next to the property. she was trying to weigh which set of neighbors to listen too.

Alderman Santos stated Garland Avenue has been a state highway for years. People should have known that more dense development was going to occur on a state highway. Three of the last city plans that he has worked with have been expecting more dense development along Garland Avenue. That was why the highway department was planning on widening it. Almost fifty percent of the

traffic from the University came from Garland. The University was trying to expand by fifty percent. Without even the mistake being made the proper thing to do is to rezone the property for more dense development. Which is what they see more and more of along Garland. The project Mr. Thompson has brought them was more compatible and serves has a better buffer to this neighborhood than the kind of dense apartments across the street. They had to expect that development. They had to respect their plans. A lot of people other than the people in this neighborhood contributed to making the plans. There were a lot of goals that they set forth in those plans that they want more dense development in the center of the city, within walking distance of schools and shopping centers. There was a transit line already here. That will make the transit line more efficient to have higher density. This was good for all of Fayetteville.

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

ORDINANCE 4384 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

RZN 02-5.00: An ordinance approving rezoning request RZN 02-5.00 for property located west of I-540 and south of Point West Phase I and east of Pine Valley Phase I. The property is zoned I-1, Heavy Commercial / Light Industrial and R-2, Medium Density Residential and contains approximately 14.84 acres. The request is to rezone to R-1.5, Moderate Density Residential. The ordinance was left on the first reading at the March 5, 2002 meeting.

Mr. Williams stated the applicant had sent a memo withdrawing the request. The applicant would have to reapply and start from scratch if he wanted to have the item reconsidered.

REMOVED FROM AGENDA.

CDBG: A presentation regarding the 2002 Community Development Block Grant.

Mr. Hugh Earnest, stated presented a overview of their program. This program gave them the opportunities for the city to provide additional money for housing. They can utilize the funding for further cost of bonds for the provision of new home construction. They may be able to pay money in advance to issue bonds to get a large one time sum of money and get far more aggressive in construction of affordable housing in the city. They can also subsides transportation needs. They need to improve their outreach relative to development of area plan. They need to involve more people in the community to make sure that they were meeting the needs of the neighborhood.

They had several projects that they had not been moving money on. Sage House, $153,635. Project for Victims of Family Violence $460,335, and Yvonne Richardson Center $104,000. This money was just sitting there. What the federal regulators have told them was that they needed to more aggressively move this money within a defined time frame or in affect the city will be penalized by reduced allocations in the future. They understood the issue they are facing and he believed the

council would begin to see more future on these projects.

Alderman Young asked how they would pay off the bonds.

Mr. Earnest stated they would use future allocations of community development block grant funds to service the debt. That was very preliminary discussion. Mr. Hunt, with Stevens, has serious concerns about that. He did not say not, but they needed to talk with their Hud representative.

NO ACTION TAKEN.

NEW BUSINESS

RZN 02-6.00: An ordinance approving rezoning request RZN 02-6.00 as submitted by Terry Carpenter of US Infrastructure, Inc. for property located at 415 Longview Street. The property is zoned A-1, Agricultural and contains approximately 38.6 acres. The request is to rezone to R-O, Residential Office.

Mr. Williams read the ordinance.

Alderman Davis stated his made perfect sense. He had not heard of any objections.

Mr. Conklin stated at the Planning Commission some of the residents had concerns about future access. He did not envision the street going into the subdivision. This property already is developed with Washington County Health Facility. The city had cost shared with Washington Regional Medical Center to extend that street through the property. The city has been involved in this project. It was an addition to North Hills Medical Park. It has turned into a regional medical area for Northwest Arkansas. Staff and Planning Commission has recommended approval.

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

Mr. Williams read the ordinance.

LEFT ON THE SECOND READING.

NEW WORLD SYSTEM: A resolution approving the purchase of the Fire Department's portion of the New World Technology upgrade for the Computer Aided Dispatching/Records Management System which will allow the Fire Department to interface with the current CAD/RMS system to provide accurate reporting information.

Chief Bosh stated the Fire Department had been using the New World Technology system about five

years ago, which was the system used in the Police Department. The Fire Department had opted to pull away from that system and to go with a stand alone system. Unfortunately, they had found that the FirePro system will not interface with this current CAD/RMS system. The new system will allow information sharing.

In response to questions, Chief Bosh stated this would fall under the Police Departments radio upgrade. They had $30,000 budgeted for that. This will require an additional $8,000 which they were going to pull out of the $60,000 that they saved on the pagers. They will show a savings of about $52,000 overall.

Alderman Young stated they had recently approved a lot of technology. Why was this not included in this.

Chief Bosh stated this was a separate system. The technology that they had approved was a separate system. This was specially for Police and Fire response.

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

RESOLUTION 58-02 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

SOLID WASTE MODIFICATION: Approval of the lift concept modification of vehicle configuration for the commercial route front load style sanitation vehicles. This will allow an upgrade to the newer style fork application and eliminate the triangle style lifts on vehicles as they are being replaced. This will also allow modifications to current containers and upgrade of containers as they are being replaced.

Ms. Carrol Hill, Solid Waste Director, stated this would save the city a lot of money on the purchase of containers and trucks. The triangle was extra and out dated. It was a simple modification to their current trucks. In the long run, there would be less maintenance. The triangle tended to break. The weight could be distributed more evenly with a fork system.

Alderman Reynolds stated they would no longer have to special order the triangle for the trucks and the containers. It should pay for itself within a year.

NO ACTION TAKEN.

Meeting adjourned at 8:30 p.m.

Communications Products Agreement

Motorola, Inc., a Delaware corporation, through its Commercial, Government, and Industrial Solutions Sector, North America Group ("Motorola"), having a place of business at 1301 E. Algonquin Rd., Schaumburg, IL 60196 and City of Fayetteville, ("Customer"), having a place of business at 100-A W. Rock, Fayetteville, AR 72701, enter into this Communications Products Agreement, pursuant to which Customer will purchase and Motorola will sell the Products, as described below. Seller and Customer may be referred to individually as "party" and collectively as "parties."

For good and valuable consideration, the parties agree as follows:

Section 1 EXHIBITS

The Exhibits listed below are incorporated into and made a part of this Agreement. In interpreting this Agreement and resolving any ambiguities, the main body of this Agreement will take precedence over the Exhibits and any inconsistency between the Exhibits will be resolved in the order in which they are listed below.

Exhibit A	Motorola "Software License Agreement"
Exhibit B	"Technical and Implementation Documents"
B-1	"List of Products" dated __4/10/02_____
B-2	"Statement of Work" dated _4/12/02____
B-3	"System Description" dated _4/12/02

Section 2 DEFINITIONS

Capitalized terms used in this Agreement shall have the following meanings:

"ADR" means alternative dispute resolution.

"Agreement" means this document, the exhibits listed above, and any amendments to this Agreement.

"Effective Date" means that date upon which the last party to sign this Agreement has executed the Agreement.

"Equipment" means the hardware listed in the List of Products.

"FCC" means the Federal Communications Commission.

"Force Majeure" means an event, circumstance, or act of a third party that is beyond a party's reasonable control, such as an act of God, an act of the public enemy, an act of a government entity, strikes or other labor disturbances, hurricanes, earthquakes, fires, floods, epidemics, embargoes, war, riots, or any other similar cause.

"Infringement Claim" means a claim that the Equipment manufactured by Motorola or the Motorola Software infringes a United States patent or copyright.

"Motorola Software" means Software that Motorola owns.

"Non-Motorola Software" means Software that a party other than Motorola owns.

"Products" mean the Equipment and Software provided by Motorola under this Agreement.

"Proprietary Rights" means the patents, patent applications, inventions, copyrights, trade secrets, trademarks, trade names, mask works, know-how, and other intellectual property rights in and to the Equipment and Software, including those created or produced by Motorola under this Agreement and any

corrections, bug fixes, enhancements, updates or modifications to or derivative works from the Software whether made by Motorola or another party.

"Purchase Price" means the price for the Products or for additional Products as permitted by Section 3.4 of this Agreement, exclusive of any applicable sales or similar taxes and freight charges.

"Software" means the Motorola and Non-Motorola Software in object code format that is furnished with the Products and which may be listed on the List of Products.

"Specifications" means the design, form, functionality, or performance requirements described in the Technical and Implementation Documents and any published descriptions of the Products.

Section 3 SCOPE OF AGREEMENT AND TERM

3.1. SCOPE OF WORK. Motorola will provide, ship, and install (if applicable) the Products, and perform its other contractual responsibilities, all in accordance with this Agreement. Customer will perform its contractual responsibilities in accordance with this Agreement.

3.2. CHANGE ORDERS. Either party may request changes within the general scope of this Agreement. Neither party is obligated to perform requested changes unless both parties execute a written change order.

3.3. TERM. Unless otherwise terminated in accordance with the provisions of this Agreement or extended by mutual agreement of the parties, the term of this Agreement shall begin on the Effective Date and shall continue until the expiration of the warranty period or three (3) years from the Effective Date, whichever occurs last.

3.4. ADDITIONAL EQUIPMENT OR SOFTWARE. During the Term of this Agreement, Customer may order additional Equipment or Software provided it is then available. Each order must refer to this Agreement. The applicable provisions of this Agreement (except for pricing, delivery, and payment terms) will govern the purchase and sale of the additional Equipment or Software. Unless otherwise expressly provided in this Agreement, the pricing and delivery terms will be Motorola's then published prices and standard delivery terms for such Equipment or Software, and payment is due within twenty (20) days after the invoice date. Motorola will send Customer an invoice as the additional Equipment is shipped or Software is licensed.

3.5. MAINTENANCE SERVICE. This Agreement does not cover maintenance or support of the Products except as provided under the warranty. If Customer wishes to purchase maintenance or support, Motorola will provide a separate maintenance and support proposal upon request.

3.6. MOTOROLA SOFTWARE. Any Motorola Software, including subsequent releases, is licensed to Customer solely in accordance with the Software License Agreement. Customer hereby accepts and agrees to abide by all of the terms and restrictions of the Software License Agreement.

3.7. NON-MOTOROLA SOFTWARE. Any Non-Motorola Software is licensed to Customer in accordance with the standard license, terms, and restrictions of the copyright owner on the Effective Date unless the copyright owner has granted to Motorola the right to sublicense the Non-Motorola Software pursuant to the Software License Agreement, in which case it applies. Motorola makes no representations or warranties of any kind regarding Non-Motorola Software.

Section 4 PERFORMANCE SCHEDULE

If this Agreement includes the performance of services, the Statement of Work will describe the performance schedule.

Section 5 PAYMENT OF PURCHASE PRICE

5.1. PURCHASE PRICE. The Purchase Price in U.S. dollars is $ 130,378.99. Motorola will submit to Customer invoices for Products when they are shipped and for services, if applicable, when they are performed. Customer will make payments to Motorola within thirty (30) days after the date of each invoice. Customer will make payments when due in the form of a check, cashier's check, or wire transfer drawn on a U.S. financial institution.

5.2. FREIGHT, TITLE, AND RISK OF LOSS. All freight charges will be pre-paid by Motorola and are included in the purchase price as indicated on Exhibit B-1. Title and risk of loss to the Equipment will pass to Customer upon receipt, except that title to Software will not pass to Customer at any time. Motorola will pack and ship all Equipment in accordance with good commercial practices.

Section 6 SITES AND SITE CONDITIONS

6.1. ACCESS TO SITES. If Motorola is providing installation or other services, Customer will provide all necessary construction and building permits, licenses, and the like; and access to the work sites or vehicles as reasonably requested by Motorola so that it may perform its contractual duties.

6.2. SITE CONDITIONS. If Motorola is providing installation or other services at Customer's sites, Customer will ensure that these work sites be safe, secure, and in compliance with all applicable industry (including R-56) and OSHA standards. To the extent applicable and unless the Statement of Work specifically states to the contrary, Customer will ensure that these work sites will have (i) adequate physical space for the installation, use and maintenance of the Products; (ii) adequate air conditioning and other environmental conditions; (iii) adequate electrical power outlets, distribution and equipment for the installation, use and maintenance of the Products; and (iv) adequate telephone or other communication lines for the installation, use and maintenance of the Products.

Section 7 ACCEPTANCE

Acceptance of the Products will occur upon delivery to Customer unless the Statement of Work provides for acceptance verification or testing, in which case acceptance of the Products will occur upon successful completion of the acceptance verification or testing. Notwithstanding the preceding sentence, Customer's use of the Products for their intended purpose will constitute acceptance.

Section 8 REPRESENTATIONS AND WARRANTIES

8.1. EQUIPMENT WARRANTY. For one (1) year from the date of shipment, Motorola warrants that the Equipment under normal use and service will operate in conformity with the manufacturer's published product specifications in all material respects and will be free from material defects in materials and workmanship.

8.2. MOTOROLA SOFTWARE WARRANTY. Unless otherwise stated in the Software License Agreement, for one (1) year from the date of shipment, Motorola warrants the Motorola Software in accordance with the terms of the Software License Agreement and the provisions of this Section applicable to the Motorola Software.

8.3. EXCLUSIONS TO EQUIPMENT AND MOTOROLA SOFTWARE WARRANTIES. These warranties do not apply to: (i) defects or damage resulting from use of the Equipment or Motorola Software in other than its normal, customary, and authorized manner; (ii) defects or damage occurring from misuse, accident, liquids, neglect, or acts of God; (iii) defects or damage occurring from testing, maintenance, disassembly, repair, installation, alteration, modification, or adjustment not provided or authorized in writing by Motorola; (iv) breakage of or damage to antennas unless caused directly by defects in material or workmanship; (vi) defects or damage caused by Customer's failure to comply with all applicable industry and OSHA standards; (vii) Equipment that has had the serial number removed or made illegible; (viii)

batteries (because they carry their own separate limited warranty); (ix) freight costs to ship Equipment to the repair depot; (x) scratches or other cosmetic damage to Equipment surfaces that does not affect the operation of the Equipment; and (xi) normal or customary wear and tear.

8.4. WARRANTY CLAIMS. Before the expiration of the warranty period, Customer must notify Motorola in writing if Equipment or Motorola Software does not conform to these warranties. Upon receipt of such notice, Motorola will investigate the warranty claim. If this investigation confirms a valid warranty claim, Motorola will (at its option and at no additional charge to Customer) repair the defective Equipment or Motorola Software, replace it with the same or equivalent product, or refund the price of the defective Equipment or Motorola Software. Such action will be the full extent of Motorola's liability hereunder. If this investigation indicates the warranty claim is not valid, then Motorola may invoice Customer for responding to the claim on a time and materials basis using Motorola's current labor rates. Repaired or replaced product is warranted for the balance of the original applicable Warranty Period. All replaced products or parts will become the property of Motorola.

8.5. ORIGINAL END USER IS COVERED. These express limited warranties are extended by Motorola to the original user purchasing the Products for commercial, industrial, or governmental use only, and are not assignable or transferable.

8.6. DISCLAIMER OF OTHER WARRANTIES. THESE WARRANTIES ARE THE COMPLETE WARRANTIES FOR THE EQUIPMENT AND MOTOROLA SOFTWARE PROVIDED UNDER THIS AGREEMENT AND ARE GIVEN IN LIEU OF ALL OTHER WARRANTIES. MOTOROLA DISCLAIMS ALL OTHER WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

Section 9 DELAYS

Neither party will be liable for its non-performance or delayed performance if caused by a Force Majeure. Each party will notify the other if it becomes aware of any Force Majeure that will significantly delay performance. The notifying party will give such notice promptly (but in no event later than fifteen days) after it discovers the Force Majeure. If a Force Majeure occurs, the parties will execute a change order to extend the performance schedule for a time period that is reasonable under the circumstances.

Section 10 DISPUTES

10.1. SETTLEMENT PREFERRED. Motorola and Customer will attempt to settle any claim or controversy arising from this Agreement (except for a claim relating to intellectual property) through consultation and negotiation in good faith and a spirit of mutual cooperation. The dispute will be escalated to appropriate higher-level managers of the parties, if necessary. If cooperative efforts fail, the dispute will be mediated by a mediator chosen jointly by Motorola and Customer within thirty days after notice by one of the parties demanding non-binding mediation. Motorola and Customer will not unreasonably withhold consent to the selection of a mediator, and they will share the cost of the mediation equally. The parties may postpone mediation until they have completed some specified but limited discovery about the dispute. The parties may also replace mediation with some other form of non-binding ADR.

10.2. LITIGATION. Any claim relating to intellectual property and any dispute that cannot be resolved between the parties through negotiation or mediation within two (2) months after the date of the initial demand for non-binding mediation shall then be submitted by either party to a court of competent jurisdiction in the state in which the Products are delivered. Each party consents to jurisdiction over it by such a court. The use of ADR procedures will not be considered under the doctrine of laches, waiver, or estoppel to affect adversely the rights of either party.

Section 11 DEFAULT AND TERMINATION

If a party fails to perform or otherwise breaches a material obligation under this Agreement, the other party may consider the non-performing party to be in default, unless a Force Majeure causes such failure. If the performing party asserts a default, it will give the non-performing party written and detailed notice of the default; and the non-performing party will have thirty (30) days thereafter either to dispute the assertion or provide a written plan to cure the default that is acceptable to the performing party. If the non-performing party provides a cure plan, it will begin implementing the cure plan immediately after receipt of the performing party's approval of the plan. If the non-performing party fails to cure the default, the performing party may terminate any unfulfilled portion of this Agreement and recover damages as permitted by law and this Agreement.

Section 12 PATENT AND COPYRIGHT INFRINGEMENT INDEMNIFICATION

12.1. Motorola will defend at its expense any suit brought against Customer to the extent that it is based on an Infringement Claim, and Motorola will indemnify Customer for those costs and damages finally awarded against Customer for an Infringement Claim. Motorola's duties to defend and indemnify are conditioned upon: (i) Customer promptly notifying Motorola in writing of such Infringement Claim; (ii) Motorola having sole control of the defense of such suit and all negotiations for its settlement or compromise; (iii) Customer providing to Motorola cooperation and, if requested by Motorola, reasonable assistance in the defense of the Infringement Claim.

12.2. If an Infringement Claim occurs, or in Motorola's opinion is likely to occur, Motorola may at its option and expense procure for Customer the right to continue using the Equipment or Motorola Software, replace or modify it so that it becomes non-infringing while providing functionally equivalent performance, or grant Customer a credit for such Equipment or Motorola Software as depreciated and accept its return. The depreciation amount will be calculated based upon generally accepted accounting standards for such Equipment and Software.

12.3. Motorola will have no duty to defend or indemnify for any Infringement Claim that is based upon (i) the combination of the Equipment or Motorola Software with any software, apparatus or device not furnished by Motorola; (ii) the use of ancillary equipment or software not furnished by Motorola and that is attached to or used in connection with the Equipment or Motorola Software; (iii) any Equipment that is not Motorola's design or formula; (iv) a modification of the Motorola Software by a party other than Motorola; or (v) the failure by Customer to install an enhancement release to the Motorola Software that is intended to correct the claimed infringement. The foregoing states the entire liability of Motorola with respect to infringement of patents and copyrights by the Equipment and Motorola Software or any parts thereof.

Section 13 LIMITATION OF LIABILITY

This limitation of liability provision shall apply notwithstanding any contrary provision in this Agreement. Except for personal injury or death, Motorola's total liability, whether for breach of contract, warranty, negligence, strict liability in tort, indemnification, or otherwise, will be limited to the direct damages recoverable under law, but not to exceed the price of the Equipment, Software, or services with respect to which losses or damages are claimed. ALTHOUGH THE PARTIES ACKNOWLEDGE THE POSSIBILITY OF SUCH LOSSES OR DAMAGES, THEY AGREE THAT MOTOROLA WILL NOT BE LIABLE FOR ANY COMMERCIAL LOSS; INCONVENIENCE; LOSS OF USE, TIME, DATA, GOOD WILL, REVENUES, PROFITS OR SAVINGS; OR OTHER SPECIAL, INCIDENTAL, INDIRECT, OR CONSEQUENTIAL DAMAGES IN ANY WAY RELATED TO OR ARISING FROM THIS AGREEMENT, THE SALE OR USE OF THE EQUIPMENT OR SOFTWARE, OR THE PERFORMANCE OF SERVICES BY MOTOROLA PURSUANT TO THIS AGREEMENT. This limitation of liability will survive the expiration or termination of this Agreement. No action for breach of this Agreement or otherwise relating to the transactions contemplated by this Agreement may be brought more than one (1) year after the accrual of such cause of action, except for money due upon an open account.

Section 14 CONFIDENTIALITY AND PROPRIETARY RIGHTS

14.1. CONFIDENTIAL INFORMATION.

14.1.1. During the term of this Agreement, the parties may provide the other with Confidential Information. For the purposes of this Agreement, "Confidential Information" is any information disclosed in written, graphic, verbal, or machine-recognizable form, and is marked, designated, labeled or identified at the time of disclosure as being confidential or its equivalent; or if in verbal form is identified as confidential or proprietary at the time of disclosure and confirmed in writing within thirty (30) days of such disclosure. Notwithstanding any other provisions of this Agreement, confidential information shall not include any information that: (i) is or becomes publicly known through no wrongful act of the receiving party; (ii) is already known to the receiving party without restriction when it is disclosed; (iii) is, or subsequently becomes, rightfully and without breach of this Agreement, in the receiving party's possession without any obligation restricting disclosure; (iv) is independently developed by the receiving party without breach of this Agreement; or (v) is explicitly approved for release by written authorization of the disclosing party.

14.1.2. Concerning the Confidential Information provided to it by the other party, each party will: (i) maintain the confidentiality of such Confidential Information and not disclose it to any third party, except as authorized by the disclosing party in writing or as required by a court of competent jurisdiction; (ii) restrict disclosure of Confidential Information to its employees who have a "need to know" and not copy or reproduce such Confidential Information; (iii) take necessary and appropriate precautions to guard the confidentiality of Confidential Information, including informing its employees who handle such Confidential Information that it is confidential and not to be disclosed to others, but such precautions shall be at least the same degree of care that the receiving party applies to its own confidential information and shall not be less than reasonable care; and (iv) use such Confidential Information only in furtherance of the performance of this Agreement. Confidential Information is and shall at all times remain the property of the disclosing party, and no grant of any proprietary rights in the Confidential Information is hereby given or intended, including any express or implied license, other than the limited right of the recipient to use the Confidential Information in the manner and to the extent permitted by this Agreement.

14.2. PRESERVATION OF MOTOROLA'S PROPRIETARY RIGHTS.

14.2.1. Motorola owns and retains all of its Proprietary Rights in the Equipment and Software. The third party manufacturer of any Equipment and the copyright owner of any Non-Motorola Software own and retain all of their Proprietary Rights in the Equipment and Software. Nothing in this Agreement is intended to restrict the Proprietary Rights of Motorola, any copyright owner of Non-Motorola Software, or any third party manufacturer of Equipment. All intellectual property developed, originated, or prepared by Motorola in connection with providing to Customer the Equipment, Software, or related services remain vested exclusively in Motorola, and this Agreement does not grant to Customer any shared development rights of intellectual property. This Agreement does not involve any Software that is a "work made for hire."

14.2.2. Except as explicitly provided in the Software License Agreement, nothing in this Agreement will be deemed to grant, either directly or by implication, estoppel, or otherwise, any right, title or interest in Motorola's Proprietary Rights. Concerning both the Motorola Software and the Non-Motorola Software, Customer agrees not to modify, disassemble, peel components, decompile, otherwise reverse engineer or attempt to reverse engineer, derive source code or create derivative works from, adapt, translate, merge with other software, reproduce, or export the Software, or permit or encourage any third party to do so.

Section 15 GENERAL

15.1. TAXES. The Purchase Price does include sales tax as indicated on Exhibit B-1. The Purchase price does not include any other amount for federal, state, or local excise, lease, service, rental, use, property, occupation, or other taxes, assessments or duties (other than federal, state, and local taxes based on Motorola's income or net worth), all of which will be paid by Customer except as exempt by law. If Motorola is required to pay or bear the burden of any such taxes, Motorola will send an invoice to Customer and Customer will pay to Motorola the amount of such taxes (including any applicable interest and penalties) within thirty (30) days after the date of the invoice. Customer will be solely responsible for reporting the Equipment for personal property tax purposes.

15.2. ASSIGNABILITY. Neither party may assign this Agreement without the prior written consent of the other party, except that Motorola may assign this Agreement to any of its affiliates or its right to receive payment without the prior consent of Customer.

15.3. SUBCONTRACTING. Motorola may subcontract any portion of the work, but such subcontracting will not relieve Motorola of its duties under this Agreement.

15.4 WAIVER. Failure or delay by either party to exercise any right or power under this Agreement will not operate as a waiver of such right or power. For a waiver of a right or power to be effective, it must be in writing signed by the waiving party. An effective waiver of a right or power shall not be construed as either (i) a future or continuing waiver of that same right or power, or (ii) the waiver of any other right or power.

15.5. SEVERABILITY. If a court of competent jurisdiction renders any provision of this Agreement (or portion of a provision) to be invalid or otherwise unenforceable, that provision or portion of the provision will be severed and the remainder of this Agreement will continue in full force and effect as if the invalid provision or portion of the provision were not part of this Agreement.

15.6. INDEPENDENT CONTRACTORS. Each party shall perform its activities and duties hereunder only as an independent contractor. The parties and their personnel shall not be considered to be an employee or agent of the other party. Nothing in this Agreement shall be interpreted as granting either party the right or authority to make commitments of any kind for the other. This Agreement shall not constitute, create, or in any way be interpreted as a joint venture, partnership or formal business organization of any kind.

15.7. HEADINGS AND SECTION REFERENCES; CONSTRUCTION. The section headings in this Agreement are inserted only for convenience and are not to be construed as part of this Agreement or as a limitation of the scope of the particular section to which the heading refers. This Agreement will be fairly interpreted in accordance with its terms and conditions and not for or against either party.

15.8. GOVERNING LAW. This Agreement and the rights and duties of the parties will be governed by and interpreted in accordance with the laws of the State in which the System is installed.

15.9. ENTIRE AGREEMENT. This Agreement, including all Exhibits, constitutes the entire agreement of the parties regarding the subject matter hereof and supersedes all previous agreements, proposals, and understandings, whether written or oral, relating to such subject matter. This Agreement may be altered, amended, or modified only by a written instrument signed by authorized representatives of both parties. The preprinted terms and conditions found on any Customer purchase order, acknowledgment or other form will not be considered an amendment or modification of this Agreement, even if a representative of each party signs such document.

15.10. NOTICES. Notices required under this Agreement to be given by one party to the other must be in writing and either delivered in person or sent to the address shown below by certified mail, return receipt requested and postage prepaid (or by a recognized courier service with an asset tracking system, such as Federal Express, UPS, or DHL), or by facsimile with correct answerback received, and shall be effective upon receipt:

City of Fayetteville	Motorola, Inc.
Attn: _Ms. Kathy Stocker_____	Attn: *Steve Kumrow*_____
100-A W. Rock_____	_2212 W. Nashville St._____
Fayetteville, AR 72701_____	_Broken Arrow, OK 74012_____
fax: _____	fax: _____

15.11. COMPLIANCE WITH APPLICABLE LAWS. Each party will comply with all applicable federal, state, and local laws, regulations and rules concerning the performance of this Agreement or use of the System. Customer will obtain and comply with all FCC licenses and authorizations required for the

installation, operation and use of the System before the scheduled installation of the Equipment. Although Motorola might assist Customer in the preparation of its FCC license applications, neither Motorola nor any of its employees is an agent or representative of Customer in FCC or other matters.

15.12. AUTHORITY TO EXECUTE AGREEMENT. Each party represents to the other that (i) it has obtained all necessary approvals, consents and authorizations to enter into this Agreement and to perform its duties under this Agreement; (ii) the person executing this Agreement on its behalf has the authority to do so; (iii) upon execution and delivery of this Agreement by the parties, it is a valid and binding contract, enforceable in accordance with its terms; and (iv) the execution, delivery, and performance of this Agreement does not violate any bylaw, charter, regulation, law or any other governing authority of the party.

15.13. SURVIVAL OF TERMS. The following provisions shall survive the expiration or termination of this Agreement for any reason: Sections 3.6 and 3.7 (concerning Software licensing); Section 10 (Disputes); Section 13 (Limitation of Liability); 14.1 (Confidential Information); and 14.2 (Preservation of Motorola's Proprietary Rights).

The parties hereby enter into this Agreement as of the Effective Date.

Motorola, Inc.	**Customer**
By: Steven Palm	By: _____
Name: STEVE PALM	Name: _____
Title: AREA CONTROLLER	Title: _____
Date: 4-21-02	Date: _____

Exhibit A

Software License Agreement

Software License Agreement

Motorola, Inc., a Delaware corporation, through its Commercial, Government, and Industrial Solutions Sector ("Motorola" or "Licensor") or Printrak International, Incorporated, a Motorola company ("Printrak" or "Licensor"), and City of Fayetteville ("Licensee"), hereby enter into this Software License Agreement ("Agreement"). Motorola and Printrak are each authorized to execute this Agreement on behalf of the other. For good and valuable consideration, the parties agree as follows:

Section 1 SCOPE

Licensor will provide proprietary software and/or radio communications, computer, or other electronic products ("Products") containing embedded or pre-loaded proprietary software to Licensee. All such software that is owned by Motorola or Printrak is referred to as "Software." Product and Software documentation that specifies technical and performance features and capabilities, and the user, operation and training manuals for the Software (including all physical or electronic media upon which this information is provided) are collectively referred to as "Documentation." This Agreement contains the terms and conditions pursuant to which Licensor will license, and Licensee may use, the Software and Documentation.

Section 2 GRANT OF LICENSE

Licensor hereby grants to Licensee a personal, non-transferable (except as permitted in Section 8 below), and non-exclusive license under Licensor's applicable proprietary rights to use the Software and related Documentation for the purposes for which they were designed and in accordance with the terms and conditions of this Agreement. The license granted authorizes Licensee to use the Software only in object code format and does not grant any rights to source code.

Section 3 LIMITATIONS ON USE

3.1. Licensee may use the Motorola Software only for Licensee's internal business purposes and only in accordance with the Documentation. Any other use of the Software is strictly prohibited. Licensee may not for any reason modify, disassemble, peel components, decompile, otherwise reverse engineer or attempt to reverse engineer, derive source code, create derivative works from, adapt, translate, merge with other software, copy, reproduce, or export any Software or permit or encourage any third party to do so, except that Licensee may make one copy of Software provided by Licensor to be used solely for archival or back-up purposes. Licensee must reproduce all copyright and trademark notices on all copies of the Software and Documentation.

3.2. Licensee may not copy onto or transfer Software installed in one Product device onto another device. Notwithstanding the preceding sentence, Licensee may temporarily transfer Software installed on one device onto another if the original device is inoperable or malfunctioning, provided that Licensee provides written notice to Licensor of such temporary transfer and such temporary transfer is discontinued when the original device is returned to operation. Upon Licensor's written request, Licensee must provide to Licensor a written list of all Product devices in which the Software is installed and being used by Licensee.

3.3. Licensee must purchase a copy for each site at which Licensee uses Motorola's Radio Service Software (if applicable). Licensee may make one additional copy for each computer owned or controlled by Licensee at each such site. Upon written Motorola's request, Licensee must provide a written list of all sites where Licensee uses or intends to use Radio Service Software.

Section 4 OWNERSHIP AND TITLE

Title to all copies of Software will not pass to Licensee at any time but remains vested exclusively in Licensor. Licensor owns and retains all of its proprietary rights in any form concerning the Software and Documentation, including all rights in patents, patent applications, inventions, copyrights, trade secrets, trademarks, trade names, and other intellectual properties (including any corrections, bug fixes, enhancements, updates, or modifications to or derivative works from the Software whether made by Licensor or another party). Nothing in this Agreement is intended to restrict the proprietary rights of Licensor or to grant by implication or estoppel any proprietary rights. All intellectual property developed, originated, or prepared by Licensor in connection with providing to Licensee Software, Products, or related services remain vested exclusively in Licensor, and this Agreement does not grant to Licensee any shared development rights of intellectual property. This Agreement does not involve any software that is a "work made for hire."

Section 5 CONFIDENTIALITY

Licensee acknowledges that the Software and Documentation contain Licensor's proprietary and confidential information and trade secrets. Licensee will take necessary and appropriate precautions to maintain and guard the confidentiality of the Software and Documentation, using at least the same degree of care that Licensee applies to its own confidential information but not less than reasonable care. Precautions will include informing Licensee's employees and agents who are authorized to use the Software and Documentation that such information is confidential and may not to be disclosed to others. Licensee will not disclose the Software and Documentation to any third party except as permitted by this Agreement or expressly in writing by Licensor. Licensee will limit access to the Software and Documentation to Licensee's employees and agents who need to know and are authorized to use the Software and Documentation as permitted by this Agreement.

Section 6 LIMITED WARRANTY

6.1. If the Software is provided pursuant to a Communications System Agreement, Printrak-Suncoast System Agreement, Communications Products Agreement, or Printrak-Suncoast Products Agreement between Licensor and Licensee, the warranty period for the Software shall commence as stated in such agreement and will continue for one (1) year except as otherwise provided in this Section. For all other transactions, the warranty period will commence upon shipment of the Software and will continue for 120 days. For Software that is owned by Suncoast Scientific Incorporated, a Motorola company; Printrak's Law Records Management System software products; and Printrak's Premier CAD SE™ software products, the warranty period for such Software shall commence as stated in the applicable agreement and will continue for 120 days. For Software that is application software, the warranty period for subsequent units licensed is the remainder (if any) of the initial warranty period or, if the initial warranty period has expired, the remainder (if any) of the term of the applicable Software Maintenance and Support Agreement.

6.2. During the applicable warranty period, Licensor warrants that the Software, when used properly and in accordance with this Agreement, will be free from a reproducible defect that eliminates the functionality or successful operation of a feature critical to the primary functionality or successful operation of the system. For Software owned by Printrak, whether such defect occurs will be determined solely with reference to the Documentation. For Software involving radio frequency systems and Products, the primary functionality of a voice communication system is subscriber-to-subscriber, subscriber-to-dispatcher, and dispatcher-to-subscriber voice communication; and the primary functionality of a data communication system is point-to-point data transmission. Licensor does not warrant that Licensee's use of the Software or Products will be uninterrupted or error-free or that the Software or the Products will meet Licensee's particular requirements.

6.3. Before the expiration of the applicable warranty period, Licensee must notify Licensor in writing if the Motorola Software does not conform to this warranty. Upon receipt of such notice, Licensor will investigate the warranty claim. If this investigation confirms a valid warranty claim, Licensor will (at its option and at no additional charge to Licensee) repair the defect, replace the defective Software with the

same or equivalent software, or refund the price of the defective Software or individual Product in which the Software is embedded or for which it was provided. Such action will be the full extent of Licensor's liability and Licensee's sole remedy for a breach of this warranty. If the investigation indicates the warranty claim is not valid, then Licensor may invoice Licensee for responding to the claim on a time and materials basis using Licensor's current labor rates.

6.4. THIS WARRANTY EXTENDS ONLY TO THE FIRST LICENSEE. SUBSEQUENT TRANSFEREES MUST ACCEPT THE SOFTWARE "AS IS" AND WITH NO WARRANTIES OF ANY KIND. LICENSOR DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

Section 7 LIMITATION OF LIABILITY

EXCEPT FOR PERSONAL INJURY OR DEATH, LICENSOR'S TOTAL LIAIBLITY, WHETHER FOR BREACH OF CONTRACT, WARRANTY, NEGLIGENCE, STRICT LIABILTY IN TORT, OR OTHERWISE, WILL BE LIMITED TO LICENSEE'S DIRECT DAMAGES RECOVERABLE UNDER LAW, BUT NOT TO EXCEED THE PRICE FOR THE SOFTWARE, THE PRODUCTS PROVIDED BY LICENSOR IN WHICH THE SOFTWARE IS EMBEDDED OR INSTALLED, OR THE SERVICES SPECIFICALLY RELATED TO THE SOFTWARE WITH RESPECT TO WHICH LOSSES OR DAMAGES ARE CLAIMED. ALTHOUGH THE PARTIES ACKNOWLEDGE THE POSSIBILITY OF SUCH LOSSES OR DAMAGES, THEY AGREE THAT LICENSOR WILL NOT BE LIABLE FOR ANY COMMERCIAL LOSS, INCONVENIENCE; LOSS OF USE, TIME, DATA, GOOD WILL, REVENUES, PROFITS OR SAVINGS; OR OTHER SPECIAL, INCIDENTAL, INDIRECT, OR CONSEQUENTIAL DAMAGES ARISING FROM THIS AGREEMENT OR THE SALE OR USE OF ANY SOFTWARE OR PRODUCTS. This Limitation of Liability provision will survive the termination of this Agreement. Licensee must bring any action under this Agreement within one (1) year after the cause of action arises.

Section 8 TRANSFERS

Licensee may not transfer Software to any third party without Licensor's prior written consent, which consent may be withheld in Licensor's reasonable discretion and may be conditioned upon the transferee paying all applicable license fees and agreeing to be bound by this Agreement. Notwithstanding the preceding sentence, if Licensee transfers ownership of radio Products to a third party, Licensee may assign its rights to use the Software (other than Radio Service Software and Motorola's FLASHport® Software) embedded in or furnished for use with those radio Products; provided that Licensee transfers all copies of such Software and the related Documentation to the transferee, and the transferee executes a transfer form to be provided by Licensor upon request (which form obligates the transferee to be bound by this Agreement).

Section 9 TERM AND TERMINATION

Licensee's right to use the Software will begin when this Agreement is mutually executed by both parties and will continue in perpetuity unless terminated without notice by Licensor upon Licensee's breach of this Agreement. Licensee acknowledges that its breach of this Agreement will result in irreparable harm to Licensor for which monetary damages would be inadequate. Upon termination of this Agreement, Licensor will be entitled to immediate injunctive relief. Within thirty (30) days after termination of this Agreement, Licensee must certify in writing to Licensor that all copies of the Software and Documentation have been returned to Licensor or destroyed and are no longer in use by Licensee.

Section 10 NOTICES

Notices required under this Agreement to be given by one party to the other must be in writing and either delivered in person or sent to the address shown below by certified mail, return receipt requested and postage prepaid (or by a recognized courier service with an asset tracking system, such as Federal

Express, UPS, or DHL), and shall be effective upon receipt. Change of address must be in writing to the other party.

Licensee	Licensor
Attn: _____	Attn: _____
_____	_____
_____	_____

Section 11 GENERAL

11.1. COPYRIGHT NOTICES. The existence of a copyright notice on the Software will not be construed as an admission or presumption that public disclosure of the Software or any trade secrets associated with the Software has occurred.

11.2. COMPLIANCE WITH LAWS. Licensee will comply with all applicable laws and regulations, including export laws and regulations of the United States. Licensee will not, without the prior authorization of Licensor and the appropriate governmental authority of the United States, in any form export or re-export, sell or resell, ship or reship, or divert, through direct or indirect means, any item or technical data or direct or indirect products sold or otherwise furnished to any person within any territory for which the Unites States Government, or any agency thereof, at the time of such action, requires an export license or other governmental approval. Violation of this provision shall be a material breach of this Agreement, permitting immediate termination by Licensor.

11.3. WAIVERS. Failure or delay by either party to exercise any right or power under this Agreement will not operate as a waiver of such right or power. For a waiver of a right or power to be effective, it must be in writing signed by the waiving party. An effective waiver of a right or power shall not be construed as either a future or continuing waiver of that same right or power, or the waiver of any other right or power.

11.4. ASSIGNMENTS. Licensor may assign any of its rights or subcontract any of its obligations under this Agreement, or encumber or sell any of its rights in any Software, without prior notice to or consent of Licensee.

11.5. ENTIRE AGREEMENT AND AMENDMENT. This Agreement constitutes the entire agreement of the parties regarding Licensee's use of the Software and may be altered, amended, or modified only by a written instrument signed by an authorized representative of each party, except that Licensor may modify this Agreement as necessary to comply with applicable laws and regulations. This Agreement will be fairly interpreted in accordance with its terms and conditions and not for or against either party.

11.6. GOVERNING LAW. This Agreement will be governed by the laws of the United States to the extent that they apply and otherwise by the laws of the State to which the Software or Products are shipped.

11.7. SEVERABILITY. If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid or otherwise unenforceable, that provision will be severed and the remainder of this Agreement will remain in full force and effect.

In witness whereof, the parties have caused duly authorized representatives to execute this Software License Agreement on the dates set forth below.

Licensee	Licensor
By: _____	By: Steve Palm
Name: _____	Name: STEVE PALM
Title: _____	Title: AREA CONTROLLER
Date: _____	Date: 4-24-02

Exhibit B

Technical and Implementation Documents

FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

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

LEGAL DEPARTMENT

DEPARTMENTAL CORRESPONDENCE

TO: **All City Council Members**

FROM: **Kit Williams, City Attorney**

DATE: **May 6, 2002**

RE: **Revised Contract with**
Burns & McDonnell Engineering Company, Inc.

Attached please find the Agreement For Professional Engineering Services that I revised after the Ordinance Review committee pursuant to your comments. I call your attention to several revisions or additions:

1. I changed the names throughout the Agreement from "Owner" to "Fayetteville", and "Engineer" to "Burns & McDonnell Engineering" to ease immediate understanding of any section's references.

2. Paragraph 4 on page one (as repeated on the signature page) was added in large font to ensure we will not have increases in cost or scope without **prior** City Council approval.

3. Paragraph 5 on page one not only shows the total anticipated and authorized cost of this contract, but includes a penalty provision (to reduce our required payment for the value of services received by reducing their 10% add-ons for subcontractors and expenses).

4. Page 8 Insurance - Added $1,000,000.00 Professional Liability Insurance requirement.

5. Page 9 - I made significant changes to paragraph 5.2.1 **removing** the exclusion of other remedies language and increasing the limitation period from one to three years (the statutory limitation period for malpractice).

6. Page 10 - I removed all previous limitation of damage, exclusion of remedies, etc. language found in paragraphs 5.2.2, 5.2.3, 5.2.4, and 5.2.5.

7. Page 14 - (paragraph 5.17) I changed the controlling law to be Arkansas law, not Missouri law.

I was waiting for Burns and McDonnell Engineering to agree to all these proposed changes before burdening you with this 19 page contract. They were still balking a little about the change (removal) of their exclusion of remedy and limitation of damages paragraphs, but I wanted to get this proposal to you today since it is fairly extensive and the City needs to go forward with the sewer project as quickly as possible.

RESOLUTION NO. _____

A RESOLUTION TO APPROVE AN AGREEMENT FOR PROFESSIONAL ENGINEERING PROJECT MANAGEMENT SERVICES WITH BURNS AND MCDONNELL ENGINEERING COMPANY, INC. IN THE AMOUNT OF $336,881.00

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 approves the Agreement for Professional Engineering Services with Burns and McDonnell Engineering Company, Inc. (attached as Exhibit A) in the amount of $336,881.00 and authorizes Mayor Coody to execute said contractual agreement.

PASSED and **APPROVED** this the 7th day of May, 2002.

APPROVED:

By: _____
DAN COODY, Mayor

ATTEST:

By: _____
Heather Woodruff, City Clerk

AGREEMENT
For
PROFESSIONAL ENGINEERING SERVICES
Between
CITY OF FAYETTEVILLE, ARKANSAS
And
BURNS & MCDONNELL ENGINEERING COMPANY, INC.
Kansas City, Missouri

THIS AGREEMENT is made this _____ day of May, 2002, by and between City of Fayetteville, Arkansas (hereinafter called FAYETTEVILLE) and Burns & McDonnell Engineering Company, Inc., a Missouri Corporation specializing in consulting engineering services (hereinafter called BURNS & MCDONNELL ENGINEERING).

FAYETTEVILLE requires professional engineering services in connection with the program management of study, design, construction, operation, maintenance, management, and financing of wastewater treatment and conveyance facilities. Therefore, FAYETTEVILLE and BURNS & MCDONNELL ENGINEERING in consideration of their mutual covenants agree as follows:

BURNS & MCDONNELL ENGINEERING shall serve as FAYETTEVILLE's professional engineering consultant in those assignments to which this Agreement applies, and shall give consultation and advice to FAYETTEVILLE during the performance of BURNS & MCDONNELL ENGINEERING's services. All services shall be performed under the direction of a professional engineer registered in the State of Arkansas and qualified in the particular field.

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, cost or fees.

THE total payment for Scope of Services in this contract is **$336,881.00** and shall not be exceeded without **prior** approval of the Fayetteville City Council pursuant to paragraph 4.1.2. If paragraph 4.1.2 is violated by BURNS & MCDONNELL ENGINEERING, BURNS & MCDONNELL ENGINEERING agrees that the value of any unauthorized services will reduce its authorized compensation from the 10% cost add-ons in paragraphs 4.1.1.2 and 4.1.1.4 dollar for dollar.

SECTION 1
SCOPE OF SERVICES OF BURNS & MCDONNELL ENGINEERING

1.1 General

1.1.1 Perform Program Management services in connection with Pre-Design Phase Projects as hereinafter stated which may include normal civil, structural, mechanical, and electrical engineering services and normal architectural design services incidental thereto.

1.1.2 Advise FAYETTEVILLE as to the necessity of FAYETTEVILLE providing or obtaining services or data from others of types described in Paragraph 2.3, make recommendations as to the possible sources of such services, and act as FAYETTEVILLE'S representative in connection with any such services.

1.2 Identification of Program Status

1.2.1 Consult with FAYETTEVILLE to determine FAYETTEVILLE's requirements for the Project and collect available data on contracts with Consulting Engineers of Record (Consulting Engineers).

1.2.2 Review contracts of Consulting Engineers and ascertain the schedules and deliverables due to FAYETTEVILLE as part of the contracts. Examine cost-to-date and the status of billings to FAYETTEVILLE for each contract.

1.2.3 Review Arkansas Department of Environmental Quality (ADEQ) requirements for Facility Plans approval. Meet with ADEQ regarding each Facility Plan being prepared.

1.2.4 Review Facility Plans and assess the level of completion. Determine the activities remaining before approval.

1.2.5 Review Water Quality Study and assess the level of completion. Determine the activities remaining before approval.

1.2.6 Conduct a one-day meeting in Fayetteville with the City of Fayetteville staff to further identify status, scheme, and schedule for the projects. Report to FAYETTEVILLE the preliminary conclusions gained from examination of Facility Plans and Water Quality Study. Establish agenda and goals for joint meeting with Consulting Engineers. Establish goals and expectations and lines of communication for the Program.

1.2.7 Jointly conduct with FAYETTEVILLE separate meetings with each Consulting Engineer and OMI, Inc. to review Program status, identify concerns and issues which may impede completion of Consulting Engineers' services, and to receive other feedback from Consulting Engineers.

Review Consulting Engineers' staffing plan and schedule for completion of the pre-design activities. Determine status of property acquisition.

1.2.8 Assess the information obtained in the meetings with Consulting Engineers and prepare an evaluation and recommendations. Present the final results of the evaluation process to FAYETTEVILLE for final approval. This presentation will highlight the evaluation process, including status of stakeholder involvement, and identify the recommendation for proceeding with design activities.

1.3 Develop Steering Document

1.3.1 Prepare a Level 1 concept milestone schedule for the overall Program through the Design Phase which identifies tasks, phases, projects, or subprojects and prioritizes them. The concept milestone schedule will provide guidance to FAYETTEVILLE and Consulting Engineers by establishing *"what's first, what's next, what's critical*, and *what can be accomplished independent of other aspects of the project"*. The concept milestone schedule will identify an initial Critical Path for the overall Program and will provide direction to the Consulting Engineers through the Design Phase. Establish a phasing plan to be followed in the design of facilities which will permit continuous provision of service by existing facilities.

1.3.2 Identify and address items requiring standardization and coordination among the Consulting Engineers. Topics anticipated include treatment processes, equipment, SCADA concepts, reliability and redundancy, and facility staffing goals.

1.3.3 Establish schedule and requirements for Value Engineering Services.

1.3.4 Develop design standards and criteria. Develop and maintain design standards for wastewater treatment plant and sewerage facilities, support facilities, and privately developed facilities to be adopted by FAYETTEVILLE's Consulting Engineers. By adopting the design standards, Consulting Engineers will assume full responsibility and liability for their resulting design services.

BURNS & MCDONNELL ENGINEERING will review design standards provided by the Consulting Engineers. BURNS & MCDONNELL ENGINEERING will prepare design standards and criteria for remaining facilities using the existing standards as a starting point. The design standards will be developed to provide overall design intent and construction quality objectives with the functional and aesthetic objectives of FAYETTEVILLE. Establish CADD standards, sheet sizes, borders, and title blocks.

1.3.5 Develop standard contract language. Develop General Conditions for General Construction Contracts. Develop other documents, including Bidding and Agreement forms, and Division 1 Specifications.

1.3.6 Disseminate the Steering Document which includes design standards and criteria and standard contract language, to Consulting Engineers for use in preparation of design contracts, budgets, and scope.

1.3.7 Assist FAYETTEVILLE in developing standardized Professional Services Agreements, based on EJCDC documents as a starting point.

1.4 Develop Program Budget

1.4.1 Prepare the overall Program Budget utilizing Consulting Engineers' opinions of probable construction costs. Formulate independent opinions of probable design fees for the West Treatment Plant, modifications to the existing Noland Facility, the West sewer system improvements, and the East sewer system improvements. Analyze and include other likely Program Budget costs.

1.5 Evaluate Status of Permitting Process

1.5.1 Review Arkansas Department of Environmental Quality (ADEQ) requirements for permitting of facilities.

1.5.2 Identify permitting requirements for the construction and operation of the new and modified facilities.

1.5.3 Identify the status of the permitting process to date.

1.5.4 Conduct a Fatal Flaw Analysis.

1.5.5 Develop matrix illustrating the permits required, the responsibilities for obtaining them, the tasks remaining before each permit is obtained, and a schedule for completion of the permitting process.

1.6 Provide Other Program Management Services

1.6.1 Prepare a Program Management Plan (PMP) describing the responsibilities of the Program Manager, Consulting Engineers, and construction contractors involved in management, design, and construction. The PMP will establish procedures enabling FAYETTEVILLE to monitor the design and construction phases of the projects. The PMP will emphasize the monitoring of cost, schedule and quality and will establish procedures to permit

FAYETTEVILLE to make timely decisions to properly control the Program. The PMP will describe review and approvals at all stages of the Program or projects such as design, construction, security, safety, D/M/WBE programs, logistics, and communications.

1.6.2 Establish a computer-based Program Management Control System (PMCS) to monitor and manage the Program schedule, budget, financial requirements, and D/M/WBE compliance. Establish a document tracking and control system, including shop drawings, samples, approvals, and changes to the work. The system will be used by the Program Manager throughout the Program to advise the FAYETTEVILLE on schedule and financial issues and manage the design and construction process. The proposed system consists of Primavera Expedition project management software, customized to FAYETTEVILLE'S documentation requirements.

Primavera Project Planner (P3) scheduling software will be used for the Master Program Schedule, which will be used in conjunction with Expedition. Review FAYETTEVILLE's information retrieval needs and consider providing FAYETTEVILLE with real-time read-only access to program financial records or provision of periodic hard copy of desired reports. Establish a public/private Web-based communications to be used for inter-firm access to selected program information by the FAYETTEVILLE, Program Management Team, and Consulting Engineers.

1.6.3 Assist in developing a Communications Plan to involve the stakeholders during the concept development and design phase; and promote a positive image of the overall Program and FAYETTEVILLE. The plan may include newsletters, press releases, message boards, and the Project web site. The plan development and implementation will be coordinated with FAYETTEVILLE's Public Relations staff.

1.6.4 Prepare a Master Program Schedule by refining the conceptual milestone schedule. Develop the Master Program Schedule through design development, construction documents, and construction. Cost load the schedule, based on program activities, for cash flow and spending plan analysis. Benchmark the program schedule and update based on actual progress of activities.

1.6.5 Prepare and coordinate up to four reports or presentations to the City Council, City staff, or other parties as directed by FAYETTEVILLE.

1.7 **It is anticipated that the above-described Scope of Services can be completed in 2758 person hours.**

SECTION 2 RESPONSIBILITIES OF FAYETTEVILLE

FAYETTEVILLE shall, within a reasonable time, so as not to delay the services of BURNS & MCDONNELL ENGINEERING:

2.1 Provide full information as to FAYETTEVILLE's requirements for the Project.

2.2 Assist BURNS & MCDONNELL ENGINEERING by placing at BURNS & MCDONNELL ENGINEERING's disposal all available information pertinent to the assignment including previous reports and any other data relative thereto.

2.3 Furnish BURNS & MCDONNELL ENGINEERING services or data such as core borings, probings and subsurface explorations, hydrographic surveys, laboratory tests and inspections of samples, materials, and equipment; appropriate professional interpretations of all of the foregoing; property, boundary, easement, right-of-way, topographic, and utility surveys; zoning and deed restrictions; and other special data or consultations, all of which BURNS & MCDONNELL ENGINEERING may rely upon in performing its services under this Agreement.

2.4 Guarantee access to and make all provisions for BURNS & MCDONNELL ENGINEERING to enter upon public and private property as required for BURNS & MCDONNELL ENGINEERING to perform its services under this Agreement.

2.5 Examine all studies, reports, sketches, cost opinions, Bid Documents, Drawings, proposals, and other documents presented by BURNS & MCDONNELL ENGINEERING and render in writing decisions pertaining thereto.

2.6 Provide such professional legal, accounting, financial, and insurance counseling services as may be required for the Project.

2.7 Designate in writing a person to act as FAYETTEVILLE's representative with respect to the services to be performed under this Agreement. Such person shall have complete authority to transmit instructions, receive information, interpret and define FAYETTEVILLE's policies and decisions with respect to materials, equipment, elements and systems to be used in the Project, and other matters pertinent to the services covered by this Agreement.

2.8 Give prompt written notice to BURNS & MCDONNELL ENGINEERING whenever FAYETTEVILLE observes or otherwise becomes aware of any defect in the Project.

2.9 Furnish approvals and permits from all governmental authorities having jurisdiction over the Project and such approvals and consents from others as may be necessary for completion of the Project.

2.10 If BURNS & MCDONNELL ENGINEERING's standard bidding requirements, Agreement forms and General Conditions are not to be used but FAYETTEVILLE's documents are to be used instead, FAYETTEVILLE shall provide copies of such documents for BURNS & MCDONNELL ENGINEERING's use in coordinating the Contract Drawings and Specifications.

SECTION 3 PERIOD OF SERVICE

3.1 BURNS & MCDONNELL ENGINEERING will proceed with providing the services set forth herein immediately upon the execution of this Agreement. These services will be completed within 120 days of the execution of this Agreement subject to adjustment from factors outside BURNS & MCDONNELL ENGINEERING's control, e.g., permitting, etc.

SECTION 4 PAYMENTS TO BURNS & MCDONNELL ENGINEERING

4.1 Compensation

4.1.1 Amount of Payment:

For services performed, the FAYETTEVILLE shall pay the BURNS & MCDONNELL ENGINEERING the sum of the following:

4.1.1.1 For time expended by personnel, payment at the hourly rates indicated in the attached "Schedule of Hourly Professional Service Billing Rates" Form BMR 902. Such rates include overhead and profit. The schedule is effective to January 1, 2003, and will be revised annually.

4.1.1.2 For outside expenses incurred by BURNS & MCDONNELL ENGINEERING, such as authorized travel and subsistence, including airfare, food, lodging, automobile rental, commercial services, courier deliveries, and incidental expenses, the cost to BURNS & MCDONNELL ENGINEERING plus 10 percent.

4.1.1.3 For normal computer usage, computer-aided drafting (CAD), telephone, fax, photocopy and mail services, a technology charge in accordance with the "Schedule of Hourly Professional Service Billing Rates" in effect at the time the service is provided. Specialty items are not included in the technology charge. For reproduction, printing and binding of documents, and vehicle and testing apparatus usage, amounts as determined from BURNS & MCDONNELL ENGINEERING's schedule of rates in effect at the time the service is provided.

4.1.1.4 For services rendered by others as subcontractor(s) to BURNS & MCDONNELL ENGINEERING, such as value engineering, surveying, real property descriptions, soil borings, subsurface investigations, laboratory testing, field quality control tests, progress photographs, or other activities required or requested by FAYETTEVILLE, the cost to BURNS & MCDONNELL ENGINEERING plus 10 percent.

4.1.2 **The total payment for the Scope of Services described herein is estimated to be Three Hundred Thirty Six Thousand Eight Hundred Eighty One United States Dollars ($336,881.00), but is not a guaranteed maximum. The total payment is based on expending no more than 2758 person-hours.**

4.2 Statements

4.2.1 Monthly statements, in engineer's standard format, will be submitted by BURNS & MCDONNELL ENGINEERING to FAYETTEVILLE. Statements will be submitted covering services and expenses incurred during the preceding month.

4.3 Payments

4.3.1 Statements are payable upon receipt and due within thirty (30) days. If a portion of BURNS & MCDONNELL ENGINEERING's statement is disputed by FAYETTEVILLE, the undisputed portion shall be paid by FAYETTEVILLE by the due date. FAYETTEVILLE shall advise BURNS & MCDONNELL ENGINEERING in writing of the basis for any disputed portion of any statement.

SECTION 5 GENERAL CONSIDERATIONS

5.1 Insurance

5.1.1 During the course of performance of these services, BURNS & MCDONNELL ENGINEERING will maintain (in United States Dollars) the following minimum insurance coverages:

Type of Coverage	**Limits of Liability**
Workers' Compensation **Statutory Employers' Liability**:	$500,000 Each Accident
Commercial General Liability Bodily Injury and Property Damage	$1,000,000 Combined Single Limit
Automobile Liability Bodily Injury Property Damage	$1,000,000 Combined Single Limit
Professional Liability Insurance	$1,000,000.00 Single Limit

If requested, BURNS & MCDONNELL ENGINEERING will provide to FAYETTEVILLE certificates as evidence of the specified insurance.

5.1.2 Construction Contractors shall be required to provide (or FAYETTEVILLE may provide) FAYETTEVILLE's Protective Liability Insurance naming FAYETTEVILLE as a Named Insured and BURNS & MCDONNELL ENGINEERING as an additional insured, or, to endorse FAYETTEVILLE and BURNS & MCDONNELL ENGINEERING as additional insureds on construction Contractor's liability insurance policies covering claims for personal injuries and property damage. Construction Contractors shall be required to provide certificates evidencing such insurance to FAYETTEVILLE and BURNS & MCDONNELL ENGINEERING.

5.1.3 FAYETTEVILLE and BURNS & MCDONNELL ENGINEERING waive all rights against each other and their officers, directors, agents, or employees for damage covered by property insurance during and after the completion of BURNS & MCDONNELL ENGINEERING's services. If the services result in a Construction Phase, a provision similar to this shall be incorporated into all Construction Contracts entered into by FAYETTEVILLE, and all construction Contractors shall be required to provide waivers of subrogation in favor of FAYETTEVILLE and BURNS & MCDONNELL ENGINEERING for damage or liability covered by any construction Contractor's policy of insurance.

5.2 Professional Responsibility

5.2.1 BURNS & MCDONNELL ENGINEERING will exercise reasonable skill, care, and diligence in the performance of BURNS & MCDONNELL ENGINEERING's services and will carry out its responsibilities in accordance with customarily accepted professional engineering practices. If BURNS & MCDONNELL ENGINEERING fails to meet the foregoing standard, BURNS & MCDONNELL ENGINEERING will perform at its own cost, and without reimbursement from FAYETTEVILLE, the professional engineering services necessary to correct errors and omissions which are caused by BURNS & MCDONNELL ENGINEERING's failure to comply with above standard, and which are reported to BURNS & MCDONNELL ENGINEERING within three years from the completion of BURNS & MCDONNELL ENGINEERING's services for the Project. FAYETTEVILLE retains all other remedies to recover for its damages caused by any negligence of BURNS & MCDONNELL ENGINEERING.

5.2.2 In addition, BURNS & MCDONNELL ENGINEERING will be responsible to FAYETTEVILLE for damages caused by its negligent conduct during its activities at the Project Site to the extent covered by BURNS & MCDONNELL ENGINEERING's Commercial General Liability, Automobile Liability Insurance and Professional Liability Insurance policies as specified in Paragraph 5.1.1.

5.3 Cost Opinions and Projections

Cost opinions and projections prepared by BURNS & MCDONNELL ENGINEERING relating to construction costs and schedules, operation and maintenance costs, equipment characteristics and performance, and operating results are based on BURNS & MCDONNELL ENGINEERING's experience, qualifications, and judgment as a design professional. Since BURNS & MCDONNELL ENGINEERING has no control over weather, cost and availability of labor, material and equipment, labor productivity, construction Contractors' procedures and methods, unavoidable delays, construction Contractors' methods of determining prices, economic conditions, competitive bidding or market conditions, and other factors affecting such cost opinions or projections, BURNS & MCDONNELL ENGINEERING does not guarantee that actual rates, costs, performance, schedules, and related items will not vary from cost opinions and projections prepared by BURNS & MCDONNELL ENGINEERING.

5.4 Changes

FAYETTEVILLE shall have the right to make changes within the general scope of BURNS & MCDONNELL ENGINEERING's services, with an appropriate change in compensation and schedule, only after Fayetteville City Council approval of such proposed changes and upon execution of a mutually acceptable amendment or change order signed by the Mayor of the City of FAYETTEVILLE and the President or any Vice President of the BURNS & MCDONNELL ENGINEERING.

5.5 Suspension of Services

Should FAYETTEVILLE fail to fulfill his responsibilities as provided under Section 2 to the extent that BURNS & MCDONNELL ENGINEERING is unduly hindered in BURNS & MCDONNELL ENGINEERING's services or if FAYETTEVILLE fails to make any payment to BURNS & MCDONNELL ENGINEERING on account of BURNS & MCDONNELL ENGINEERING's services and expenses within 90 days after receipt of BURNS & MCDONNELL ENGINEERING's bill therefore, BURNS & MCDONNELL ENGINEERING may, after giving seven days' written notice to FAYETTEVILLE, suspend services under this Agreement until FAYETTEVILLE has satisfied FAYETTEVILLE's obligations under this Agreement.

5.6 Termination

5.6.1 Services may be terminated by FAYETTEVILLE or BURNS & MCDONNELL ENGINEERING by seven (7) days' written notice in the event of substantial failure to perform in accordance with the Terms hereof by the other party through no fault of the terminating party. Failure on the part of FAYETTEVILLE to make payments to BURNS & MCDONNELL ENGINEERING when due shall be considered substantial nonperformance and cause for termination. If so terminated, FAYETTEVILLE shall pay BURNS & MCDONNELL ENGINEERING all amounts due BURNS & MCDONNELL ENGINEERING for all services properly rendered and expenses incurred to the date of receipt of notice of termination, plus reasonable costs incurred by BURNS & MCDONNELL ENGINEERING in terminating the services.

5.6.2 In the event of premature termination of the Project by FAYETTEVILLE and through no fault of BURNS & MCDONNELL ENGINEERING, BURNS & MCDONNELL ENGINEERING shall be entitled to: 1) recover all reasonable costs and expenses incurred to date of termination plus all costs incurred to assemble and close Project files and documents; 2) unavoidable down time in the reassignment of Project staff; 3) termination penalties/expenses related to third parties retained by BURNS & MCDONNELL ENGINEERING in regard to his obligations under this contract; plus 4) a termination amount of 15 percent of the remaining portion of the total compensation (or estimated compensation) agreed to herein or by separate authorization to cover lost profits, damages, and lost opportunity costs which cannot otherwise be accurately calculated.

5.7 Delays

In the event the services of BURNS & MCDONNELL ENGINEERING are suspended or delayed by FAYETTEVILLE, BURNS & MCDONNELL ENGINEERING shall be entitled to additional compensation for reasonable costs incurred by BURNS & MCDONNELL ENGINEERING in temporarily closing down or delaying the Project and reassigning Project staff (including, but not limited to, unavoidable down time and any termination expenses incurred where reassignment is not reasonably possible) and in organizing Project files, records, and work in progress for suspension and later resumption of BURNS & MCDONNELL ENGINEERING's services.

5.8 Disputes

In the event that a dispute should arise relating to the performance of the services to be provided and should that dispute result in litigation, it is agreed that the prevailing party shall be entitled to recover all reasonable costs of litigation, including staff time, court costs, attorneys' fees, and other related expenses.

5.9 Rights and Benefits

BURNS & MCDONNELL ENGINEERING's services will be performed solely for the benefit of FAYETTEVILLE and not for the benefit of any other persons or entities.

5.10 Dispute Resolution

5.10.1 Scope of Paragraph: The procedures of this Paragraph shall apply to any and all disputes between FAYETTEVILLE and BURNS & MCDONNELL ENGINEERING which arise from, or in any way are related to, this Agreement, including, but not limited to the interpretation of this Agreement, the enforcement of its terms, any acts, errors, or omissions of FAYETTEVILLE or BURNS & MCDONNELL ENGINEERING in the performance of this Agreement, and disputes concerning payment.

5.10.2 Exhaustion of Remedies Required: No action may be filed unless the parties first negotiate and, if necessary, mediate their disputes as set forth in this Paragraph. If timely Notice is given under Paragraph 5.10.3, but an action is initiated prior to exhaustion of these procedures, such action shall be stayed, upon application by either party to a court of proper jurisdiction, until the procedures in Paragraphs 5.10.3 and 5.10.4 have been complied with.

5.10.3 Notice of Dispute

5.10.3.1 For disputes arising prior to the making of final payment promptly after the occurrence of any incident, action, or failure to act upon which a claim is based, the party seeking relief shall serve the other party with a written Notice;

5.10.3.2 For disputes arising after the making of final payment, FAYETTEVILLE shall give BURNS & MCDONNELL ENGINEERING written Notice at the address listed in Paragraph 5.18 within ninety (90) days after occurrence of any incident, accident, or first observance of defect or damage. In both instances, the Notice shall specify the nature and amount of relief sought, the reason relief should be granted, and the appropriate portions of this Agreement that authorize the relief requested.

5.10.4 Negotiation: Within seven days of receipt of the Notice, the Project Managers for FAYETTEVILLE and BURNS & MCDONNELL ENGINEERING shall confer in an effort to resolve the dispute. If the dispute cannot be resolved at that level, then, upon written request of either side, the matter shall be referred to the President of BURNS & MCDONNELL ENGINEERING and the Mayor of the City of Fayetteville or his designee. These officers shall meet at the Project Site or such other location as is agreed upon within 30 days of the written request to resolve the dispute.

request that the matter be submitted to mediation before a mediator is mutually agreed upon. If the parties cannot agree on a mediator, then the American Arbitration Association shall appoint one upon request. Any administrative or mediator's fees shall be split equally between the parties.

5.11 FAYETTEVILLE represents that it has sufficient funds or the means of obtaining funds to remit payment to BURNS & MCDONNELL ENGINEERING for services rendered by BURNS & MCDONNELL ENGINEERING.

5.12 Publications

Recognizing the importance of professional development on the part of BURNS & MCDONNELL ENGINEERING's employees and the importance of BURNS & MCDONNELL ENGINEERING's public relations, BURNS & MCDONNELL ENGINEERING may prepare publications, such as technical papers, articles for periodicals, and press releases, pertaining to BURNS & MCDONNELL ENGINEERING's services for the Project. Such publications will be provided to FAYETTEVILLE in draft form for FAYETTEVILLE's advance review.

FAYETTEVILLE shall review such drafts promptly and provide FAYETTEVILLE's comments to BURNS & MCDONNELL ENGINEERING. FAYETTEVILLE may require deletion of proprietary data or confidential information from such publications, but otherwise FAYETTEVILLE will not unreasonably withhold approval. The cost of BURNS & MCDONNELL ENGINEERING's activities pertaining to any such publication shall be for BURNS & MCDONNELL ENGINEERING's account.

5.13 Indemnification

5.13.1 FAYETTEVILLE agrees that it will require all construction Contractors to indemnify, defend, and hold harmless FAYETTEVILLE and BURNS & MCDONNELL ENGINEERING from and against any and all loss where loss is caused or incurred in whole or in part as a result of the negligence or other actionable fault of the Contractors, or their employees, agents, Subcontractors, and Suppliers.

5.14 Computer Models

BURNS & MCDONNELL ENGINEERING may use or modify BURNS & MCDONNELL ENGINEERING's proprietary computer models in service of FAYETTEVILLE under this Agreement, or BURNS & MCDONNELL ENGINEERING may develop computer models during BURNS & MCDONNELL ENGINEERING's service to FAYETTEVILLE under this Agreement. Such use, modification, or development by BURNS & MCDONNELL ENGINEERING does not constitute a

license to FAYETTEVILLE to use or modify BURNS & MCDONNELL ENGINEERING's computer models. Said proprietary computer models shall remain the sole property of BURNS & MCDONNELL ENGINEERING. FAYETTEVILLE and BURNS & MCDONNELL ENGINEERING will enter into a separate license agreement if FAYETTEVILLE wishes to use BURNS & MCDONNELL ENGINEERING's computer models.

5.15 Notices

Any Notice required under this Agreement will be in writing, addressed to the appropriate party at the following addresses:

FAYETTEVILLE's address:

City of Fayetteville, Arkansas
113 West Mountain Street
Fayetteville, Arkansas 72701

BURNS & MCDONNELL ENGINEERING's address:

Burns & McDonnell Engineering Co., Inc.
9400 Ward Parkway
Kansas City, MO 64114

5.16 Successor and Assigns

FAYETTEVILLE and BURNS & MCDONNELL ENGINEERING each binds himself and his successors, executors, administrators, and assigns to the other party of this Agreement and to the successors, executors, administrators, and assigns of such other party, in respect to all covenants of this Agreement; except as above, neither FAYETTEVILLE nor BURNS & MCDONNELL ENGINEERING shall assign, sublet, or transfer his interest in the Agreement without the written consent of the other.

5.17 Controlling Law

This Agreement shall be subject to, interpreted and enforced according to the laws of the State of Arkansas without regard to any conflicts of law provisions.

5.18 Entire Agreement

This Agreement represents the entire Agreement between BURNS & MCDONNELL ENGINEERING and FAYETTEVILLE relative to the Scope of Services herein. All

previous or contemporaneous agreements, representations, promises, and conditions relating to BURNS & MCDONNELL ENGINEERING's services described herein are superseded. Since terms contained in purchase orders do not generally apply to professional services, in the event FAYETTEVILLE issues to BURNS & MCDONNELL ENGINEERING a purchase order, no preprinted terms thereon shall become a part of this Agreement. Said purchase order document, whether or not signed by BURNS & MCDONNELL ENGINEERING, shall be considered as a document for FAYETTEVILLE's internal management of its operations.

SECTION 6 SPECIAL CONDITIONS

6.1 Additional Responsibilities of the BURNS & MCDONNELL ENGINEERING:

6.1.1 FAYETTEVILLE's or ASWCC's review, approval, or acceptance of design drawings, specifications, reports, and other services furnished hereunder shall not in any way relieve BURNS & MCDONNELL ENGINEERING of responsibility for the technical adequacy of the work. Neither FAYETTEVILLE's nor ASWCC's review, approval or acceptance of, nor payment for any of the services shall be construed as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement.

6.1.2 BURNS & MCDONNELL ENGINEERING shall be and shall remain liable, in accordance with applicable law, for all damages to FAYETTEVILLE caused by BURNS & MCDONNELL ENGINEERING's negligent performance of any of the services furnished under this Agreement except for errors, omissions or other deficiencies to the extent attributable to FAYETTEVILLE or FAYETTEVILLE-furnished data.

6.1.3 BURNS & MCDONNELL ENGINEERING's obligations under this clause are in addition to BURNS & MCDONNELL ENGINEERING's other express or implied assurances under this Agreement or State law and in no way diminish any other rights that FAYETTEVILLE may have against BURNS & MCDONNELL ENGINEERING for faulty materials, equipment, or work.

6.2 Remedies

Except as may be otherwise provided in this Agreement, all claims, counter-claims, disputes and other matters in question between FAYETTEVILLE and BURNS & MCDONNELL ENGINEERING arising out of or relating to this Agreement or the breach thereof will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within Arkansas.

6.3 Audit: Access to Records

6.3.1 BURNS & MCDONNELL ENGINEERING shall maintain books, records, documents and other evidence directly pertinent to performance on work under this Agreement in accordance with generally accepted accounting principles and practices consistently applied in effect on the date of execution of this Agreement. BURNS & MCDONNELL ENGINEERING shall also maintain the financial information and data used by BURNS & MCDONNELL ENGINEERING in the preparation of support of the cost submission required for any negotiated agreement or change order and send to FAYETTEVILLE a copy of the cost summary submitted. The United States Environmental Protection Agency, the Comptroller General of the United States, the United States Department of Labor, FAYETTEVILLE, the State or any of their authorized representatives shall have access to all such books, records, documents and other evidence for the purpose of inspection, audit and copying during normal business hours. BURNS & MCDONNELL ENGINEERING will provide proper facilities for such access and inspection.

6.3.2 Records under Paragraph 6.3.1 above, shall be maintained and made available during performance on assisted work under this Agreement and until three years from the date of final payment for the project. In addition, those records which relate to any controversy arising out of such performance, or to costs or items to which an audit exception has been taken, shall be maintained and made available until three years after the date of resolution of such appeal, litigation, claim or exception.

6.3.3 This right of access clause (with respect to financial records) applies to:

6.3.3.1 Negotiated prime agreements;

6.3.3.2 Negotiated change orders or agreement amendments in excess of $10,000 affecting the price of any formally advertised, competitively awarded, fixed price agreement;

6.3.3.3 Agreements or purchase orders under any agreement other than a formally advertised, competitively awarded, fixed price agreement. However, this right of access does not apply to a prime agreement, lower tier subagreement or purchase order awarded after effective price competition, except:

(1) With respect to record pertaining directly to subagreement performance, excluding any financial records of BURNS & MCDONNELL ENGINEERING;

(2) If there is any indication that fraud, gross abuse or corrupt practices may be involved;

(3) If the subagreement is terminated for default or for convenience.

6.4 Covenant Against Contingent Fees

BURNS & MCDONNELL ENGINEERING warrants that no person or selling agency has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by BURNS & MCDONNELL ENGINEERING for the purpose of securing business. For breach or violation of this warranty, FAYETTEVILLE shall have the right to annul this Agreement without liability or at its discretion, to deduct from the contract price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage or contingent fee.

6.5 Gratuities

6.5.1 If FAYETTEVILLE finds after a notice and hearing that BURNS & MCDONNELL ENGINEERING, or any of BURNS & MCDONNELL ENGINEERING's agents or representatives, offered or gave gratuities (in the form of entertainment, gifts or otherwise) to any official, employee or agent of FAYETTEVILLE, the State or EPA in an attempt to secure an agreement or favorable treatment in awarding, amending or making any determinations related to the performance of this Agreement, FAYETTEVILLE may, by written notice to BURNS & MCDONNELL ENGINEERING, terminate this Agreement. FAYETTEVILLE may also pursue other rights and remedies that the law or this Agreement provides. However, the existence of the facts on which FAYETTEVILLE bases such finding shall be in issue and may be reviewed in proceedings under the Remedies clause of the Agreement.

6.5.2 In the event this Agreement is terminated as provided in Paragraph 6.5.1, FAYETTEVILLE may pursue the same remedies against BURNS & MCDONNELL ENGINEERING as it could pursue in the event of a breach of the Agreement by BURNS & MCDONNELL ENGINEERING. As a penalty, in addition to any other damages to which it may be entitled (as determined by FAYETTEVILLE) which shall be not less than three nor more than ten times the costs BURNS & MCDONNELL ENGINEERING incurs in providing any such gratuities to any such officer or employee.

6.6 Arkansas Freedom of Information Act. BURNS & MCDONNELL ENGINEERING agrees that it will provide to FAYETTEVILLE, at a cost to be agreed upon, all documents in its possession that are, under this Agreement, the property of

FAYETTEVILLE and which FAYETTEVILLE believes to be subject to an Arkansas Freedom of Information Act request made to it, or, in anticipation of such a request, which it believes necessary for it to possess. BURNS & MCDONNELL ENGINEERING further agrees that it will request of all subconsultants, retained by BURNS & MCDONNELL ENGINEERING to perform services under this Agreement, to provide to FAYETTEVILLE, at a cost to be agreed upon, all documents in the possession of such subconsultants that are, under this Agreement, the property of FAYETTEVILLE and which FAYETTEVILLE believes to be subject to an Arkansas Freedom of Information Act request made to FAYETTEVILLE, or, in anticipation of such a request, which it believes necessary for FAYETTEVILLE to possess. BURNS & MCDONNELL ENGINEERING will produce all documents or material in the format that are kept by BURNS & MCDONNELL ENGINEERING, or at the option of BURNS & MCDONNELL ENGINEERING, in some other format. If a specialized format is requested by FAYETTEVILLE, the cost of conversion, if that additional responsibility is accepted by BURNS & MCDONNELL ENGINEERING, will be borne by FAYETTEVILLE at the then prevailing rates for the parties actually performing the conversion. Production of requested items will be done with reasonable diligence, but cannot in some circumstances be within the time frame established by the Act. The above and foregoing provisions apply only to work performed from this date forward and does not apply retroactively.

Nothing in this Agreement shall constitute an acceptance of BURNS & MCDONNELL ENGINEERING or its subconsultants to the application of the Arkansas Freedom of Information Act to BURNS & MCDONNELL ENGINEERING or its subconsultants or to BURNS & MCDONNELL ENGINEERING's or subconsultant's books, records, drawings, or other items not constituting the property of FAYETTEVILLE under this Agreement, nor a waiver of its rights to object to any requests made to it pursuant to the Arkansas Freedom of Information Act by any person or entity not a party to this Agreement.

IN WITNESS WHEREOF, the CITY OF FAYETTEVILLE, ARKANSAS, by and through its Mayor, and BURNS & MCDONNELL ENGINEERING COMPANY, INC., by its authorized officer have made and executed this Agreement as of the day and year first above written.

CITY OF FAYETTEVILLE, ARKANSAS

By: _____
Mayor

ATTEST:

By: _____
City Clerk

BURNS & MCDONNELL ENGINEERING COMPANY, INC.

By: _____
President, Infrastructure Group

By: _____
Project Manager

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, cost or fees.

END OF AGREEMENT FOR PROFESSIONAL ENGINEERING SERVICES

ORDINANCE NO. _____

AN ORDINANCE AMENDING §33.046 OF THE CODE OF FAYETTEVILLE, TO SET THE FEES AND CONDITIONS FOR ANNUAL RURAL FIRE CONTRACTS EFFECTIVE JUNE 1, 2002

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

Section 1. That §33.046. **Providing fire protection services outside city**, is hereby repealed and the following shall be inserted in its stead:

§33.046. **Providing fire suppression services outside city.**

The city fire department shall not provide fire protection services beyond the corporate limits and shall not combat any fire located outside the corporate limits except pursuant to:

(A) A mutual aid agreement or written contract, approved by the city council, with another municipal corporation or with a duly and legally organized fire department which operates in Washington County.

(B) A written contract executed with an individual resident or property owner of a specific property located not more than two miles beyond the city's corporate limits. Each property owner or resident desiring to participate in such a contract shall pay to the City an annual fire suppression fee of $487 per property for a twelve (12) month period.

(C) Annual fees for fire suppression contracts for service outside the City shall be as contained herein for twelve (12) months effective June 1, 2002.

(D) The city fire department shall have the right to refuse to respond to any fire located outside the city's corporate limits if, in the judgment of the fire chief or his authorized representative, fire protection within the city would be impaired by such a response.

(E) No contract shall be executed without the prior determination by the fire chief or his authorized representative that the property covered by the contract can be identified and serviced by the fire department.

PASSED and **APPROVED** this the 7th day of May, 2002.

APPROVED:

By: _____
DAN COODY, Mayor

ATTEST:

By: _____
Heather Woodruff, City Clerk

From: "Richard P. Osborne" <RPOLaw@Lawyer.com>
To: "Fayetteville City Clerk" <hwoodruff@ci.fayetteville.ar.us>
Date: 5/7/02 12:02PM
Subject: Schmitt Appeal

Hon. Heather Woodruff
Fayetteville City Clerk
By E-Mail

Re: Schmitt Appeal

Dear Ms. Woodruff:

Based on the need for additional research and unavailability of witnesses, we respectfully request a continuance in the hearing of our appeal until the second meeting in June, 2002.

Rick

Richard P. Osborne, Attorney
26 East Center Street
Fayetteville, AR 72701

Office 479-521-5555
Fax 479-444-0000

FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

TENTATIVE AGENDA
CITY COUNCIL
MAY 7, 2002

A meeting of the Fayetteville City Council will be held on May 7, 2002 at 6:30 p.m. in Room 219 of the City Administration Building located at 113 West Mountain Street, Fayetteville, Arkansas.

A. CONSENT

1. **APPROVAL OF THE MINUTES**

2. **TRAILS GRANT:** A resolution authorizing a recreational trails grant application and authorizing resources for a 20% share of project's cost.

3. **MOTOROLA:** A resolution awarding a contract to Motorola in the amount of $130,378.99 to upgrade the radio system to allow digital and encryption capabilities to be added to the Police Department's radios and approve a $10,000 contingency to the project.

4. **MAXIMUM AVIATION SERVICES:** A resolution approving License to Maximum Aviation Services for use of Fayetteville Municipal Airport ramp space to park temporarily out of service airliners.

5. **DON NELMS:** A resolution approving Don Nelms ground lease agreement for the purpose of constructing an aircraft hangar.

6. **FLYING INVESTMENTS:** A resolution approving Flying Investments ground lease agreement for the purpose of constructing an aircraft hangar.

7. **JUVENILE BLOCK GRANT:** A resolution accepting the 2002 Juvenile Accountability Incentive Block Grant Program. 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.

8. **FIRE APPARATUS:** A resolution approving the return of $15,100.00 to the Fire Departments Operations Budget from the sale of fire apparatus. The money will be used to replace personal protective equipment for Firefighters.

113 WEST MOUNTAIN 72701 479-521-7700
FAX 479-575-8257

B. OLD BUSINESS

1. **RZN 02-7.00:** An ordinance approving rezoning request RZN 02-7.00 as submitted by Lindsey and Associates on behalf of the Estate of Marie Frankie Hughes for property located west of Porter Road and north of Valley Drive. The property is zoned R-1, Low Density Residential and contains approximately 11.94 acres. The request is to rezone to RMF-12, Moderate Density Family Residential. The item was left on the first reading at the Apirl 16, 2002 meeting.

C. NEW BUSINESS

1. **WASTEWATER SYSTEM IMPROVEMENTS:** An ordinance authorizing the issuance and sale of up to $25 million of Sales and Use Tax Capital Improvement Bonds for the Wastewater System Improvement Project.

2. **RZN 02-9.00:** An ordinance approving rezoning RZN 02-9.00 as submitted by Julian and Jane Archer for property located at 2231 Markham Road. The property is zoned R-1, Low Density Residential and contains approximately 18.80 acres. The request is to rezone to A-1, Agricultural.

3. **RZN 02-12.00:** An ordinance approving rezoning request RZN 02-12.00 as submitted by Julian and Jan Archer for property located at 2231 Markham Road. The property is zoned R-1, Low Density Residential and contains approximately 4.10 acres. The request is to rezone to A-1, Agricultural.

4. **VA 02-1.00:** An ordinance submitted by Greg Brockman for property located north of 15th Street and west of Duncan Streets the request is to vacate a 30' side portion of an unimproved Price Avenue right-of-way.

5. **PLANNING COMMISSION APPEAL:** Appeal of a Planning Commission Decision regarding LSD 02-7.00 for property located at the southwest corner of Fletcher Avenue and Rodgers Drive.

6. **SALES AND USE TAX:** An ordinance providing for the levy of a one percent sales and use tax and providing for an expiration date for such replacement Sales and Use Tax of June 30, 2013.

7. **SPECIAL ELECTION:** An ordinance calling for a special election on the question of levying a one percent Sales and Use Tax within the City of Fayetteville, to replace the one percent Sales and Use Tax expiring on June 30, 2003 and providing for an expiration date for such tax of June 30, 2013.

8. **TRAFFIC STUDY:** A resolution approving a transfer of Sanitary Sewer Rehab. Costs of $564,000 from CIP Sales Tax Fund to Water and Sewer Enterprise Fund, with $200,000 of the available CIP Sales Tax Funds to budgeted for a Master Traffic Study and $25,000 to be transferred to other Drainage Improvements.

9. **WATER MAIN REPLACEMENT:** A resolution to budget the 1.5 million of Water and Sewer Operating Funds reimbursed from Bond Proceeds, towards accelerated water main replacement activities, including approval of a budget adjustment and an addition to the fiscal year 2002 Capital Improvements Program.

10. **BURNS AND MCDONNELL:** A resolution to approve an agreement with Burns and McDonnell to perform program management services in connection with the Wastewater System Improvement Project. ~~[illegible]~~.

11. **MCGOODWIN, WILLIAMS & YATES:** A resolution approving amendment No. 2 to the contract with McGoodwin, Williams and Yates and approval of a contract contingency in the amount of ~~$25,000~~ 27,511 relating to the Wastewater System Improvement Project.

12. **BLACK AND VEATCH:** A resolution approving a contract amendment with Black and Veatch for water and sewer system operations and rate study services and approval of a budget adjustment.

13. **RAZE AND REMOVAL:** A resolution approving a raze and removal of house at 1200 S. Roberts as per Ordinance 3948.

14. **RURAL FIRE CONTRACTS:** An ordinance amending the Code of Fayetteville to establish annual fees for Rural Fire Contracts for a two year period from June 1, 2002 through May 31, 2004.

15. **CDBG:** A resolution to waive the building permit fee and other development fees for the Community Development.

16. **CHURCH OF THE NAZARENE:** A resolution to waive the building permit fee and other development fees for the rebuilding of the First Church of the Nazarene.

STAFF REVIEW FORM

XX AGENDA REQUEST
___ CONTRACT REVIEW
___ GRANT REVIEW

For the Fayetteville City Council meeting of May 7, 2002 Consent

FROM:

Steve Hatfield	Parks and Recreation	Urban Development
Name	Division	Department

ACTION REQUIRED: authorizing DJW
A resolution ~~expressing support for~~ a Recreational Trails Grant application and authorizing resources for a 20% share of project's cost.

COST TO CITY:

$20,000	$72,886	Park Trail Development
Cost of this Request	Category/Project Budget	Category/Project Name
2250-9250-5814-00	$0	Park Improvements
Account Number	Funds Used To Date	Program Name
96097	$72,886	Parks Development
Project Number	Remaining Balance	Fund

BUDGET REVIEW: X Budgeted Item ___ Budget Adjustment Attached

Budget Manager (Review limited to black application review.) Administrative Services Director

CONTRACT/GRANT/LEASE REVIEW: GRANTING AGENCY: ___

Marsha Farthing	4/16/02	Nancy Smith	4/16/02
Accounting Manager	Date	Internal Auditor	Date
D J White (Approved as to form ONLY.)	4/16/02		
City Attorney	Date	ADA Coordinator	Date
P Vice	4/16/02		
Purchasing Officer	Date		

STAFF RECOMMENDATION: **Approval of Resolution**

Connie Edmonston	4-16-02	
Division Head	Date	Cross Reference
Hugh Earnest	4-16-02	
Department Director	Date	New Item: (Yes) No
Administrative Services Director	4/19/02	Prev Ord/Res #: ___
	Date	
Dan Coody	4/19/02	Orig Contract Date: ___
Mayor	Date	Orig Contract Number: ___

Consent

STAFF REVIEW FORM

Description Recreational Trails Grant _____ Meeting Date May 7, 2002

Comments:
Budget Coordinator

Reference Comments:

Accounting Manager

City Attorney

Purchasing Officer

ADA Coordinator

Internal Auditor

FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

DEPARTMENTAL CORRESPONDENCE

TO:	Mayor Coody and City Council
THRU:	Hugh Earnest, Urban Development Director
	Connie Edmonston, Parks and Recreation Superintendent
FROM:	Steve Hatfield, Park Landscape Architect
DATE:	April 11, 2002
SUBJECT:	Recreational Trails Grant

Background

The Arkansas Recreational Trails Fund uses federal funding from the Transportation Equity Act for the 21st Century (TEA-21) for the purpose of building and performing major maintenance on motorized, non-motorized, and multiple use trails. A resolution is required from the Fayetteville City Council to the Arkansas State Highway and Transportation Department (AHTD) expressing support for the project and authorizing the resources for a 20% share of the project's cost.

Current Status

The renovation of Lake Fayetteville Trail is a wonderful project which will improve the trail experience around the perimeter of the lake. Currently, the Parks and Recreation Division has a $20,000 matching grant awarded for this project. Staff is currently waiting on approval from the State to utilize this funding for three trail kiosks, various trail corridor signage, and an interpretive brochure/trail map. These new trail amenities will provide important trail education materials such as trail usage, trail distances, designation of trail routes, emergency contact numbers, listing of trail events, and information that would promote the historical and environmental importance of the area. The Parks and Recreation Division requests approval to apply for up to $100,000 (80/20 match) in 2002 grant money from the Arkansas Recreational Trails Fund to continue the Lake Fayetteville Trail Renovation project. This funding will be used for developing accessible trail experiences in and around North Shore Park. The City of Fayetteville's matching money contribution, of up to $20,000, will be provided by the Parks and Recreation Capital Improvement Budget.

Recommendation

The Parks and Recreation Division recommends approval of a resolution expressing support from the Fayetteville City Council to the AHTD for the project and authorizing the resources for a 20% share of the project's cost. Enclosed is a copy of the grant application materials for your review. If you have any questions, please call Connie Edmonston at 444-3473 or Steve Hatfield 718-7688.

Attachments:
Grant Application

ARKANSAS RECREATIONAL TRAILS PROGRAM
2002 APPLICATION

Frequently asked Questions

How much money can I request?

There is no maximum or minimum to a sponsor's request. The largest award to date has been $119,000 and the smallest has been $1,500. The average award is $33,000.

For the 2002 federal fiscal year, Arkansas has $764,935 to distribute statewide.

What should I do if I want to request funding for more than one project?

If a sponsor submits applications for more than one project separate applications for each project must be submitted and they must be prioritized by the applicant.

When is the application due?

All applications are due no later than 4:00 PM, Friday, May 10, 2002.

Applications received after 4:00 p.m. on Friday, May 10, 2002 will not be considered. Decrease the possibilities of late arrivals by completing and mailing your application(s) at least one week prior to the deadline.

How do I fill out and send in the application?

Read the questions in the application carefully. Determine what information is required and provide the information in the space provided. Use the application in the form received. Do not add additional pages. There is ample space provided on the application for answers to the questions.

Do not skip any questions on the application. Do not omit the budget sheets.

Twelve copies of the application must be submitted. Applications with fewer copies will not be considered.

No fax (facsimile) applications will be accepted.

No e-mail or electronic applications will be accepted.

All drawings, site plans, maps, displays, etc. must be 8.5 inches by 11 inches. Do not send oversized drawings, figures, maps, or plans.

Do I need to include proof of support for the project?

It is not necessary to provide copies of letters from individuals supporting your project unless they are indicating a financial commitment to the project as requested in the application.

What is the minimum width of a paved bicycle and walking path.

To meet existing safety and design guidelines, multiple use trails allowing access to bicycles must be 10 feet wide. Such facilities can be as narrow as 8 feet in width when bicycle use is expected to be low, pedestrian traffic is expected to be low, there is adequate horizontal and vertical sight clearance, and the trail will not be used by maintenance vehicles. Using a width of less than 10 feet must be justified.

Does my project need to be in compliance with the Americans with Disabilities Act?

With few exceptions, all trails, particularly in urban areas, must be accessible to initials with disabilities. Existing barrier free design standards must be adhered to.

What kind of work can I request funding for?

Projects resulting in new trails or major maintenance to existing trails have a higher priority for funding than do projects with large percentages of trail support facilities. These support facilities include, but are not limited to benches, trash receptacles, lighting, trailhead information kiosks, drinking fountains, etc..

Landscaping beyond what is necessary to eliminate construction damage and irrigation facilities cannot be approved. Visitor center construction/improvements, playground equipment, and sidewalks will not be funded.

Can a project on private property be approved?

Projects on private property can be funded. However, public access must be provided for.

What can I use for my 20% (twenty per cent) local match?

Budgeted line item funds (cash) are the preferred source of local match.

The documented and verified value of donated materials can be used as local match.

Volunteer labor can be credited at the prevailing minimum rate and used as local match.

The appraised value of property, real estate, donated to the sponsor for the express purpose of the trail project can be used as local match.

When can I start work on the project?

The Arkansas State Highway and Transportation Department (AHTD) will issue each sponsor who submits required project development information (proof of ownership, plans and specifications, and approval from the State Historic Preservation Officer) and who signs an Agreement of Understanding and a Contract an official notice to proceed. Any approved costs directly associated with the project incurred **after** the issuance of the notice to proceed are eligible for reimbursement. Costs incurred prior to the issuance of the notice to proceed will **not** be eligible for reimbursement.

Can I receive funds to get started on the construction?

This is a reimbursable program. The sponsor is responsible for accomplishing work on the project prior to receiving funds from the AHTD.

If you have questions that are not covered here, please contact:

Steve Weston
AHTD – Planning and Research
P.O. Box 2261
Little Rock, AR 72203
(501) 569-2020
steve.weston@ahtd.state.ar.us

ARKANSAS RECREATIONAL TRAILS FUND

FY 2002 Funds

The Arkansas Recreational Trails Fund uses federal funding from the Transportation Equity Act for the 21st Century (TEA-21) for the purpose of building and performing major maintenance on motorized, non-motorized, and multiple use trails. Agencies of city, county, state, or federal government and duly incorporated private/non-profit agencies can apply for these funds if access to the project by the general public is provided throughout the life of the project.

A local sponsor must provide at least 20% of the total project cost. The local share can be in the form of cash, donated funds, or the documented fair market value of any donated materials or services that are accepted and incorporated into the project. Federal funds from other sources cannot be used to match these funds. Federal agencies wishing to use these funds can provide up to 15% of the total project cost as match, with the remaining 5% coming through cooperative relationships with trail user groups.

This is a reimbursable program. This means once the local sponsor receives an official Notice-to-Proceed from the Arkansas State Highway and Transportation Department, 80% of the costs directly attributable to the project can be reimbursed. The local sponsor is responsible for maintaining records and proving that expenses are legitimate and directly related to the project. This may be in the form of receipts, time sheets, etc. Such reimbursement will occur after an on-site visual verification conducted by AHTD.

PROJECT ADMINISTRATION PROCESS

The following steps will be taken to administer approved trail projects through completion.

1. Successful applicants (sponsors) will be notified by the Arkansas Recreational Trails Advisory Committee.

2. A trails project administration workshop will be held. Each sponsor must have a representative at this meeting. Environmental clearances, billing procedures, and administrative procedures will be discussed.

3. Sponsors will transmit a resolution to the Arkansas State Highway and Transportation Department (AHTD) from their governing body expressing support for the project and that they have the resources for their 20% share of their project's cost.

4. An Agreement of Understanding will be executed between the sponsor and AHTD. This document outlines the responsibilities of each of the respective parties.

5. The sponsor will provide AHTD with proof of land ownership and all plans, mapping, and construction specifications for review and approval.

6. The sponsor will provide AHTD with proof of State Historic Preservation Officer approval of the project and any other documentation necessary to obtain environmental clearances.

7. Once plans, maps, and construction specifications have been approved and after all environmental clearances have been obtained the final Contract between the sponsor and AHTD will be executed.

8. A pre-construction conference will be held.

9. **AHTD will provide the sponsor with an official Notice To Proceed. All expenses incurred <u>after</u> receipt of the Notice To Proceed will be reimbursable at the rate of 80%. All such expenses must be directly related to the trail project as outlined in the documentation listed above. Any expenses incurred <u>prior</u> to receipt of the Notice To Proceed will be the responsibility of the sponsor and will not be eligible for reimbursement.**

10. At set stages during the construction of the project, the sponsor can request reimbursement for work accomplished. Such reimbursements will be preceded by a visual verification conducted by AHTD staff. The stages at which reimbursement can be requested will be clearly outlined in the Agreement of Understanding.

For information contact:

Steve Weston
AHTD – Planning and Research
P.O. Box 2261
Little Rock, AR 72203
(501) 569-2020
steve.weston@ahtd.state.ar.us

APPLICATION

Project Title: _____

Applicant: _____

Address: _____

_____

_____

Primary Contact Person: _____

Title: _____ Phone: _____ Fax: _____

E-mail _____

Type of Applicant (circle one) Private/Non-Profit Government Agency

BUDGET INFORMATION; fill out attached 3 page budget sheet and fill in these blanks.

Local Share (must be at least 20% of total project cost): $_____

TEA-21 Share (not to exceed 80% of total project cost): $_____

Total Project Cost: $_____

PROJECT LOCATION

County: _____ Nearest Municipality: _____

Township: _____ Range: _____ Section(s): _____

Land Ownership (circle one) Public Private

Provide an accurate map indicating the location to the project in relation to the nearest municipality. This map must include information necessary to locate the site from the nearest state or U.S. highway.

PROJECT DESCRIPTION

1. **Outline exactly what will be accomplished with the funds you are applying for.** Provide a description of the work to be accomplished, how it will be accomplished, and who will perform it. Include materials to be used, source of labor, and source of design and construction standards to be used. Provide an accurate site plan covering the entire project with north arrow, scale, project beginning and end point(s), individual points of construction, maintenance, etc.

Length of trail to be **constructed**: _____

2. What is the primary purpose of this trail project? (check one)

_____ Restoration of sites damaged by trail use.

_____ New trail construction.

_____ Improvements, upgrading, or segment relocation to enhance use of existing trails.

_____ Trail-side or trail-head facility construction including but not limited to benches, vista clearing, bridges, parking, information boards, etc.

3. Circle each of the trail uses to be provided by this project and provide a **brief explanation** of how each will be accommodated.

bicycling	day hiking	equestrian	jogging/fitness
overnight/long distance hiking	4-wheel drive vehicle	4-wheel all terrain vehicle	interpretive
aquatic	barrier free	motorcycle	other

4. How does this project accomplish a recommendation in the current Statewide Comprehensive Outdoor Recreation Plan (available from the Arkansas Department of Parks and Tourism, 501-682-1301 State the recommendation and provide a brief explanation.

5. How will the project be designed and constructed to ensure the safety of its users and to avoid the danger or injury to users due to possible conflicts between different uses?

6. Describe how maintenance will be accomplished after project completion. Include who will perform maintenance, maintenance schedule and checklist, and inspection schedule.

7. Explain the planning process that led to this proposal, i.e. public involvement, establishment of need and demand, review process, etc.

8. What accommodations will be made to provide access to this trail for individuals with disabilities?

9. What is the source of the required local 20% match (budget item, donated materials, donated services, or donated cash)? If donated funds, materials, or services will be used as all or part of the local 20% match, **written commitments by the donors(s) must be provided**. Please provide copies of this documentation.

10. Will this project be accomplished by a contractor or by in-house (force-account) labor?

11. List any previous Recreational Trail Program funds you have received and the projects' status.

All applications must be received at the Arkansas State Highway and Transportation Department headquarters building in Little Rock no later than 4:00 P.M., Friday, May 10, 2002. No facsimile (fax) or electronic (e-mail or disc) applications will be accepted. Send twelve (12) copies of this application with all necessary attachments to:

Thomas L. Harrell, Planning and Research Engineer
Planning and Research Division
Arkansas State Highway and Transportation Department
P.O. Box 2261
Little Rock, Arkansas 72201

Arkansas Recreational Trails Program
Application Budget Sheet

Project Name _____

Sponsor _____

1 **Clearing and Grubbing**
Please estimate the costs of all clearing and grubbing associated with this project .

Length (in feet) _____ Width (in feet) _____

Material $ _____

Labor $ _____

2 **Base**
Please estimate the cost of purchasing and installing sub-base aggregate for this project.

Approximate number of cubic yards: _____

Material $ _____

Labor $ _____

3 **Paving**
Please estimate the cost of purchasing and installing trail paving material.

Length (in feet) _____ Width (in feet) _____

Asphalt, approximate number of cubic yards: _____

Concrete, approximate number of cubic yards: _____

Other (indicate material), approximate number of cubic yards: _____

Material $ _____

Labor $ _____

4 **Boardwalk Construction**
Please estimate the cost of purchasing and installing materials for boardwalks.

Length (in feet) _____ Width (in feet) _____

Material $ _____

Labor $ _____

Arkansas Recreational Trails Program
Application Budget Sheet

5 **Trail Support Facilities**
Please estimate the number and cost of purchasing and installing trail support facilities such as signs, bulletin boards, benches, parking spaces, etc..

A _____ $ _____

B _____ $ _____

C _____ $ _____

D _____ $ _____

E _____ $ _____

Material $ _____

Labor $ _____

6 **Bridges**
Please estimate the number and cost of purchasing materials and installing bridges

Number of bridges: _____

Length(s) of bridges: _____

Width(s) of bridges: _____

Distance between water and surface of bridges: _____

_____

Material $ _____

Labor $ _____

7 **Utilities**
Please describe and estimate the costs for installation of any utilities necessary for this project, i.e. water lines, electrical lines, etc.

A _____ $ _____

B _____ $ _____

C _____ $ _____

D _____ $ _____

Material $ _____

Labor $ _____

Arkansas Recreational Trails Program
Application Budget Sheet

8 **Drainage Structures**
Please describe and estimate the costs for purchasing materials and installing any drainage structures, i.e. culverts, etc..

Number: _____

Length: _____

Material $ _____

Labor $ _____

9 **Brochures and/or Educational Materials**
Please estimate the costs associated with publishing any brochures necessary for your trail project.

Material $ _____

Labor $ _____

10 **Other**
Please describe and estimate the cost for any other trail related project.

A _____

B _____

C _____

D _____

Material $ _____

Labor $ _____

PROJECT TOTALS Total Project Material $ _____

Total Project Labor $ _____

Total Project Cost $ _____

STAFF REVIEW FORM

X AGENDA REQUEST
X CONTRACT REVIEW
___ GRANT REVIEW

For the Fayetteville City Council meeting of May 7, 2002

FROM:

Name	Division	Department
Rick Hoyt, Interim Chief	Police	Police

ACTION REQUIRED: Award contract to Motorla Inc in the amount of $130,378.99 to upgrade the radio system to allow digital and encryption capabilities to be added to the Police Department's radios and approve a $10,000 contingency to the project.

COST TO CITY:

$140,378.99	$ 518,712	Radio System Replacement
Cost of this Request	Category/Project Budget	Category/Project Name
4470-9470-5801.00	$ 249,785	Capital Improvements
Account Number	Funds Used To Date	Program Name
99019	$ 268,927	Sales Tax Capital Improvements Fund
Project Number	Remaining Balance	Fund

BUDGET REVIEW: X Budgeted Item ___ Budget Adjustment Attached

Budget Manager — Administrative Services Director

CONTRACT/GRANT/LEASE REVIEW:

Marsha Farthing	4/19/02	Nancy Smith	4/19/02
Accounting Manager	Date	Internal Auditor	Date
D. G. Whitt	4/19/02		
City Attorney	Date	ADA Coordinator	Date
P Vice	4-19-02		
Purchasing Officer	Date		

GRANTING AGENCY:

STAFF RECOMMENDATION: Authorize Mayor and City Clerk to enter into contract with Motorola Inc for adding digital and encryption capabilities to Police Radios and approve a $10,000 contingency for this project.

Division Head	4-19-02 Date
Department Director	4-19-02 Date
Administrative Services Director	4/19/02 Date
Mayor	4/23/02 Date

Cross Reference

New Item: Yes No

Prev Ord/Res #:

Orig Contract Date:

New Bus
Consent

Staff Review Form
Page 2

Description:_____

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 Dan Coody and Members of the City Council

FROM: Rick Hoyt, Interim Chief of Police

DATE: April 19, 2002

SUBJECT: Radio System Upgrade Phase II - The addition of Digital and Encryption to Police Radios

This project completes the Phase II part of the radio replacement project. The first phase of the radio project was completed earlier this year with the installation of a conventional repeater at the Mt. Robinson tower site, which addressed the coverage problems the Waste Water Treatment Plant (WWTP) was having.

This migration project will upgrade the current SmartNet system for mixed-mode operation. This allows for subscriber units and dispatch positions to communicate with other units in either an analog or digitized audio mode of operation. The system will also be equipped for digital encryption.

The mixed-mode operation will allow users who are not currently capable of digital operation to continue on the system with their analog only units. The field units for the Police Department are currently equipped for digital operation. The Police department Portable units and ten (10) mobile units will also be equipped for digital encryption operation as part of this project.

Astro digital systems can deliver reliable, consistent audio quality across more of our coverage area. Digital technology can improve signal integrity even at the fringes of our coverage area resulting in clean, clear communications.

The use of digital operation will also allow the radio system to be equipped for digital encryption operation. Units equipped with digital operation, and encryption will be capable of using system in the encrypted mode. Encryption is the process of disguising two-way radio communication voice signals before they are transmitted over the air. This feature is important in the Police Department for operations where security is important i.e. dignitary protection details, narcotics operations, hostage situations, etc.

Communications Products Agreement

Motorola, Inc., a Delaware corporation, through its Commercial, Government, and Industrial Solutions Sector, North America Group ("Motorola"), having a place of business at 1301 E. Algonquin Rd., Schaumburg, IL 60196 and City of Fayetteville, ("Customer"), having a place of business at 100-A W. Rock, Fayetteville, AR 72701, enter into this Communications Products Agreement, pursuant to which Customer will purchase and Motorola will sell the Products, as described below. Seller and Customer may be referred to individually as "party" and collectively as "parties."

For good and valuable consideration, the parties agree as follows:

Section 1 EXHIBITS

The Exhibits listed below are incorporated into and made a part of this Agreement. In interpreting this Agreement and resolving any ambiguities, the main body of this Agreement will take precedence over the Exhibits and any inconsistency between the Exhibits will be resolved in the order in which they are listed below.

Exhibit A	Motorola "Software License Agreement"
Exhibit B	"Technical and Implementation Documents"
B-1	"List of Products" dated __4/10/02_____
B-2	"Statement of Work" dated _4/12/02____
B-3	"System Description" dated _4/12/02

Section 2 DEFINITIONS

Capitalized terms used in this Agreement shall have the following meanings:

"ADR" means alternative dispute resolution.

"Agreement" means this document, the exhibits listed above, and any amendments to this Agreement.

"Effective Date" means that date upon which the last party to sign this Agreement has executed the Agreement.

"Equipment" means the hardware listed in the List of Products.

"FCC" means the Federal Communications Commission.

"Force Majeure" means an event, circumstance, or act of a third party that is beyond a party's reasonable control, such as an act of God, an act of the public enemy, an act of a government entity, strikes or other labor disturbances, hurricanes, earthquakes, fires, floods, epidemics, embargoes, war, riots, or any other similar cause.

"Infringement Claim" means a claim that the Equipment manufactured by Motorola or the Motorola Software infringes a United States patent or copyright.

"Motorola Software" means Software that Motorola owns.

"Non-Motorola Software" means Software that a party other than Motorola owns.

"Products" mean the Equipment and Software provided by Motorola under this Agreement.

"Proprietary Rights" means the patents, patent applications, inventions, copyrights, trade secrets, trademarks, trade names, mask works, know-how, and other intellectual property rights in and to the Equipment and Software, including those created or produced by Motorola under this Agreement and any

corrections, bug fixes, enhancements, updates or modifications to or derivative works from the Software whether made by Motorola or another party.

"Purchase Price" means the price for the Products or for additional Products as permitted by Section 3.4 of this Agreement, exclusive of any applicable sales or similar taxes and freight charges.

"Software" means the Motorola and Non-Motorola Software in object code format that is furnished with the Products and which may be listed on the List of Products.

"Specifications" means the design, form, functionality, or performance requirements described in the Technical and Implementation Documents and any published descriptions of the Products.

Section 3 SCOPE OF AGREEMENT AND TERM

3.1. SCOPE OF WORK. Motorola will provide, ship, and install (if applicable) the Products, and perform its other contractual responsibilities, all in accordance with this Agreement. Customer will perform its contractual responsibilities in accordance with this Agreement.

3.2. CHANGE ORDERS. Either party may request changes within the general scope of this Agreement. Neither party is obligated to perform requested changes unless both parties execute a written change order.

3.3. TERM. Unless otherwise terminated in accordance with the provisions of this Agreement or extended by mutual agreement of the parties, the term of this Agreement shall begin on the Effective Date and shall continue until the expiration of the warranty period or three (3) years from the Effective Date, whichever occurs last.

3.4. ADDITIONAL EQUIPMENT OR SOFTWARE. During the Term of this Agreement, Customer may order additional Equipment or Software provided it is then available. Each order must refer to this Agreement. The applicable provisions of this Agreement (except for pricing, delivery, and payment terms) will govern the purchase and sale of the additional Equipment or Software. Unless otherwise expressly provided in this Agreement, the pricing and delivery terms will be Motorola's then published prices and standard delivery terms for such Equipment or Software, and payment is due within twenty (20) days after the invoice date. Motorola will send Customer an invoice as the additional Equipment is shipped or Software is licensed.

3.5. MAINTENANCE SERVICE. This Agreement does not cover maintenance or support of the Products except as provided under the warranty. If Customer wishes to purchase maintenance or support, Motorola will provide a separate maintenance and support proposal upon request.

3.6. MOTOROLA SOFTWARE. Any Motorola Software, including subsequent releases, is licensed to Customer solely in accordance with the Software License Agreement. Customer hereby accepts and agrees to abide by all of the terms and restrictions of the Software License Agreement.

3.7. NON-MOTOROLA SOFTWARE. Any Non-Motorola Software is licensed to Customer in accordance with the standard license, terms, and restrictions of the copyright owner on the Effective Date unless the copyright owner has granted to Motorola the right to sublicense the Non-Motorola Software pursuant to the Software License Agreement, in which case it applies. Motorola makes no representations or warranties of any kind regarding Non-Motorola Software.

Section 4 PERFORMANCE SCHEDULE

If this Agreement includes the performance of services, the Statement of Work will describe the performance schedule.

Section 5 PAYMENT OF PURCHASE PRICE

5.1. PURCHASE PRICE. The Purchase Price in U.S. dollars is $ 130,378.99. Motorola will submit to Customer invoices for Products when they are shipped and for services, if applicable, when they are performed. Customer will make payments to Motorola within thirty (30) days after the date of each invoice. Customer will make payments when due in the form of a check, cashier's check, or wire transfer drawn on a U.S. financial institution.

5.2. FREIGHT, TITLE, AND RISK OF LOSS. All freight charges will be pre-paid by Motorola and are included in the purchase price as indicated on Exhibit B-1. Title and risk of loss to the Equipment will pass to Customer upon receipt, except that title to Software will not pass to Customer at any time. Motorola will pack and ship all Equipment in accordance with good commercial practices.

Section 6 SITES AND SITE CONDITIONS

6.1. ACCESS TO SITES. If Motorola is providing installation or other services, Customer will provide all necessary construction and building permits, licenses, and the like; and access to the work sites or vehicles as reasonably requested by Motorola so that it may perform its contractual duties.

6.2. SITE CONDITIONS. If Motorola is providing installation or other services at Customer's sites, Customer will ensure that these work sites be safe, secure, and in compliance with all applicable industry (including R-56) and OSHA standards. To the extent applicable and unless the Statement of Work specifically states to the contrary, Customer will ensure that these work sites will have (i) adequate physical space for the installation, use and maintenance of the Products; (ii) adequate air conditioning and other environmental conditions; (iii) adequate electrical power outlets, distribution and equipment for the installation, use and maintenance of the Products; and (iv) adequate telephone or other communication lines for the installation, use and maintenance of the Products.

Section 7 ACCEPTANCE

Acceptance of the Products will occur upon delivery to Customer unless the Statement of Work provides for acceptance verification or testing, in which case acceptance of the Products will occur upon successful completion of the acceptance verification or testing. Notwithstanding the preceding sentence, Customer's use of the Products for their intended purpose will constitute acceptance.

Section 8 REPRESENTATIONS AND WARRANTIES

8.1. EQUIPMENT WARRANTY. For one (1) year from the date of shipment, Motorola warrants that the Equipment under normal use and service will operate in conformity with the manufacturer's published product specifications in all material respects and will be free from material defects in materials and workmanship.

8.2. MOTOROLA SOFTWARE WARRANTY. Unless otherwise stated in the Software License Agreement, for one (1) year from the date of shipment, Motorola warrants the Motorola Software in accordance with the terms of the Software License Agreement and the provisions of this Section applicable to the Motorola Software.

8.3. EXCLUSIONS TO EQUIPMENT AND MOTOROLA SOFTWARE WARRANTIES. These warranties do not apply to: (i) defects or damage resulting from use of the Equipment or Motorola Software in other than its normal, customary, and authorized manner; (ii) defects or damage occurring from misuse, accident, liquids, neglect, or acts of God; (iii) defects or damage occurring from testing, maintenance, disassembly, repair, installation, alteration, modification, or adjustment not provided or authorized in writing by Motorola; (iv) breakage of or damage to antennas unless caused directly by defects in material or workmanship; (vi) defects or damage caused by Customer's failure to comply with all applicable industry and OSHA standards; (vii) Equipment that has had the serial number removed or made illegible; (viii)

batteries (because they carry their own separate limited warranty); (ix) freight costs to ship Equipment to the repair depot; (x) scratches or other cosmetic damage to Equipment surfaces that does not affect the operation of the Equipment; and (xi) normal or customary wear and tear.

8.4. WARRANTY CLAIMS. Before the expiration of the warranty period, Customer must notify Motorola in writing if Equipment or Motorola Software does not conform to these warranties. Upon receipt of such notice, Motorola will investigate the warranty claim. If this investigation confirms a valid warranty claim, Motorola will (at its option and at no additional charge to Customer) repair the defective Equipment or Motorola Software, replace it with the same or equivalent product, or refund the price of the defective Equipment or Motorola Software. Such action will be the full extent of Motorola's liability hereunder. If this investigation indicates the warranty claim is not valid, then Motorola may invoice Customer for responding to the claim on a time and materials basis using Motorola's current labor rates. Repaired or replaced product is warranted for the balance of the original applicable Warranty Period. All replaced products or parts will become the property of Motorola.

8.5. ORIGINAL END USER IS COVERED. These express limited warranties are extended by Motorola to the original user purchasing the Products for commercial, industrial, or governmental use only, and are not assignable or transferable.

8.6. DISCLAIMER OF OTHER WARRANTIES. THESE WARRANTIES ARE THE COMPLETE WARRANTIES FOR THE EQUIPMENT AND MOTOROLA SOFTWARE PROVIDED UNDER THIS AGREEMENT AND ARE GIVEN IN LIEU OF ALL OTHER WARRANTIES. MOTOROLA DISCLAIMS ALL OTHER WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

Section 9 DELAYS

Neither party will be liable for its non-performance or delayed performance if caused by a Force Majeure. Each party will notify the other if it becomes aware of any Force Majeure that will significantly delay performance. The notifying party will give such notice promptly (but in no event later than fifteen days) after it discovers the Force Majeure. If a Force Majeure occurs, the parties will execute a change order to extend the performance schedule for a time period that is reasonable under the circumstances.

Section 10 DISPUTES

10.1. SETTLEMENT PREFERRED. Motorola and Customer will attempt to settle any claim or controversy arising from this Agreement (except for a claim relating to intellectual property) through consultation and negotiation in good faith and a spirit of mutual cooperation. The dispute will be escalated to appropriate higher-level managers of the parties, if necessary. If cooperative efforts fail, the dispute will be mediated by a mediator chosen jointly by Motorola and Customer within thirty days after notice by one of the parties demanding non-binding mediation. Motorola and Customer will not unreasonably withhold consent to the selection of a mediator, and they will share the cost of the mediation equally. The parties may postpone mediation until they have completed some specified but limited discovery about the dispute. The parties may also replace mediation with some other form of non-binding ADR.

10.2. LITIGATION. Any claim relating to intellectual property and any dispute that cannot be resolved between the parties through negotiation or mediation within two (2) months after the date of the initial demand for non-binding mediation shall then be submitted by either party to a court of competent jurisdiction in the state in which the Products are delivered. Each party consents to jurisdiction over it by such a court. The use of ADR procedures will not be considered under the doctrine of laches, waiver, or estoppel to affect adversely the rights of either party.

Section 11 DEFAULT AND TERMINATION

If a party fails to perform or otherwise breaches a material obligation under this Agreement, the other party may consider the non-performing party to be in default, unless a Force Majeure causes such failure. If the performing party asserts a default, it will give the non-performing party written and detailed notice of the default; and the non-performing party will have thirty (30) days thereafter either to dispute the assertion or provide a written plan to cure the default that is acceptable to the performing party. If the non-performing party provides a cure plan, it will begin implementing the cure plan immediately after receipt of the performing party's approval of the plan. If the non-performing party fails to cure the default, the performing party may terminate any unfulfilled portion of this Agreement and recover damages as permitted by law and this Agreement.

Section 12 PATENT AND COPYRIGHT INFRINGEMENT INDEMNIFICATION

12.1. Motorola will defend at its expense any suit brought against Customer to the extent that it is based on an Infringement Claim, and Motorola will indemnify Customer for those costs and damages finally awarded against Customer for an Infringement Claim. Motorola's duties to defend and indemnify are conditioned upon: (i) Customer promptly notifying Motorola in writing of such Infringement Claim; (ii) Motorola having sole control of the defense of such suit and all negotiations for its settlement or compromise; (iii) Customer providing to Motorola cooperation and, if requested by Motorola, reasonable assistance in the defense of the Infringement Claim.

12.2. If an Infringement Claim occurs, or in Motorola's opinion is likely to occur, Motorola may at its option and expense procure for Customer the right to continue using the Equipment or Motorola Software, replace or modify it so that it becomes non-infringing while providing functionally equivalent performance, or grant Customer a credit for such Equipment or Motorola Software as depreciated and accept its return. The depreciation amount will be calculated based upon generally accepted accounting standards for such Equipment and Software.

12.3. Motorola will have no duty to defend or indemnify for any Infringement Claim that is based upon (i) the combination of the Equipment or Motorola Software with any software, apparatus or device not furnished by Motorola; (ii) the use of ancillary equipment or software not furnished by Motorola and that is attached to or used in connection with the Equipment or Motorola Software; (iii) any Equipment that is not Motorola's design or formula; (iv) a modification of the Motorola Software by a party other than Motorola; or (v) the failure by Customer to install an enhancement release to the Motorola Software that is intended to correct the claimed infringement. The foregoing states the entire liability of Motorola with respect to infringement of patents and copyrights by the Equipment and Motorola Software or any parts thereof.

Section 13 LIMITATION OF LIABILITY

This limitation of liability provision shall apply notwithstanding any contrary provision in this Agreement. Except for personal injury or death, Motorola's total liability, whether for breach of contract, warranty, negligence, strict liability in tort, indemnification, or otherwise, will be limited to the direct damages recoverable under law, but not to exceed the price of the Equipment, Software, or services with respect to which losses or damages are claimed. ALTHOUGH THE PARTIES ACKNOWLEDGE THE POSSIBILITY OF SUCH LOSSES OR DAMAGES, THEY AGREE THAT MOTOROLA WILL NOT BE LIABLE FOR ANY COMMERCIAL LOSS; INCONVENIENCE; LOSS OF USE, TIME, DATA, GOOD WILL, REVENUES, PROFITS OR SAVINGS; OR OTHER SPECIAL, INCIDENTAL, INDIRECT, OR CONSEQUENTIAL DAMAGES IN ANY WAY RELATED TO OR ARISING FROM THIS AGREEMENT, THE SALE OR USE OF THE EQUIPMENT OR SOFTWARE, OR THE PERFORMANCE OF SERVICES BY MOTOROLA PURSUANT TO THIS AGREEMENT. This limitation of liability will survive the expiration or termination of this Agreement. No action for breach of this Agreement or otherwise relating to the transactions contemplated by this Agreement may be brought more than one (1) year after the accrual of such cause of action, except for money due upon an open account.

Section 14 CONFIDENTIALITY AND PROPRIETARY RIGHTS

14.1. CONFIDENTIAL INFORMATION.

14.1.1. During the term of this Agreement, the parties may provide the other with Confidential Information. For the purposes of this Agreement, "Confidential Information" is any information disclosed in written, graphic, verbal, or machine-recognizable form, and is marked, designated, labeled or identified at the time of disclosure as being confidential or its equivalent; or if in verbal form is identified as confidential or proprietary at the time of disclosure and confirmed in writing within thirty (30) days of such disclosure. Notwithstanding any other provisions of this Agreement, confidential information shall not include any information that: (i) is or becomes publicly known through no wrongful act of the receiving party; (ii) is already known to the receiving party without restriction when it is disclosed; (iii) is, or subsequently becomes, rightfully and without breach of this Agreement, in the receiving party's possession without any obligation restricting disclosure; (iv) is independently developed by the receiving party without breach of this Agreement; or (v) is explicitly approved for release by written authorization of the disclosing party.

14.1.2. Concerning the Confidential Information provided to it by the other party, each party will: (i) maintain the confidentiality of such Confidential Information and not disclose it to any third party, except as authorized by the disclosing party in writing or as required by a court of competent jurisdiction; (ii) restrict disclosure of Confidential Information to its employees who have a "need to know" and not copy or reproduce such Confidential Information; (iii) take necessary and appropriate precautions to guard the confidentiality of Confidential Information, including informing its employees who handle such Confidential Information that it is confidential and not to be disclosed to others, but such precautions shall be at least the same degree of care that the receiving party applies to its own confidential information and shall not be less than reasonable care; and (iv) use such Confidential Information only in furtherance of the performance of this Agreement. Confidential Information is and shall at all times remain the property of the disclosing party, and no grant of any proprietary rights in the Confidential Information is hereby given or intended, including any express or implied license, other than the limited right of the recipient to use the Confidential Information in the manner and to the extent permitted by this Agreement.

14.2. PRESERVATION OF MOTOROLA'S PROPRIETARY RIGHTS.

14.2.1. Motorola owns and retains all of its Proprietary Rights in the Equipment and Software. The third party manufacturer of any Equipment and the copyright owner of any Non-Motorola Software own and retain all of their Proprietary Rights in the Equipment and Software. Nothing in this Agreement is intended to restrict the Proprietary Rights of Motorola, any copyright owner of Non-Motorola Software, or any third party manufacturer of Equipment. All intellectual property developed, originated, or prepared by Motorola in connection with providing to Customer the Equipment, Software, or related services remain vested exclusively in Motorola, and this Agreement does not grant to Customer any shared development rights of intellectual property. This Agreement does not involve any Software that is a "work made for hire."

14.2.2. Except as explicitly provided in the Software License Agreement, nothing in this Agreement will be deemed to grant, either directly or by implication, estoppel, or otherwise, any right, title or interest in Motorola's Proprietary Rights. Concerning both the Motorola Software and the Non-Motorola Software, Customer agrees not to modify, disassemble, peel components, decompile, otherwise reverse engineer or attempt to reverse engineer, derive source code or create derivative works from, adapt, translate, merge with other software, reproduce, or export the Software, or permit or encourage any third party to do so.

Section 15 GENERAL

15.1. TAXES. The Purchase Price does include sales tax as indicated on Exhibit B-1. The Purchase price does not include any other amount for federal, state, or local excise, lease, service, rental, use, property, occupation, or other taxes, assessments or duties (other than federal, state, and local taxes based on Motorola's income or net worth), all of which will be paid by Customer except as exempt by law. If Motorola is required to pay or bear the burden of any such taxes, Motorola will send an invoice to Customer and Customer will pay to Motorola the amount of such taxes (including any applicable interest and penalties) within thirty (30) days after the date of the invoice. Customer will be solely responsible for reporting the Equipment for personal property tax purposes.

15.2. ASSIGNABILITY. Neither party may assign this Agreement without the prior written consent of the other party, except that Motorola may assign this Agreement to any of its affiliates or its right to receive payment without the prior consent of Customer.

15.3. SUBCONTRACTING. Motorola may subcontract any portion of the work, but such subcontracting will not relieve Motorola of its duties under this Agreement.

15.4 WAIVER. Failure or delay by either party to exercise any right or power under this Agreement will not operate as a waiver of such right or power. For a waiver of a right or power to be effective, it must be in writing signed by the waiving party. An effective waiver of a right or power shall not be construed as either (i) a future or continuing waiver of that same right or power, or (ii) the waiver of any other right or power.

15.5. SEVERABILITY. If a court of competent jurisdiction renders any provision of this Agreement (or portion of a provision) to be invalid or otherwise unenforceable, that provision or portion of the provision will be severed and the remainder of this Agreement will continue in full force and effect as if the invalid provision or portion of the provision were not part of this Agreement.

15.6. INDEPENDENT CONTRACTORS. Each party shall perform its activities and duties hereunder only as an independent contractor. The parties and their personnel shall not be considered to be an employee or agent of the other party. Nothing in this Agreement shall be interpreted as granting either party the right or authority to make commitments of any kind for the other. This Agreement shall not constitute, create, or in any way be interpreted as a joint venture, partnership or formal business organization of any kind.

15.7. HEADINGS AND SECTION REFERENCES; CONSTRUCTION. The section headings in this Agreement are inserted only for convenience and are not to be construed as part of this Agreement or as a limitation of the scope of the particular section to which the heading refers. This Agreement will be fairly interpreted in accordance with its terms and conditions and not for or against either party.

15.8. GOVERNING LAW. This Agreement and the rights and duties of the parties will be governed by and interpreted in accordance with the laws of the State in which the System is installed.

15.9. ENTIRE AGREEMENT. This Agreement, including all Exhibits, constitutes the entire agreement of the parties regarding the subject matter hereof and supersedes all previous agreements, proposals, and understandings, whether written or oral, relating to such subject matter. This Agreement may be altered, amended, or modified only by a written instrument signed by authorized representatives of both parties. The preprinted terms and conditions found on any Customer purchase order, acknowledgment or other form will not be considered an amendment or modification of this Agreement, even if a representative of each party signs such document.

15.10. NOTICES. Notices required under this Agreement to be given by one party to the other must be in writing and either delivered in person or sent to the address shown below by certified mail, return receipt requested and postage prepaid (or by a recognized courier service with an asset tracking system, such as Federal Express, UPS, or DHL), or by facsimile with correct answerback received, and shall be effective upon receipt:

City of Fayetteville	Motorola, Inc.
Attn: _Ms. Kathy Stocker_____	Attn: *Steve Kumrow*_____
100-A W. Rock_____	_2212 W. Nashville St._____
Fayetteville, AR 72701_____	_Broken Arrow, OK 74012_____
fax: _____	fax: _____

15.11. COMPLIANCE WITH APPLICABLE LAWS. Each party will comply with all applicable federal, state, and local laws, regulations and rules concerning the performance of this Agreement or use of the System. Customer will obtain and comply with all FCC licenses and authorizations required for the

installation, operation and use of the System before the scheduled installation of the Equipment. Although Motorola might assist Customer in the preparation of its FCC license applications, neither Motorola nor any of its employees is an agent or representative of Customer in FCC or other matters.

15.12. AUTHORITY TO EXECUTE AGREEMENT. Each party represents to the other that (i) it has obtained all necessary approvals, consents and authorizations to enter into this Agreement and to perform its duties under this Agreement; (ii) the person executing this Agreement on its behalf has the authority to do so; (iii) upon execution and delivery of this Agreement by the parties, it is a valid and binding contract, enforceable in accordance with its terms; and (iv) the execution, delivery, and performance of this Agreement does not violate any bylaw, charter, regulation, law or any other governing authority of the party.

15.13. SURVIVAL OF TERMS. The following provisions shall survive the expiration or termination of this Agreement for any reason: Sections 3.6 and 3.7 (concerning Software licensing); Section 10 (Disputes); Section 13 (Limitation of Liability); 14.1 (Confidential Information); and 14.2 (Preservation of Motorola's Proprietary Rights).

The parties hereby enter into this Agreement as of the Effective Date.

Motorola, Inc.	**Customer**
By: _____	By: _____
Name: _____	Name: _____
Title: _____	Title: _____
Date: _____	Date: _____

Exhibit A

Software License Agreement

Software License Agreement

Motorola, Inc., a Delaware corporation, through its Commercial, Government, and Industrial Solutions Sector ("Motorola" or "Licensor") or Printrak International, Incorporated, a Motorola company ("Printrak" or "Licensor"), and City of Fayetteville ("Licensee"), hereby enter into this Software License Agreement ("Agreement"). Motorola and Printrak are each authorized to execute this Agreement on behalf of the other. For good and valuable consideration, the parties agree as follows:

Section 1 SCOPE

Licensor will provide proprietary software and/or radio communications, computer, or other electronic products ("Products") containing embedded or pre-loaded proprietary software to Licensee. All such software that is owned by Motorola or Printrak is referred to as "Software." Product and Software documentation that specifies technical and performance features and capabilities, and the user, operation and training manuals for the Software (including all physical or electronic media upon which this information is provided) are collectively referred to as "Documentation." This Agreement contains the terms and conditions pursuant to which Licensor will license, and Licensee may use, the Software and Documentation.

Section 2 GRANT OF LICENSE

Licensor hereby grants to Licensee a personal, non-transferable (except as permitted in Section 8 below), and non-exclusive license under Licensor's applicable proprietary rights to use the Software and related Documentation for the purposes for which they were designed and in accordance with the terms and conditions of this Agreement. The license granted authorizes Licensee to use the Software only in object code format and does not grant any rights to source code.

Section 3 LIMITATIONS ON USE

3.1. Licensee may use the Motorola Software only for Licensee's internal business purposes and only in accordance with the Documentation. Any other use of the Software is strictly prohibited. Licensee may not for any reason modify, disassemble, peel components, decompile, otherwise reverse engineer or attempt to reverse engineer, derive source code, create derivative works from, adapt, translate, merge with other software, copy, reproduce, or export any Software or permit or encourage any third party to do so, except that Licensee may make one copy of Software provided by Licensor to be used solely for archival or back-up purposes. Licensee must reproduce all copyright and trademark notices on all copies of the Software and Documentation.

3.2. Licensee may not copy onto or transfer Software installed in one Product device onto another device. Notwithstanding the preceding sentence, Licensee may temporarily transfer Software installed on one device onto another if the original device is inoperable or malfunctioning, provided that Licensee provides written notice to Licensor of such temporary transfer and such temporary transfer is discontinued when the original device is returned to operation. Upon Licensor's written request, Licensee must provide to Licensor a written list of all Product devices in which the Software is installed and being used by Licensee.

3.3. Licensee must purchase a copy for each site at which Licensee uses Motorola's Radio Service Software (if applicable). Licensee may make one additional copy for each computer owned or controlled by Licensee at each such site. Upon written Motorola's request, Licensee must provide a written list of all sites where Licensee uses or intends to use Radio Service Software.

Section 4 OWNERSHIP AND TITLE

Title to all copies of Software will not pass to Licensee at any time but remains vested exclusively in Licensor. Licensor owns and retains all of its proprietary rights in any form concerning the Software and Documentation, including all rights in patents, patent applications, inventions, copyrights, trade secrets, trademarks, trade names, and other intellectual properties (including any corrections, bug fixes, enhancements, updates, or modifications to or derivative works from the Software whether made by Licensor or another party). Nothing in this Agreement is intended to restrict the proprietary rights of Licensor or to grant by implication or estoppel any proprietary rights. All intellectual property developed, originated, or prepared by Licensor in connection with providing to Licensee Software, Products, or related services remain vested exclusively in Licensor, and this Agreement does not grant to Licensee any shared development rights of intellectual property. This Agreement does not involve any software that is a "work made for hire."

Section 5 CONFIDENTIALITY

Licensee acknowledges that the Software and Documentation contain Licensor's proprietary and confidential information and trade secrets. Licensee will take necessary and appropriate precautions to maintain and guard the confidentiality of the Software and Documentation, using at least the same degree of care that Licensee applies to its own confidential information but not less than reasonable care. Precautions will include informing Licensee's employees and agents who are authorized to use the Software and Documentation that such information is confidential and may not to be disclosed to others. Licensee will not disclose the Software and Documentation to any third party except as permitted by this Agreement or expressly in writing by Licensor. Licensee will limit access to the Software and Documentation to Licensee's employees and agents who need to know and are authorized to use the Software and Documentation as permitted by this Agreement.

Section 6 LIMITED WARRANTY

6.1. If the Software is provided pursuant to a Communications System Agreement, Printrak-Suncoast System Agreement, Communications Products Agreement, or Printrak-Suncoast Products Agreement between Licensor and Licensee, the warranty period for the Software shall commence as stated in such agreement and will continue for one (1) year except as otherwise provided in this Section. For all other transactions, the warranty period will commence upon shipment of the Software and will continue for 120 days. For Software that is owned by Suncoast Scientific Incorporated, a Motorola company; Printrak's Law Records Management System software products; and Printrak's Premier CAD SE™ software products, the warranty period for such Software shall commence as stated in the applicable agreement and will continue for 120 days. For Software that is application software, the warranty period for subsequent units licensed is the remainder (if any) of the initial warranty period or, if the initial warranty period has expired, the remainder (if any) of the term of the applicable Software Maintenance and Support Agreement.

6.2. During the applicable warranty period, Licensor warrants that the Software, when used properly and in accordance with this Agreement, will be free from a reproducible defect that eliminates the functionality or successful operation of a feature critical to the primary functionality or successful operation of the system. For Software owned by Printrak, whether such defect occurs will be determined solely with reference to the Documentation. For Software involving radio frequency systems and Products, the primary functionality of a voice communication system is subscriber-to-subscriber, subscriber-to-dispatcher, and dispatcher-to-subscriber voice communication; and the primary functionality of a data communication system is point-to-point data transmission. Licensor does not warrant that Licensee's use of the Software or Products will be uninterrupted or error-free or that the Software or the Products will meet Licensee's particular requirements.

6.3. Before the expiration of the applicable warranty period, Licensee must notify Licensor in writing if the Motorola Software does not conform to this warranty. Upon receipt of such notice, Licensor will investigate the warranty claim. If this investigation confirms a valid warranty claim, Licensor will (at its option and at no additional charge to Licensee) repair the defect, replace the defective Software with the

same or equivalent software, or refund the price of the defective Software or individual Product in which the Software is embedded or for which it was provided. Such action will be the full extent of Licensor's liability and Licensee's sole remedy for a breach of this warranty. If the investigation indicates the warranty claim is not valid, then Licensor may invoice Licensee for responding to the claim on a time and materials basis using Licensor's current labor rates.

6.4. THIS WARRANTY EXTENDS ONLY TO THE FIRST LICENSEE. SUBSEQUENT TRANSFEREES MUST ACCEPT THE SOFTWARE "AS IS" AND WITH NO WARRANTIES OF ANY KIND. LICENSOR DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

Section 7 LIMITATION OF LIABILITY

EXCEPT FOR PERSONAL INJURY OR DEATH, LICENSOR'S TOTAL LIAIBLITY, WHETHER FOR BREACH OF CONTRACT, WARRANTY, NEGLIGENCE, STRICT LIABILTY IN TORT, OR OTHERWISE, WILL BE LIMITED TO LICENSEE'S DIRECT DAMAGES RECOVERABLE UNDER LAW, BUT NOT TO EXCEED THE PRICE FOR THE SOFTWARE, THE PRODUCTS PROVIDED BY LICENSOR IN WHICH THE SOFTWARE IS EMBEDDED OR INSTALLED, OR THE SERVICES SPECIFICALLY RELATED TO THE SOFTWARE WITH RESPECT TO WHICH LOSSES OR DAMAGES ARE CLAIMED. ALTHOUGH THE PARTIES ACKNOWLEDGE THE POSSIBILITY OF SUCH LOSSES OR DAMAGES, THEY AGREE THAT LICENSOR WILL NOT BE LIABLE FOR ANY COMMERCIAL LOSS, INCONVENIENCE; LOSS OF USE, TIME, DATA, GOOD WILL, REVENUES, PROFITS OR SAVINGS; OR OTHER SPECIAL, INCIDENTAL, INDIRECT, OR CONSEQUENTIAL DAMAGES ARISING FROM THIS AGREEMENT OR THE SALE OR USE OF ANY SOFTWARE OR PRODUCTS. This Limitation of Liability provision will survive the termination of this Agreement. Licensee must bring any action under this Agreement within one (1) year after the cause of action arises.

Section 8 TRANSFERS

Licensee may not transfer Software to any third party without Licensor's prior written consent, which consent may be withheld in Licensor's reasonable discretion and may be conditioned upon the transferee paying all applicable license fees and agreeing to be bound by this Agreement. Notwithstanding the preceding sentence, if Licensee transfers ownership of radio Products to a third party, Licensee may assign its rights to use the Software (other than Radio Service Software and Motorola's FLASHport® Software) embedded in or furnished for use with those radio Products; provided that Licensee transfers all copies of such Software and the related Documentation to the transferee, and the transferee executes a transfer form to be provided by Licensor upon request (which form obligates the transferee to be bound by this Agreement).

Section 9 TERM AND TERMINATION

Licensee's right to use the Software will begin when this Agreement is mutually executed by both parties and will continue in perpetuity unless terminated without notice by Licensor upon Licensee's breach of this Agreement. Licensee acknowledges that its breach of this Agreement will result in irreparable harm to Licensor for which monetary damages would be inadequate. Upon termination of this Agreement, Licensor will be entitled to immediate injunctive relief. Within thirty (30) days after termination of this Agreement, Licensee must certify in writing to Licensor that all copies of the Software and Documentation have been returned to Licensor or destroyed and are no longer in use by Licensee.

Section 10 NOTICES

Notices required under this Agreement to be given by one party to the other must be in writing and either delivered in person or sent to the address shown below by certified mail, return receipt requested and postage prepaid (or by a recognized courier service with an asset tracking system, such as Federal

Express, UPS, or DHL), and shall be effective upon receipt. Change of address must be in writing to the other party.

Licensee	Licensor
Attn: _____	Attn: _____
_____	_____
_____	_____

Section 11 GENERAL

11.1. COPYRIGHT NOTICES. The existence of a copyright notice on the Software will not be construed as an admission or presumption that public disclosure of the Software or any trade secrets associated with the Software has occurred.

11.2. COMPLIANCE WITH LAWS. Licensee will comply with all applicable laws and regulations, including export laws and regulations of the United States. Licensee will not, without the prior authorization of Licensor and the appropriate governmental authority of the United States, in any form export or re-export, sell or resell, ship or reship, or divert, through direct or indirect means, any item or technical data or direct or indirect products sold or otherwise furnished to any person within any territory for which the Unites States Government, or any agency thereof, at the time of such action, requires an export license or other governmental approval. Violation of this provision shall be a material breach of this Agreement, permitting immediate termination by Licensor.

11.3. WAIVERS. Failure or delay by either party to exercise any right or power under this Agreement will not operate as a waiver of such right or power. For a waiver of a right or power to be effective, it must be in writing signed by the waiving party. An effective waiver of a right or power shall not be construed as either a future or continuing waiver of that same right or power, or the waiver of any other right or power.

11.4. ASSIGNMENTS. Licensor may assign any of its rights or subcontract any of its obligations under this Agreement, or encumber or sell any of its rights in any Software, without prior notice to or consent of Licensee.

11.5. ENTIRE AGREEMENT AND AMENDMENT. This Agreement constitutes the entire agreement of the parties regarding Licensee's use of the Software and may be altered, amended, or modified only by a written instrument signed by an authorized representative of each party, except that Licensor may modify this Agreement as necessary to comply with applicable laws and regulations. This Agreement will be fairly interpreted in accordance with its terms and conditions and not for or against either party.

11.6. GOVERNING LAW. This Agreement will be governed by the laws of the United States to the extent that they apply and otherwise by the laws of the State to which the Software or Products are shipped.

11.7. SEVERABILITY. If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid or otherwise unenforceable, that provision will be severed and the remainder of this Agreement will remain in full force and effect.

In witness whereof, the parties have caused duly authorized representatives to execute this Software License Agreement on the dates set forth below.

Licensee	Licensor
By: _____	By: _____
Name: _____	Name: _____
Title: _____	Title: _____
Date: _____	Date: _____

Exhibit B

Technical and Implementation Documents

List of Products - Exhibit B-1
City of Fayetteville Astro/DVP-XL Upgrade

Date : April 10,2002

Item	APC	Qty	Nomenclature	Description	Extended List
KEYLOADER					
1	201	1	T6717	KVL 3000 Plus HARDWARE	
1a	201	1	C724	ADD: CABLE FOR XTS3000 AND MTS200	
1b	201	1	C542	ADD: CABLE CIU, DIU	
1c	201	1	C543	ADD: CABLE FOR RNC, DIU, DIU 3000,	
1d	201	1	C954	ADD: CABLE FOR SPECTRA AND ASTRO S	
1e	462	1	X795	ADD; ASN MODE	
1f	462	1	X769AC	ENH: DVP_XL	
2	453	1	NTN7395BR	BATTERY,HIGH CAPACITY	
3	129	1	NTN1402	120V RAPID DUAL UNIT	
					$2,939.50
DIU Upgrades					
4	524	1	F2047	ASTRO DIU TRUNK SOFTWARE UPGRADE	
4a	524	3	X807	ENH: ASTRO CAI UPGRADE TRUNK	
					$600.00
Encryption Modules					
5	525	3	T6721	DIGITAL INTERFACE CRYPTO MODULE	
5a	525	3	CA00147AA	BASIC SOFTWARE OPTION	
5b	525	3	CA00146AB	ADD: DVP XL ENCRYPTION KIT	
					$3,150.00
Quantar Refresh					
6	195	3	T5504	6809 TRUNKED UPGRADE KIT	
6a	195	3	X795	ENH: CURRENT SFTW VERSION	
					$600.00
Spectra Upgrade					
7	362	10	NTN1147	DVP_XL	$6,370.00
XTS Upgrade					
8	620	107	NTN8257	DVP_XL	$68,159.00
				TOTAL LINE ITEM AMOUNT	$81,818.50
				Installation, Project Management,Technical Services, System Test	$41,654.50
				Freight	$503.00
				Tax (5.125% + $ 75)	$6,402.99
				System Total	$130,378.99

CITY OF FAYETTEVILLE, ARKANSAS

SECTION 2: STATEMENT OF WORK

April 12, 2002

MOTOROLA

1. STATEMENT OF WORK

This Statement of Work (SOW) describes the work to be performed for the installation, optimization, and testing of an ASTRO upgrade for the City of Fayetteville. It delineates responsibilities between Motorola and the City of Fayetteville as agreed to by contract.

A Motorola Project Manager will lead the Motorola Systems Integration team. The primary function of the Project Manager is to successfully implement the project, within the allotted timeframe.

Changes to this document shall be made through a Change Order as described in the Communications Products Agreement (CPA).

1.1 MOTOROLA SYSTEM RESPONSIBILITIES (GENERAL)

Motorola will be responsible for the performance of all equipment provided by Motorola under this contract. The City of Fayetteville will assume responsibility for the performance of all other equipment necessary for completion of this project not provided by Motorola. Motorola's responsibilities on this project are further defined in the Project Schedule and in the Work Breakdown Structure (WBS) which is part of this SOW. Motorola's general responsibilities include the following:

- Provide a Project Manager as a primary point of contact.
- Provide a project implementation team to implement the City of Fayetteville's system as defined in this SOW and the System Description.
- Prepare and maintain the minutes of all project meetings.
- Schedule the system upgrades and cutover in agreement with the City of Fayetteville so as to minimize the downtime of the system and the impact to the City of Fayetteville.
- Coordinate the activities of all Motorola subcontractors under this contract.
- Administer safety work procedures for construction and installation.

1.2 THE CITY OF FAYETTEVILLE SYSTEM RESPONSIBILITIES (GENERAL)

The City of Fayetteville's responsibilities on this project are further defined in the Project Schedule and in the WBS that is part of this SOW. The City of Fayetteville responsibilities include:

- Provide a designated project manager for system implementation.

- Host all project meetings.
- Supply primary commercial power, wiring, and cable terminations.
- Supply the site links (i.e. telephone circuits, microwave, leased T1, etc) as required to accommodate the audio and data signals required for the Motorola system. Motorola will provide the appropriate link specification to the City of Fayetteville.
- Ensure all City of Fayetteville subcontractors perform in accordance with this SOW and the project schedule.
- Provide all network, electrical, and telephone connections for the proposed system, including placing cables in their appropriate locations.

1.3 SYSTEM IMPLEMENTATION

Implementation of the project will proceed according to the mutually agreed Project Schedule and WBS. The WBS and schedule define the project inter-dependencies of the tasks, as well as reflecting who is the responsible party for each task. A detailed WBS is part of this SOW. Motorola's phased approach to implementation includes factory staging, site development, infrastructure and subscriber unit installation, optimization and programming, and testing of the communications network.

1.4 INSTALLATION AND OPTIMIZATION OF FIXED EQUIPMENT

1.4.1 Perform Installation of Motorola Supplied Equipment

Motorola will install the equipment as defined by the Equipment List and WBS.

1.4.2 Perform On-Site Optimization and Test of Motorola Supplied Equipment

Motorola will verify correct operation of all Motorola supplied equipment as the equipment is installed. After Motorola verifies that the equipment has been correctly installed, Motorola's System Technologist will optimize the entire system. Further, Motorola will verify and reset as necessary, all audio and data levels between Motorola supplied equipment and the inter-site transmission network demarcation points.

1.5 ACCEPTANCE TEST PROCEDURES

Section 7 of the Communications Products Agreement describes system acceptance.

Each segment will be tested independently using detailed check sheets to be provided by Motorola, as appropriate, and approved by the City of Fayetteville prior to commencement of acceptance testing. If deficiencies are found during the testing, both the deficiencies and resolutions to the deficiencies shall be agreed upon and documented. If the documented deficiencies do not prevent productive operational use of the system, then the test will be deemed to have been completed. Motorola will, however, remain responsible for the resolution of the documented deficiencies.

Any system testing that the City of Fayetteville wants performed that is not specified in this proposal must be reviewed by Motorola for feasibility and acceptability. Any additional tests will represent a change in the project's scope.

1.6 MOBILES AND PORTABLES

1.6.1 Perform Programming

107 Portables and 10 mobiles will be programmed and tested from a template approved by the City of Fayetteville. A maximum of five radio templates will be created. Modifications to the templates requested by the City of Fayetteville after the units have been programmed will be performed at an additional cost under a change order.

All 107 portable radios and (10) ten mobile radios will be upgraded with the DVP-XL module prior to reprogramming.

1.7 TRAINING

There is no training associated with this proposal.

1.8 SYSTEM DOCUMENTATION

Motorola provides documentation of the system configurations, physical installation, and system testing. Existing documentation is updated during the project.

1.8.1 Design Documentation

Motorola will create or update the following documents during the design phase:

Equipment list

System description

Acceptance test procedures

Programming parameters

1.8.2 Equipment Manuals

Motorola will provide equipment manuals covering both standard and optional features. The content of these manuals is standardized and may not be specific to City of Fayetteville.

Some equipment manuals are only available in print. Some equipment manuals are available electronically. Motorola will provide the manual in the format that is standard for that product. No hard copies of the electronic manuals will be delivered under this contract.

1.9 SYSTEM ACCEPTANCE

System Acceptance shall be controlled by section 7 of the CPA. Each task requiring Acceptance Test procedures to be executed requires both City of Fayetteville and Motorola representatives to witness and approve the test.

1.10 CHANGE ORDER PROCEDURE

Changes to the contract will be controlled by section 3.2 of the CPA.

1.11 WORK BREAKDOWN STRUCTURE

The following WBS summarizes the project activities by phase.

Each WBS task contains the following information:

WBS number

Action item to be performed

Deliverable

Who is accountable for the action item

Who has approval authority over that action item

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Table 1: Summary of project activities by phase.

WBS #	WBS Title	Action	Deliverable	Accountable	Approval
1.	**Contract**	**The project schedule starts at Contract Award.**	**Start of Project**		
1.1.	Project Kick Off	A project kickoff meeting will be held to formally begin the implementation of the project, introduce project teams, and review the project.	Meeting with City of Fayetteville	City of Fayetteville & Motorola	N/A
2.	**Design Review**	**Tasks associated with planning the detailed project execution take place during this phase of the project.**	**City of Fayetteville Design Review**	**City of Fayetteville & Motorola**	**As defined below**
2.1.	Post-Sale City of Fayetteville Design Review	The City of Fayetteville and Motorola will review the ASTRO upgrade design	Design review of the ASTRO upgrade design and system interface design.	City of Fayetteville & Motorola	As defined below
2.2.	Finalize Design	Motorola and City of Fayetteville will work together to finalize the system design.	Finalize Design	City of Fayetteville & Motorola	
2.3.	Update equipment list	Motorola will update the equipment list, for equipment provided by Motorola under this contract, as necessary to accommodate the specifics of the Detailed Design Review.	Updated Equipment List for Motorola Provided Equipment	Motorola	City of Fayetteville
2.4.	Update System Description	Motorola will update the System Description to reflect changes in the system design.	Updated System Description	Motorola	City of Fayetteville
2.5.					
2.6.	Update SOW	Motorola will update the SOW to reflect changes in the implementation scope.	Updated SOW	Motorola	City of Fayetteville

Use or disclosure of this proposal is subject to the restrictions on the title page.
Motorola Confidential Proprietary

WBS #	WBS Title	Action	Deliverable	Accountable	Approval
2.7.					
2.8.	Deliver Design Document	Motorola will submit a final Design Document to City of Fayetteville. This document will be baselined by the System Description, SOW, , and other documentation provided prior to contract approval.	Design Document	Motorola	City of Fayetteville
2.8.1.	Final approval with City of Fayetteville	City of Fayetteville will review the work performed by Motorola and sign an approval document for the Design Review	Final Approval	City of Fayetteville	Motorola
2.8.2.					
2.8.3.					
2.8.4.					
3.	**Order Processing**	**Motorola will place factory orders for the system hardware that is being purchased for this ASTRO upgrade.**	**Order ASTRO upgrade hardware**	**Motorola**	**N/A**
4.	**Manufacturing**	**During this phase of the ASTRO upgrade implementation, all equipment is manufactured and shipped**	**Manufactured and shipped equipment**	**City of Fayetteville & Motorola**	**As defined below**
4.1.	Motorola Manufacturing	During this phase, equipment is manufactured.	Manufactured Equipment	Motorola	N/A
4.2.	Fleet Mapping / Equipment Configuration	Equipment programming and configurations will be determined as defined below.	Equipment Configurations and Programming (Fleetmapping)	City of Fayetteville & Motorola	As defined below

Use or disclosure of this proposal is subject to the restrictions on the title page.
Motorola Confidential Proprietary

WBS #	WBS Title	Action	Deliverable	Accountable	Approval
4.2.1.	Develop Templates	Motorola will develop templates for the following system components: ϖ Central Controller ϖ DIUs ϖ Consoles ϖ Subscriber Equipment	Develop Templates	Motorola	City of Fayetteville
4.2.2.	Fleet Map approval	Motorola will provide and review templates and configuration detail as defined by City of Fayetteville requirements for City of Fayetteville approval. City of Fayetteville will review the work performed by Motorola and sign an approval document.	Fleet Map and Template Approval	City of Fayetteville	Motorola
4.2.3.	Equipment ship to field	Motorola will ship the equipment to a location agreed to by the City of Fayetteville.	Ship Equipment to Field	Motorola	City of Fayetteville
5.	**Materials Management**	The City of Fayetteville and Motorola will manage the receiving and tracking of all project materials as defined below. The City of Fayetteville will designate and provide a central location to ship all project equipment.	MATERIALS MANAGEMENT	City of Fayetteville & MOTOROLA	N/A
5.1.	Receive, Log, and Inventory Equipment	Motorola will receive the project equipment, verify receipt of the equipment as ordered, visually verify the equipment arrived undamaged.	Receive, Log, and Inventory Equipment	Motorola	City of Fayetteville

WBS #	WBS Title	Action	Deliverable	Accountable	Approval
6.	**Upgrade of Mt. Sequia Site**	**During this phase of the project, all Site components are physically installed and upgraded.**	**Installed and Upgrade Sequia Site Equipment**	**City of Fayetteville & Motorola**	**As defined below**
6.1.1.	Installation and Upgrade	Motorola will install or upgrade the equipment, including: ▫ DIUs ▫ ▫ Central Controller	Installation and Upgrade of Site Equipment	Motorola	City of Fayetteville
6.1.2.					
6.1.3.	FNE Installation Acceptance	City of Fayetteville will acknowledge successful completion of the FNE Prime Site Installation by signing the acceptance document.	FNE Prime Site Installation Acceptance	City of Fayetteville	Motorola
6.2.	Console Upgrade	During this phase of the project, all console components are physically installed. As a part of the physical installation, Motorola will perform the activities described below.	Installed Console Equipment	City of Fayetteville & Motorola	As defined below
6.2.1.	Install and Upgrade Console Equipment	Motorola will install and upgrade the equipment for the dispatch system.	Installation and upgrade of Dispatch Control Equipment	Motorola	City of Fayetteville
6.2.2.	Console Installation Acceptance	City of Fayetteville will acknowledge successful completion of the Console Installation by signing the acceptance document.	Console Installation Acceptance	City of Fayetteville	Motorola
6.2.3.					

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WBS #	WBS Title	Action	Deliverable	Accountable	Approval
7.	**Program and Optimize Mt. Sequia Site**	**During this phase of the project, all Mt. Sequia Site components are optimized.**	**Optimization of ASTRO upgrade equipment**	**City of Fayetteville & Motorola**	**As defined below**
7.1.	Program/Optimize	Motorola will configure, optimize, and program all system prime site equipment. Motorola will prepare the equipment for final ATP testing.	Optimized ASTRO upgrade	Motorola	N/A
7.1.1.	System FNE	Motorola will program, optimize, configure, and set levels for the following components: ϖ Central Controller ϖ DIUs	Optimized Mt. Sequia Site FNE	Motorola	N/A
7.1.2.	Dispatch Center	Motorola will program, optimize, configure, and set levels for the following components: ϖ Central Electronics Bank ϖ Gold Elite Server ϖ Operator Positions	Optimized Dispatch FNE	Motorola	N/A
8.	**Acceptance Test**	**During this phase of the project, all ASTRO upgrade components are tested and documented as defined in the Acceptance Test Plan.** **Motorola will document the results of the test procedures.**	**Execution of ASTRO upgrade equipment ATP**	**City of Fayetteville & Motorola**	**As defined below**
8.1.1.	System ATP	Motorola will test the system functionality by executing the functional Acceptance Test Procedures documented in the contract.	System Functional ATP	Motorola	City of Fayetteville

WBS #	WBS Title	Action	Deliverable	Accountable	Approval
8.1.2.	SATP Acceptance	Upon successful execution of the Acceptance Test Plan, the City of Fayetteville will acknowledge System Acceptance by signing the System Acceptance Certificate. Acceptance will occur on a site by site and system by system basis	System Acceptance Acknowledgement	City of Fayetteville	Motorola
9.	**Subscriber Upgrade**	**Motorola will upgrade subscriber equipment as defined below.**	**Installation of Subscriber Equipment**	**Motorola**	City of Fayetteville
9.1.1.	Upgrade Mobiles	Motorola will upgrade 107 XTS-3000 Portables and 10 ASTRO-Spectra Mobiles for DVP-XL.	Upgrade Mobiles	Motorola	City of Fayetteville
9.1.2.	Program Subscribers	Motorola will program the 107 XTS-3000 Portables and 48 ASTRO-Spectra Mobiles a single time.	Program Mobiles	Motorola	City of Fayetteville
9.1.3.	Subscriber Acceptance	City of Fayetteville will acknowledge successful completion of the subscriber ATP by signing the acceptance document.	Subscriber Acceptance	City of Fayetteville	Motorola
10.	**Finalize**	**The Finalization phase of the ASTRO Upgrade consists of ensuring that all criteria for Final Acceptance have been met.**	**Final ASTRO Upgrade Acceptance**	**City of Fayetteville & Motorola**	**As defined below**
10.1.1.	Perform Cut-over	Motorola will execute Cutover plan.	Cutover to use of ASTRO upgrade	Motorola	City of Fayetteville
10.1.2.	Punchlist Resolution	Motorola will resolve punchlist documented at System Acceptance	Documentation and Resolution of Punchlist Items	Motorola	City of Fayetteville
10.1.3.					

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WBS #	WBS Title	Action	Deliverable	Accountable	Approval
10.1.4.	Final Acceptance	The City of Fayetteville will acknowledge Final System Acceptance upon completion of the criteria for Final System Acceptance for this ASTRO upgrade.	Final Acceptance of ASTRO upgrade	City of Fayetteville	Motorola

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EXHIBIT B-3

CITY OF FAYETTEVILLE ARKANSAS

SECTION 01: SYSTEM DESCRIPTION

1. OVERVIEW

Early this year the City of Fayetteville Arkansas and Motorola completed a project to place a new site at Mt. Sequoyah, replacement of dispatch equipment, and to make modifications to the Mt. Robinson site to make it operate as a backup site for the system.

After the completion of this project the City of Fayetteville and Motorola completed a second project to replace all the repeaters, three of which were equipped for ASTRO digital operation and upgrade the system software at the Mt. Robinson site so that system users could operate in an ASTRO digital mode.

As part of the first project the City of Fayetteville was to be provided with software for the MTC3600 controller at Mt. Sequoyah to allow that site to transmit in the ASTRO digital mode on three of the system repeaters.

The new software for the MTC3600 controller has been ordered and has arrived at Smith Two-Way radio for installation. The current project provides the necessary system integration services to install and test the ASTRO operation for the MTC3600 controller. This integration also includes the implementation of the fleet map changes necessary for ASTRO operation from the Mt. Sequoyah site for the Police Department fleet.

Additionally as part of this project, the City of Fayetteville has purchased the necessary software, modules, and equipment to equip a portion of the Police Department fleet with the ability to operate in the ASTRO digital DVP_XL encryption mode.

2. SUMMARY OF THE PROJECT SCOPE

As part of this project the Motorola System Integration team will the following equipment:

- One hundred and seven (107) DVP_XL Encryption Modules for installation in the City of Fayetteville Police Department XTS-3000 Portables
- Ten (10) DVP_XL Encryption Modules for installation in the City of Fayetteville Police ASTRO Spectra Mobiles
- One (1) KVL3000 Plus Keyloader with cables, battery and charger.
- Three (1) FlashPort upgrades for the existing ASTRO DIU units.

The equipment which was supplied as part of the project completed early this year that will be integrated and/or tested in this current project includes:

- MTC3600 ASTRO system software
- Three (3) ASTRO DIUs
- ASTRO ACIM cards in the Central Electronics Bank
- Cabling between various pieces of equipment necessary for ASTRO operation.
- Modifications will also take place to the System SAC database and the Gold Elite Console databases to allow for ASTRO and ASTRO DVP_XL encryption operation.

STAFF REVIEW FORM

_X AGENDA REQUEST
_X CONTRACT REVIEW
_ GRANT REVIEW
For the Fayetteville City Council meeting of April 16, 2002

FROM:

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

ACTION REQUIRED: Approval of License to Maximum Aviation Services for use of Fayetteville Municipal Airport ramp space to park temporarily out of service airliners.

COST TO CITY:

$ (4,500)	$ 28,160	
Cost of this Request	Category/Project Budget	Category/Project Name
5550.0955.4457.00	$ 0	
Account Number	Funds used to date	Program Name
N/A	$ 28,160	
Project Number	Remaining Balance	Fund

BUDGET REVIEW: _____ Budgeted Item ____ Budget Adjustment Attached

[signature]	Date	[signature] 4-19-2002	Date
Budget Manager		Administrative Services Dir.	

CONTRACT/GRANT/LEASE REVIEW:

Marsha Fairbing	4/19/02			
Accounting Manager	Date	Internal Auditor	Date	GRANTING AGENCY
[signature]	4/14/02			
City Attorney	Date	ADA Coordinator	Date	
[signature]	4/19/02			
Purchasing Officer	Date	Grants Coordinator	Date	

STAFF RECOMMENDATION:

[signature]	April 9, 2002	Cross Reference
Division Head	Date	
[signature]	4/19/02	New Item: Yes X No
Department Director	Date	Prev. Ord/Res#: _____
[signature]	4/23/03	Orig Cont. Date: _____
Administrative Services Director	Date	Orig Cont #: _____
[signature]		
Mayor	Date	

New Bus ___
Consent ✓

STAFF REVIEW FORM

Meeting Date: April 8, 2002

License agreement between the City of Fayetteville and Maximum Aviation services for the temporary storage of out of service airline aircraft. Aircraft will be maintained in flyable condition and license fees will be paid at the end of the month for the aircraft stored during the month. Monthly and daily rates will be established.

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: April 8, 2002
SUBJECT: Airline Storage License

Maximum Aviation Services

Background: Attached please find a license for the use of Airport Parking Ramp for the purpose of parking airline aircraft temporarily taken out of airline service. The initial agreement is to park up to 20 aircraft on the ramp at any time. The aircraft would be maintained in flyable condition and thus be available for reentry into the airline fleet.

Purpose: The purpose of this Memo is to inform all staff and then receive City Council approval for the project.

Budget Considerations: The airport will charge $200.00 per month for each aircraft. Total revenue to the airport could be $4,000.00 per month or $48,000.00 per year.

Requested Action: Approve the license for signature by the Mayor.

Attachments: Staff Review Form
License (signature page signed by fax)

AIRCRAFT STORAGE LICENSE

As of _____, 2002 the City of Fayetteville (Fayetteville Municipal Airport), herein "Licensor", permits the undersigned Licensee, Maximum Aviation Services , to store aircraft at the Fayetteville Municipal Airport under the following terms:

1. The aircraft stored under this License are identified by tail number and type of aircraft (hereinafter "Subject Aircraft"). Concurrent with execution of this License, Licensee is required to deliver a written list including the quantity of the Subject Aircraft(s) Licensee intends to store at the Fayetteville Municipal Airport using Exhibit "B" as Licensee's format (hereinafter "List") to Licensor. Licensee may change the number and identity of the Subject Aircraft(s) by delivering the List to Licensor every thirty (30) days after Licensee's execution of this License.

1a. If Licensee fails to timely deliver the List, this License shall be deemed terminated at Licensor's sole discretion and Licensor will calculate the quantity of Subject Aircraft and the Licensee shall be bound by Licensor's calculations for purposes of determining the Monthly License Fee as defined and set forth in Paragraph 4, hereinbelow.

1b. If Licensor disputes the contents of the Licensee's timely List delivery, Licensor shall deliver written notification to Licensee of the disputed List. If Licensee does not contest in writing the contest of the disputed List within seven (7) days following its receipt, then Licensor will calculate the quantity of Subject Aircraft and the Licensee shall be bound by Licensor's calculations for purposes of determining the Monthly License Fee as set forth in Paragraph 4, hereinbelow. This License will automatically be revised to include the Subject Aircraft stated in the List on the last day of the month following receipt of the List by Licensor.

2. The Subject Aircraft shall initially be stored in an area designated by Licensor. The Licensor may change the storage location by written notice to Licensee. If Licensee does not move the Subject Aircraft, the Subject Aircraft shall be moved by Licensor within ten days of delivery of the notice to Licensee. Licensor shall be entitled to recovery of reasonable costs.

3. This License commences the date first above written and shall continue month-to-month. Either party may terminate this License by thirty (30) days prior written notice.

4. Licensee shall pay "Monthly Licensee Fee" per month on the last day of each month during the term of this License. The Monthly License Fee shall be calculated in accordance with the Schedule of Charges (Exhibit "A", attached hereto and incorporated herein) and the List (Exhibit "B"). If the above amount is not paid by Licensee within twenty (20) days following the last day of each month, Licensor shall also be paid interest at the rate of 1.5% per month on the unpaid balance. The Monthly License Fee may change (as described in Paragraph 1, hereinabove) in accordance with Exhibit "A", should the quantity and identity of the Subject Aircraft set forth in the List change.

5. This License is personal to the Licensee.

6. Licensee shall save and hold Licensor, its officers, agents and employees, free and harmless from costs, liability or damages, including attorney fees, arising out of acts or omissions to act, including negligent acts or omissions to act, by Licensor, its officers, agents or employees in connection with operations under this license, or to enforce the terms or remedy a breach of this License.

7. Licensee shall provide Licensor with a Certificate of Insurance naming Licensor as additional insured on a policy or policies of insurance with at least the following coverages: Bodily Injury Liability, $1,000,000 each person and $2,000,000 each occurrence; and property damage liability, $500,000 occurrence. Said Certificates shall provide the policy or policies shall not be canceled without given thirty days' prior written notice to Licensor.

8. The Subject Aircraft shall not be used for commercial activity unless Licensee receives prior written consent for such activity form the Licensor.

9. The Licensee may perform work on the Subject Aircraft as is permitted by Federal Aviation Regulations.

10. The use of combustible chemicals, in, or adjacent to, the storage area is strictly prohibited.

11. Licensee shall not interfere with the departure or arrival of aircraft.

12. Licensee shall not make or cause to be made, alterations to the storage area without first securing the written consent of the Licensor.

13. Licensor has access to the storage area at reasonable times for the purpose of inspection or making necessary repairs or improvements.

14. Waiver of any provision herein, or of the regulations governing the use of aircraft storage, shall not be deemed a continuing waiver or waiver of another provision or regulation.

15. Notices required herein may be given by enclosing the same in a sealed envelope, addressed to the party for whom intended, and by depositing such envelope with postage prepaid at any United States Post Office facility. Such notices shall be addressed as follows:

LICENSOR:
Director of Aviation and Economic Development
Fayetteville Municipal Airport
4500 S. School Avenue, Suite F
Fayetteville, Arkansas 72701
Phone: 479-718-7642 / Fax: 479-718-7646

LICENSEE:
Maximum Aviation Services
ATTN: Max Seefluth, Preseident
21 Fox Ridge Drive
Kansas, Oklahoma 72347
Phone: 918-597-3077 / Fax: (same)

16. Licensor is not responsible for theft, loss, injury, damage or destruction of the aircraft or property thereon or accident or injury to licensee. The charges fixed herein are for the privilege of storage only.

17. Licensee shall abide by the *"Airport Minimum Standards for Operations and Commercial Activities"* adopted by the Licensor and by the rules and regulations relating to the use of Fayetteville Municipal Airport. Execution of this license by Licensee acknowledges receipt of the rules and regulations.

The Licensor accepts the terms of this License as of the date first above written.

LICENSEE: MAXIMUM AVIATION SERVICES

By: _____
Name and Title

_____

ATTEST:

By: _____

The License is granted as of the date first above written.

LICENSOR: CITY OF FAYETTEVILLE

By: _____
Dan Coody, Mayor

ATTEST:

By: _____
Heather Woodruff, City Clerk

FAYETTEVILLE MUNICIPAL AIRPORT
AIRCRAFT STORAGE

EXHIBIT "A"
SCHEDULE OF CHARGES

TYPE OF AIRCRAFT	MONTHLY RATE	DAILY RATE
Small (example) BAe 146 ATR	$200.00	$6.75/day
Narrow Body (example DC9 720 727 MD80 737 880	$200.00	$6.75/day
Wide Body (example) DC8 A300 MD11 DC10 L1011 757 B747 B767	T-B-D	T-B-D

FAYETTEVILLE MUNICIPAL AIRPORT

EXHIBIT "B"
AIRCRAFT STORAGE

COMPANY NAME _____

CONTACT PERSON _____

PHONE NUMBER _____

FAX NUMBER _____

AIRCRAFT INFORMATION REQUIRED

AIRCRAFT TYPE _____ TAIL NUMBER _____

AIRCRAFT OWNER _____

DATE AIRCRAFT ARRIVED _____

DATE AIRCRAFT DEPARTED _____

AIRCRAFT LOCATION ON FIELD_____

Date aircraft placed on ramp _____

Date aircraft placed in storage

STAFF REVIEW FORM

X_ AGENDA REQUEST
X CONTRACT REVIEW
_ GRANT REVIEW
For the Fayetteville City Council meeting of May 7, 2002

FROM:

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

ACTION REQUIRED: Approval of Don Nelms ground lease agreement for the purpose of constructing an aircraft hangar and signature by the Mayor and City Clerk.

COST TO CITY:

$ (980.00)	$ 28,160.00	Ground Rent/Freight
Cost of this Request	Category/Project Budget	Category/Project Name
5550.0955.4457.00	$ 0	Charges for service
Account Number	Funds used to date	Program Name
N/A	$ 28,160	Airport
Project Number	Remaining Balance	Fund

BUDGET REVIEW: X Budgeted Item ___ Budget Adjustment Attached

Budget Manager — Date — Administrative Services Dir. — Date

CONTRACT/GRANT/LEASE REVIEW:

Accounting Manager — Date — Internal Auditor — Date — **GRANTING AGENCY**

City Attorney — Date — ADA Coordinator — Date

Purchasing Officer — Date — Grants Coordinator — Date

STAFF RECOMMENDATION: Approve the Airport Ground Lease Contract with Don Nelms.

Division Head — Date

Department Director — Date

Administrative Services Director — Date

Mayor — Date

Cross Reference

New Item: Yes X No
Prev. Ord/Res#:
Orig Cont. Date:
Orig Cont #:

New Bus
Consent

STAFF REVIEW FORM

Meeting Date: May 7, 2002

Comments: Review and approve airport ground lease contract with Don Nelms. Mr. Nelms will construct a hangar in the newly developed corporate area and house aircraft which he uses in his business.

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

MEMORANDUM

TO: Dan Coody, Mayor
City Council Members
THRU: Staff Review Committee
FROM: Ray M. Boudreaux, Director
DATE: April 16, 2002
SUBJECT: Airport Ground Lease for Corporate Hangar Construction

Background: Attached please find the final ground lease signed by Don Nelms of Fayetteville. Mr. Nelms will construct a corporate hangar on propertyleased from the City at Fayetteville Municipal Airport from which to operate a flying business.

Purpose: To approve an airport ground lease contract with Don Nelms.

Budget Considerations: Don Nelms will pay the City $980.00 a year for the ground.

Requested Action: Approval by the City Council. Signature by the Mayor and City Clerk.

Attachments: Staff Review Form
Lease agreement

Aviation and Economic Development Department
Fayetteville Municipal Airport, Drake Field
4500 South School Avenue, Suite F
Fayetteville, Arkansas 72701
Ray M. Boudreaux, Director

LEASE AGREEMENT
Ground Lease

This **Lease Agreement** entered into this ____ day of _____, 2002, by and between the City of Fayetteville, Arkansas, hereinafter referred to as the "Lessor," and Don Nelms, 2933 N. College Avenue, Fayetteville, Arkansas 72703 hereinafter referred to as "Tenant";

WHEREAS, the Lessor owns and operates an Airport known as Fayetteville Municipal Airport - Drake Field, situated in Washington County in the State of Arkansas; and

WHEREAS, Tenant desires to lease from Lessor certain space for the construction of an aircraft hangar and ramp as described below for aviation operations, heavy aircraft maintenance and aircraft storage:

A CERTAIN TRACT OF LAND 140 FT. X 140 FT. LOCATED AT THE FAYETTEVILLE MUNICIPAL AIRPORT - DRAKE FIELD AND MORE PARTICULARLY SET FORTH AND SHOWN ON EXHIBIT "A", ATTACHED HERETO AND MADE A PART HEREOF, ONCE COMPETED TO HAVE AN ADDRESS ON SOUTH SCHOOL AVENUE.

NOW, THEREFORE, the Parties hereto agree as follows:

1. **LEASEHOLD.** The Lessor does hereby grant, demise and lease unto Tenant certain premises situated in Washington County, Arkansas, within the boundaries of the Fayetteville Municipal Airport- Drake Field. Tenant will be responsible for all improvements to the Leased Premises, (aircraft hangar and ramp).

2. **TERM.** The term of this lease is for thirty (30) years beginning on the first day of the next month, following the date the occupancy permit is granted (____ day of _____, 2002), and ending at midnight the end of the previous month in the year 2032 (_____, 2032), unless otherwise terminated, canceled or extended as set forth herein below. Lessor or Tenant may terminate this lease at any time by giving the other party thirty (30) days written notice of termination during the first six (6) months following the date of the lease and prior to the ground breaking for the new facility.

A. Option to Extend. Tenant Don Nelms shall have the option to extend the Lease Term of this Lease for one (1) period of twenty (20) years if Tenant Don Nelms, has satisfied the following conditions (extensions beyond fifty (50) years must be renegotiated and approved by the City Council):

(1). Tenant has complied with and performed all conditions, covenants, and terms of the Agreement without any defaults known to Tenant, or any defaults that are not otherwise in the process of being resolved in the manner provided in this Agreement.

(2). Notice of Tenant Don Nelm's request to renew has been made and presented in writing to City of Fayetteville at least one hundred twenty (120) days prior to the expiration of the term.

(3.) The amount of rental fees shall have been successfully negotiated and agreed to by the parties for the extended lease term.

3. **RENTAL FEES.** During the term of this lease, Tenant Don Nelms agrees to pay Lessor an annual ground rental fee of five cents ($.05) per square foot of total leased ground space. Leased ground space totals 19,600 square feet. Annual rental due the Lessor is Nine Hundred and Eighty Dollars ($980.00). Said rental is to be paid in advance in yearly installments on the first day of the next month following the date the occupancy permit is granted (____ day of _____, 2002).

If paid annually, or in increments of five (5) years or less, rental charges shall be reviewed every five (5) years and the rental charges for the next five (5) years of the lease term will be adjusted up to reflect the Consumer Price Index (CPI) plus one (1) percent, using the formula on Lease Attachment #1.

The parties agree that the rental to be effective as of the commencement of each period of the lease shall be equal to the rate set forth, as adjusted by the CPI, as defined to mean the monthly index published by the United States Department of Labor, Bureau of Labor Statistics. Index utilized will be for the month nearest to the renewal date as published by the United States Department of Labor, Bureau of Labor Statistics prior to the renewal date.

A delinquency charge will be imposed on payments not received by the close of business on the tenth day after the due date. Such delinquency charge shall be the maximum amount allowable under Arkansas law. All payments shall be delivered or mailed to: City of Fayetteville, 113 West Mountain Street, Fayetteville, Arkansas 72701.

4. **UTILITIES AND JANITORIAL SERVICES**. Tenant shall be responsible for the payment of the utilities associated with any, but not limited to, electric, gas, heating, water/sewer, and trash removal to the leasehold.

The Lessor shall not be required to furnish to Tenant any facilities or services of any kind, such as, but not limited to, water/sewer, trash removal, electricity, or gas. Any such facilities or services required by Tenant for their use and purposes shall be their sole and exclusive responsibility and agree to hold Lessor harmless from any responsibility or liability therefore.

5. **TERMS AND CONDITIONS.** Tenant agrees to comply with and abide by all terms and conditions set forth in this original Agreement of Lease.

6. **USE OF THE PREMISES**. Tenant agrees that the leased premises shall be used and occupied only as an aircraft hangar and for related lawful purposes.

A. **Flammable Material**. Tenant further agrees not to store any flammable material on the demised premises other than a limited supply of oils and agents necessary for the operation of an aircraft hangar.

B. **Hazardous Substance.** Tenant shall not cause or permit any Hazardous Substance to be used or stored on or in the Leased Premises with out first obtaining the Lessor's written consent. If Hazardous Substances are used, stored, generated, or disposed of on or in the Leased Premises or if the Leased Premises or any other Airport property becomes contaminated in any manner for which Tenant is responsible or legally liable, Tenant shall indemnify and hold harmless the Lessor from any and all claims, damages, fines, judgements, penalties, costs, liabilities, or losses (including, without limitation and decrease in value of the Lease Premises, damages caused by loss or restriction of rentable or usable space as part of the Leased Premises) arising during or after the term hereof and arising as a result of that contamination by Tenant, Tenant's agents, employees, and invitees. This indemnification includes, without limitation, and all costs incurred because of any investigation of the Airport or any cleanup, removal, or restoration mandated by a federal, state, local agency or political subdivision.

C. Tenant shall not start or operate aircraft engines within the facility leased hereby and shall not allow such operations by any other person.

7. **USE OF THE AIRPORT**. Tenant is granted the use, in common, without charge, with others similarly authorized, of the airport, together with all facilities, equipment, improvements, and services which have been or may hereafter be provided at or in connection with the Airport from time to time including, but not limited to, the landing field and any extensions hereof or additions thereto, roadways, runways, ramps, aprons, taxiways, flood lights, landing lights, beacons, control tower, signals, radio aids, and all other conveniences for flying, landings and takeoffs.

Tenant agrees to observe and obey Lessor's Ordinances and Regulations with respect to the use of the demised premised and Airport; provided, however, such Ordinances and Regulations shall be consistent with safety and with all city, county, state, and federal ordinances, rules and regulations. Tenant agrees to abide by the rulings of the Federal Aviation Administration with respect to the use of the Leased Premises. *"Airport Minimum Standards for Operations and Commercial Activities"* herein referred to as Airport Minimum Standards at Fayetteville Municipal Airport are made part of this lease by reference as if included word for word.

8. **REPAIRS, MAINTENANCE AND APPEARANCE**.

A. Tenant shall at all times during the term of this Lease Agreement, at Tenant's expense, keep and maintain in good repair and safe condition the leased premises and the equipment and appurtenances, both inside and outside, structural and non-structural, extraordinary and ordinary,

whether or not necessitated by wear, tear, obsolescence or defects, latent or otherwise. When used herein, the term "repairs" shall include all necessary replacements, renewals, alterations, additions, and betterments. Tenant acknowledges that Tenant shall be responsible for the repairs and maintenance necessary to maintain the structural integrity of the hangar. Tenant will at all times maintain the Leased Premises in a clean, orderly, and attractive condition; not allow the accumulation of rubbish, trash, refuse and any unsightly conditions or fire hazards on the Leased Premises. Tenant shall be responsible for mowing and the upkeep of the outside grounds of the Leased Premises. Tenant shall be responsible for all janitorial services and trash removal from the Leased Premises.

B. The necessity for and adequacy of repair to the Lease Premises, pursuant to subparagraph (a.) hereof, shall be measured by the standard which is appropriate for improvements of similar construction and also shall meet the requirements and standards set out and promulgated by the City of Fayetteville pursuant to the primary lease referred to above.

C. Tenant agrees to reimburse Lessor for all sums and expenses incurred in the repairs or maintenance required or caused to be made pursuant to the regulations and rules of the Lessor mentioned in subparagraph (b) above as a result of failure by Tenant to maintain or repair the demised premised as required.

9. **ALTERATIONS AND IMPROVEMENTS**. Tenant shall have prior written consent from the Lessor, meeting all City requirements, to make any alterations, additions and improvements Tenant deems necessary and desirable to the interior of the leased premises. Tenant shall not be entitled to make any major or material alterations, additions or changes to the exterior of the leased premises without the Lessor's prior written consent. Tenant acknowledges and agrees that all such alterations, additions and improvements, including paneling, partitions, railings, floors, ceilings and the like, shall become the property of the Lessor upon the terminations of the Lease Agreement.

10. **INSURANCE**. Tenant shall obtain and maintain property insurance coverage for the repair or replacement of the leasehold and any adjacent improvements, with an insurance company licensed to do business in the State of Arkansas, naming the City of Fayetteville and the Fayetteville Municipal Airport and their trustees, agents, officers, and employees are named as an additional insured on the policy, and Tenant shall provide the Airport Administration Office with a Certificate of Insurance during the term of this Lease.

Tenant acknowledges that it is the Tenant's responsibility to maintain insurance on Tenant's personal property.

11. **SUB-LEASING AND ASSIGNMENT**. Tenant shall not be entitled to sub-lease or assign the Tenant's interest in this Lease Agreement without first obtaining the written permission of the Lessor. A request to sub-lease or an assignment of the lease will not be unreasonably withheld.

12. **EVENTS OF DEFAULT**. The following shall be "events of default" under this Agreement, and the terms "events of default" or "default" shall mean, whenever they are used herein, any one or more of the following.

A. Tenant shall fail to pay when due and owning any rentals hereunder and such nonpayment shall continue for twenty days after written notice thereof by the Airport;

B. Tenant voluntarily shall abandon, desert, or vacate the Leased Premises;

C. Tenant shall fail to comply with insurance requirements imposed hereunder;

D. Tenant shall fail to observe or perform any other of its obligation hereunder, and such failure shall continue unremedied for twenty (20 days after the Lessor shall have given to the Tenant written notice specifying such default. Provided, the Airport may grant Tenant such additional time as it's reasonably required to correct any such default if Tenant has instituted corrective action and diligently is pursuing the same;

E. Tenant shall fail to provide and maintain any security assurances required hereunder.

13. **REMEDIES UPON TENANT'S DEFAULT**. Whenever an event of default of Tenant shall occur, the Lessor may pursue any available right or remedy at law or equity including:

A. Termination. At its exclusive option, the Lessor may deliver to Tenant written notice of termination, specifying the date upon which the Agreement will terminate. In the event of termination, Tenant's rights to possession of the Leased Premises immediately shall cease. The Lessor may then reenter and take possession of the Leased Premises and Tenant forthwith shall surrender possession of the Leased Premises. Upon termination of this Agreement, Tenant shall be liable for payment of:

(1.) All sums accrued through the date of termination.

(2.) The reasonable costs incurred by the Lessor to relet the Leased Premises, or any portion thereof; and

(3.) The reasonable cost incurred by the Lessor to restore the Leased Premised or any portion thereof to the condition in which they originally were leased, ordinary wear and tear excepted.

All rentals received by the Lessor from reletting the Leased Premises after the termination of this Agreement shall be credited against the Outstanding Rental Balance. The acceptance by the Lessor of any rentals from Tenant after the termination of this Agreement shall not reinstate this Agreement.

Upon such notice, Tenant agrees to vacate the premises immediately. Should it become necessary

for Lessor to resort to judicial process to enforce the terms of this Agreement, or reclaim possession of the premises, Tenant agrees to pay a reasonable attorney's fee.

14. **EXPIRATION OR TERMINATION.** On the expiration or other termination of this Lease, Tenant's right to use the demised premises shall cease, and Tenant shall vacate the premises without unreasonable delay. All property installed, erected, or placed by Tenant in, on, or about the premises leased hereunder shall be deemed to remain the property of Lessor. Tenant shall have the right at any time during the term of this agreement, or any renewal or extension hereof, and for an additional period of seven (7) days after the expiration or other termination of this agreement, to remove any or all of Tenant's property, subject, however to Tenant's obligation to repair all damage, if any, resulting from such removal. Any and all property not removed by Tenant prior to the expiration of the aforesaid seven (7) day period shall thereupon become a part of the land on which it is located and title hereto shall thereupon vest in Lessor.

15. **TERMINATION OF AIRPORT**. In the event that the Fayetteville Municipal Airport facility and property are no longer used for aviation purposes, the Tenant may remain in possession of the premises until the end of the lease term with the right to use the premises for any use allowable under Arkansas law.

16. **TAXES**. Tenant shall pay all ad valorem taxes and assessments upon the leased premises and upon all personal property located upon the leased premises which are assessed during the lease term.

17. **MORTGAGING OF LEASEHOLD**. Tenant is hereby given the absolute right without the Lessor's consent to mortgage his interest in the leased premises, provided that no such mortgage shall extend to or affect the fee, the reversionary interest, or the estate of Lessor in and to the land and building (hangar facility complex) erected thereon.

18. **INDEMNITY**. Tenant agrees to indemnify Lessor against any liability for injuries to persons or damage to property caused by Tenant's gross negligent use or occupancy of the leased premises; provided, however, that Tenant shall not be liable for any personal injury, damage or loss occasioned by the negligence of Lessor or its agents or employees, and provided further, that each party shall give prompt and timely notice of any claim made or suit instituted which in any way directly or indirectly affects or might affect either party, and each party shall have the right to compromise and defend the same to the extent of its own interest. This clause shall not be construed to waive that tort immunity asset forth under Arkansas Law.

19. **NON-WAIVER**. Neither the waiver by Lessor of any breach of Tenant of any provision hereof nor any forbearance by the Airport to seek a remedy for any such breach shall operate as a waiver of any other breach of Tenant.

20. **NOTICES**. Any notice or consent required by this Agreement shall be sufficient if sent by Certified Mail, return receipt requested, postage paid, to the following addresses:

LESSOR:

Airport Administration Office
4500 S. School Avenue, Suite F
Fayetteville, Arkansas 72701
PH: 501-718-7642

TENANT:

Don Nelms
2933 N. College Avenue
Fayetteville, Arkansas 72703

21. This Agreement shall be construed under the laws of the State of Arkansas.

22. All the covenants, conditions, and provisions under this agreement shall extend to and bind the legal representatives, successors, and assign of the respective parties hereof.

IN WITNESS WHEREOF, the parties have executed this lease on the day and year first above written.

LESSOR:
CITY OF FAYETTEVILLE, ARKANSAS

By: _____
Dan Coody, Mayor

ATTEST:

By: _____
Heather Woodruff, City Clerk

TENANT:
Don Nelms

By: _____

_____
Title

ATTEST:

By: _____

Title: _____

LEASE ATTACHMENT NUMBER ONE

Rent adjustments shall be made as of the commencement of each of the Dates Upon Which Rent Increases Apply and shall be determined by the following formula:

Rent as last so increased under this Lease

multiplied by:

$$1 + \frac{\text{Current Index - Base Index}}{\text{Base Index}}$$

plus

one percent (1%) of the Rent as last so increased under this Lease

Where, "Current Index" shall be the CPI *(D-1 Consumer Price Index-All City Average," "all items groups, subgroups and special groups," published monthly in the Monthly Labor Review of the Bureau of Labor Statistics of the United States Department of Labor)* for the month immediately prior to the applicable Dates Upon Which Rent Increases Apply, and Base Index shall be the CPI for the month immediately prior to the Commencement Date or the most recent Dates Upon Which Rent Increases Apply, whichever is applicable. In no event, however, shall the Rent for any period be less than the Rent as last so increased under this Lease. In the event that such CPI is no longer published or otherwise available, the adjustment provided for herein shall be by the successor (or the most nearly comparable successor index) thereto, adjusted as appropriate to the applicable dates.

STAFF REVIEW FORM

X_ AGENDA REQUEST
X CONTRACT REVIEW
_ GRANT REVIEW
For the Fayetteville City Council meeting of May 7, 2002

FROM:

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

ACTION REQUIRED: Approval of Flying Investments, LLC ground lease agreement for the purpose of constructing an aircraft hangar and signature by the Mayor and City Clerk.

COST TO CITY:

$ (980.00)	$ 28,160.00	Ground Rent/Freight
Cost of this Request	Category/Project Budget	Category/Project Name
5550.0955.4457.00	$ 0	Charges for service
Account Number	Funds used to date	Program Name
N/A	$ 28,160.00	Airport
Project Number	Remaining Balance	Fund

BUDGET REVIEW: X Budgeted Item ___ Budget Adjustment Attached

Budget Manager — Date — Administrative Services Dir. — Date

CONTRACT/GRANT/LEASE REVIEW:

Marsha Fairking 4/19/02
Accounting Manager — Date — Internal Auditor — Date — **GRANTING AGENCY**

4/19/02
City Attorney — Date — ADA Coordinator — Date

4/19/02
Purchasing Officer — Date — Grants Coordinator — Date

STAFF RECOMMENDATION: Approve the Airport Ground Lease Contract with Flying Investments Inc.

Division Head — Date

Department Director — Date

4/19/02
Administrative Services Director — Date

Mayor — Date

Cross Reference

New Item: Yes X No
Prev. Ord/Res#:
Orig Cont. Date:
Orig Cont #:

New Business ___
Consent ✓

STAFF REVIEW FORM

Meeting Date: May 7, 2002

Comments: Review and approve airport ground lease contract with Flying Investments, LLC. Company will construct a hangar in the newly developed corporate area and house, and conduct flying operations with, several cabin class jet aircraft.

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

MEMORANDUM

TO: Dan Coody, Mayor
City Council Members
THRU: Staff Review Committee
FROM: Ray M. Boudreaux, Director
DATE: April 16, 2002
SUBJECT: Airport Ground Lease for Corporate Hangar Construction

Background: Attached please find the final ground lease signed by Flying Investments, LLC Inc. of Fayetteville. The company will construct a corporate hangar on property leased from the City at Fayetteville Municipal Airport from which to operate a flying business. The company plans to operate several corporate jet aircraft.

Purpose: To approve an airport ground lease contract with Flying Investments, LLC of Fayetteville.

Budget Considerations: Flying Investments, LLC will pay the City $980.00 a year for the ground. An agreement has been negotiated as part of the lease agreement for the company to purchase their own fuel and for the City to store it and pump it into the aircraft utilizing airport staff. Fees charged have been negotiated on an annual basis so that the fees paid for the service decrease with the quantity pumped into the planes.

Requested Action: Approval by the City Council. Signature by the Mayor and City Clerk.

Attachments: Staff Review Form
Lease agreement

Aviation and Economic Development Department
Fayetteville Municipal Airport, Drake Field
4500 South School Avenue, Suite F
Fayetteville, Arkansas 72701
Ray M. Boudreaux, Director

LEASE AGREEMENT
Ground Lease

This **Lease Agreement** entered into this _____ day of _____, 2002, by and between the City of Fayetteville, Arkansas, hereinafter referred to as the "Lessor," and Flying Investments LLC, P. O. Box 8157, Fayetteville, Arkansas 72703 hereinafter referred to as "Tenant";

WHEREAS, the Lessor owns and operates an Airport known as Fayetteville Municipal Airport - Drake Field, situated in Washington County in the State of Arkansas; and

WHEREAS, Tenant desires to lease from Lessor certain space for the construction of an aircraft hangar and ramp as described below:

A CERTAIN TRACT OF LAND 140 FT. X 140 FT. LOCATED AT THE FAYETTEVILLE MUNICIPAL AIRPORT - DRAKE FIELD AND MORE PARTICULARLY SET FORTH AND SHOWN ON EXHIBIT "A", ATTACHED HERETO AND MADE A PART HEREOF, ONCE COMPETED TO HAVE AN ADDRESS ON SOUTH SCHOOL AVENUE.

NOW, THEREFORE, the Parties hereto agree as follows:

1. **LEASEHOLD.** The Lessor does hereby grant, demise and lease unto Tenant certain premises situated in Washington County, Arkansas, within the boundaries of the Fayetteville Municipal Airport- Drake Field. Tenant will be responsible for all improvements to the Leased Premises.

2. **TERM.** The term of this lease is for thirty (30) years beginning on the first day of the next month following the date the occupancy permit is granted (___day of_____, 2002), and ending at midnight the end of the previous month in the year 2032 (_____, 2032), unless otherwise terminated, canceled or extended as set forth herein below. Lessor or Tenant may terminate this lease at any time by giving the other party thirty (30) days written notice of termination during the first six (6) months following the date of the lease and prior to the ground breaking for the new facility.

A. Option to Extend. Tenant Flying Investments LLC shall have the option to extend the Lease Term of this Lease for one (1) period of Twenty (20) years if Tenant Flying Investments LLC, has satisfied the following conditions (extensions beyond fifty (50) years must be renegotiated and approved by the City Council):

(1). Tenant has complied with and performed all conditions, covenants, and terms of the Agreement without any defaults known to Tenant, or any defaults that are not otherwise in the process of being resolved in the manner provided in this Agreement.

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(2). Notice of Flying Investments LLC's request to renew has been made and presented in writing to the City of Fayetteville at least one hundred twenty (120) days prior to the expiration of the term.

(3.) The amount of rental fees shall have been successfully negotiated and agreed to by the parties for the extended lease term.

3. **RENTAL FEES.** During the term of this lease, Tenant Flying Investments agrees to pay Lessor-City of Fayetteville an annual ground rental fee of five cents ($.05) per square foot of total leased ground space. Leased ground space totals 19,600 square feet. Annual rental due the Lessor is Nine Hundred and Eighty Dollars ($980.00) . Said rental is to be paid in advance in yearly installments on the first day of the next month following the date the occupancy permit is granted (___day of_____, 2002).

If paid annually, or in increments of five (5) years or less, rental charges shall be reviewed every five (5) years and the rental charges for the next five (5) years of the lease term will be adjusted up to reflect the Consumer Price Index (CPI) plus one (1) percent, using the formula on Lease Attachment #1.

The parties agree that the rental to be effective as of the commencement of each period of the lease shall be equal to the rate set forth, as adjusted by the CPI, as defined to mean the monthly index published by the United States Department of Labor, Bureau of Labor Statistics and in no case shall be less than the amount paid for the previous period. Index utilized will be for the month nearest to the renewal date as published by the United States Department of Labor, Bureau of Labor Statistics prior to the renewal date.

A delinquency charge will be imposed on payments not received by the close of business on the tenth day after the due date. Such delinquency charge shall be the maximum amount allowable under Arkansas law. All payments shall be delivered or mailed to: City of Fayetteville, 113 West Mountain Street, Fayetteville, Arkansas 72701.

4. **UTILITIES AND JANITORIAL SERVICES**. Tenant shall be responsible for the payment of the utilities associated with any, but not limited to, electric, gas, heating, water/sewer, and trash removal to the leasehold.

The Lessor shall not be required to furnish to Tenant any facilities or services of any kind, such as, but not limited to, water/sewer, trash removal, electricity, or gas. Any such facilities or services required by Tenant for their use and purposes shall be their sole and exclusive responsibility and agree to hold Lessor harmless from any responsibility or liability therefore.

5. **TERMS AND CONDITIONS.** Tenant agrees to comply with and abide by all terms and conditions set forth in this original Agreement of Lease.

6. **USE OF THE PREMISES**. Tenant agrees that the leased premises shall be used and occupied only as an aircraft hangar and for related lawful purposes.

A. **Flammable Material**. Tenant further agrees not to store any flammable material on the demised premises other than a limited supply of oils and agents necessary for the operation of an aircraft hangar.

B. **Hazardous Substance.** Tenant shall not cause or permit any Hazardous Substance to be used or stored on or in the Leased Premises with out first obtaining the Lessor's written consent. If Hazardous Substances are used, stored, generated, or disposed of on or in the Leased Premises or if the Leased Premises or any other Airport property becomes contaminated in any manner for which Tenant is responsible or legally liable, Tenant shall indemnify and hold harmless the Lessor from any and all claims, damages, fines, judgements, penalties, costs, liabilities, or losses (including, without limitation and decrease in value of the Lease Premises, damages caused by loss or restriction of rentable or usable space as part of the Leased Premises) arising during or after the term hereof and arising as a result of that contamination by Tenant, Tenant's agents, employees, and invitees. This indemnification includes, without limitation, and all costs incurred because of any investigation of the Airport or any cleanup, removal, or restoration mandated by a federal, state, local agency or political subdivision.

C. Tenant shall not start or operate aircraft engines within the facility leased hereby and shall not allow such operations by any other person.

7. **USE OF THE AIRPORT**. Tenant Flying Investments LLC is granted the use, in common, without charge, with others similarly authorized, of the airport, together with all facilities, equipment, improvements, and services which have been or may hereafter be provided at or in connection with the Airport from time to time including, but not limited to, the landing field and any extensions hereof or additions thereto, roadways, runways, ramps, aprons, taxiways, flood lights, landing lights, beacons, control tower, signals, radio aids, and all other conveniences for flying, landings and takeoffs.

Tenant agrees to observe and obey Lessor's Ordinances and Regulations with respect to the use of the demised premised and Airport; provided, however, such Ordinances and Regulations shall be consistent with safety and with all city, county, state, and federal ordinances, rules and regulations. Tenant agrees to abide by the rulings of the Federal Aviation Administration with respect to the use of the Leased Premises. *"Airport Minimum Standards for Operations and Commercial Activities"* herein referred to as Airport Minimum Standards at Fayetteville Municipal Airport are made part of this lease by reference as if included word for word. Special provisions for the use of fuel storage facilities are at Lease Attachment #2.

8. **REPAIRS, MAINTENANCE AND APPEARANCE**.

A. Tenant shall at all times during the term of this Lease Agreement, at Tenant's expense,

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keep and maintain in good repair and safe condition the leased premises and the equipment and appurtenances, both inside and outside, structural and non-structural, extraordinary and ordinary, whether or not necessitated by wear, tear, obsolescence or defects, latent or otherwise. When used herein, the term "repairs" shall include all necessary replacements, renewals, alterations, additions, and betterments. Tenant acknowledges that Tenant shall be responsible for the repairs and maintenance necessary to maintain the structural integrity of the hangar. Tenant will at all times maintain the Leased Premises in a clean, orderly, and attractive condition; not allow the accumulation of rubbish, trash, refuse and any unsightly conditions or fire hazards on the Leased Premises. Tenant shall be responsible for mowing and the upkeep of the outside grounds of the Leased Premises. Tenant shall be responsible for all janitorial services and trash removal from the Leased Premises.

B. The necessity for and adequacy of repair to the Lease Premises, pursuant to subparagraph (a.) hereof, shall be measured by the standard which is appropriate for improvements of similar construction and also shall meet the requirements and standards set out and promulgated by the City of Fayetteville pursuant to the primary lease referred to above.

C. Tenant agrees to reimburse Lessor for all sums and expenses incurred in the repairs or maintenance required or caused to be made pursuant to the regulations and rules of the Lessor mentioned in subparagraph (b) above as a result of failure by Tenant to maintain or repair the demised premised as required.

9. **ALTERATIONS AND IMPROVEMENTS**. Tenant shall have prior written consent from the Lessor, meeting all City requirements, to make any alterations, additions and improvements Tenant deems necessary and desirable to the interior of the leased premises. Tenant shall not be entitled to make any major or material alterations, additions or changes to the exterior of the leased premises without the Lessor's prior written consent. Tenant acknowledges and agrees that all such alterations, additions and improvements, including paneling, partitions, railings, floors, ceilings and the like, shall become the property of the Lessor upon the terminations of the Lease Agreement.

10. **INSURANCE**. Tenant shall obtain and maintain property insurance coverage for the repair or replacement of the leasehold and any adjacent improvements, with an insurance company licensed to do business in the State of Arkansas, naming the City of Fayetteville and the Fayetteville Municipal Airport and their trustees, agents, officers, and employees are named as an additional insured on the policy, and Tenant shall provide the Airport Administration Office with a Certificate of Insurance during the term of this Lease.

Tenant acknowledges that it is the Tenant's responsibility to maintain insurance on Tenant's personal property.

11. **SUB-LEASING AND ASSIGNMENT**. Tenant shall not be entitled to sub-lease or assign the Tenant's interest in this Lease Agreement without first obtaining the written permission of the Lessor, provided however, Tenant may assign Tenant's interest in this Lease Agreement for a One

Hundred and Eighty (180) day period to Qualified Escrow, LLC, in order for Tenant to accomplish a tax deferred exchange under Section 1031 of the Internal Revenue Code. A request to sub-lease or an assignment of the lease will not be unreasonably withheld.

12. **EVENTS OF DEFAULT**. The following shall be "events of default" under this Agreement, and the terms "events of default" or "default" shall mean, whenever they are used herein, any one or more of the following.

A. Tenant shall fail to pay when due and owning any rentals hereunder and such nonpayment shall continue for twenty days after written notice thereof by the Airport;

B. Tenant voluntarily shall abandon, desert, or vacate the Leased Premises;

C. Tenant shall fail to comply with insurance requirements imposed hereunder;

D. Tenant shall fail to observe or perform any other of its obligation hereunder, and such failure shall continue unremedied for twenty (20 days after the Lessor shall have given to the Tenant written notice specifying such default. Provided, the Airport may grant Tenant such additional time as it's reasonably required to correct any such default if Tenant has instituted corrective action and diligently is pursuing the same;

E. Tenant shall fail to provide and maintain any security assurances required hereunder; or

13. **REMEDIES UPON Tenant'S DEFAULT**. Whenever an event of default of Tenant shall occur, the Lessor may pursue any available right or remedy at law or equity including:

A. Termination. At its exclusive option, the Lessor may deliver to Tenant written notice of termination, specifying the date upon which the Agreement will terminate. In the event of termination, Tenant's rights to possession of the Leased Premises immediately shall cease. The Lessor may then reenter and take possession of the Leased Premises and Tenant forthwith shall surrender possession of the Leased Premises. Upon termination of this Agreement, Tenant shall be liable for payment of:

(1.) All sums accrued through the date of termination.

(2.) The reasonable costs incurred by the Lessor to relet the Leased Premises, or any portion thereof; and

(3.) The reasonable cost incurred by the Lessor to restore the Leased Premised or any portion thereof to the condition in which they originally were leased, ordinary wear and tear excepted.

All rentals received by the Lessor from re-letting the Leased Premises after the termination of this

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Agreement shall be credited against the Outstanding Rental Balance. The acceptance by the Lessor of any rentals from Tenant after the termination of this Agreement shall not reinstate this Agreement.

Upon such notice, Tenant agrees to vacate the premises immediately. Should it become necessary for Lessor to resort to judicial process to enforce the terms of this Agreement, or reclaim possession of the premises, Tenant agrees to pay a reasonable attorney's fee.

14. **EXPIRATION OR TERMINATION.** On the expiration or other termination of this Lease, Tenant 's right to use the demised premises shall cease, and Tenant shall vacate the premises without unreasonable delay. All property installed, erected, or placed by Tenant in, on, or about the premises leased hereunder shall be deemed to remain the property of Lessor. Tenant shall have the right at any time during the term of this agreement, or any renewal or extension hereof, and for an additional period of seven (7) days after the expiration or other termination of this agreement, to remove any or all of Tenant's property, subject, however to Tenant's obligation to repair all damage, if any, resulting from such removal. Any and all property not removed by Tenant prior to the expiration of the aforesaid seven (7) day period shall thereupon become a part of the land on which it is located and title hereto shall thereupon vest in Lessor.

15. **TERMINATION OF AIRPORT**. In the event that the Fayetteville Municipal Airport facility and property are no longer used for aviation purposes, the Tenant may remain in possession of the premises until the end of the lease term with the right to use the premises for any use allowable under Arkansas law.

16. **TAXES**. Tenant shall pay all ad valorem taxes and assessments upon the leased premises and upon all personal property located upon the leased premises which are assessed during the lease term.

17. **MORTGAGING OF LEASEHOLD**. Tenant is hereby given the absolute right without the Lessor's consent to mortgage his interest in the leased premises, provided that no such mortgage shall extend to or affect the fee, the reversionary interest, or the estate of Lessor in and to the land and building (hangar facility complex) erected thereon.

18. **INDEMNITY**. Tenant agrees to indemnify Lessor against any liability for injuries to persons or damage to property caused by Tenant's gross negligent use or occupancy of the leased premises; provided, however, that Tenant shall not be liable for any personal injury, damage or loss occasioned by the negligence of Lessor or its agents or employees, and provided further, that each party shall give prompt and timely notice of any claim made or suit instituted which in any way directly or indirectly affects or might affect either party, and each party shall have the right to compromise and defend the same to the extent of its own interest. This clause shall not be construed to waive that tort immunity asset forth under Arkansas Law.

19. **NON-WAIVER**. Neither the waiver by Lessor of any breach of Tenant of any provision hereof nor any forbearance by the Airport to seek a remedy for any such breach shall operate as a waiver of any other breach of Tenant.

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20. NOTICES. Any notice or consent required by this Agreement shall be sufficient if sent by Certified Mail, return receipt requested, postage paid, to the following addresses:

LESSOR:

Airport Administration Office
4500 S. School Avenue, Suite F
Fayetteville, Arkansas 72701
PH: 479-718-7642
FAX: 479-718-7646

LESSOR:

Flying Investments LLC
P. O. Box 8157
Fayetteville, Arkansas 72703
PH: 479-530-4000
FAX: 479-443-9424

21. This Agreement shall be construed under the laws of the State of Arkansas.

22. All the covenants, conditions, and provisions under this agreement shall extend to and bind the legal representatives, successors, and assign of the respective parties hereof.

IN WITNESS WHEREOF, the parties have executed this lease on the day and year first above written.

LESSOR:
CITY OF FAYETTEVILLE, ARKANSAS

By: _____
Dan Coody, Mayor

ATTEST:

By: _____
Heather Woodruff, City Clerk

LESSEE:

By: David Hollman

DIRECTOR of AVIATION
Title

ATTEST:

By: James Nicholson

Title: Financial Coordinator
Commission Expires
August 2, 2006-7-

JAMES L. NICHOLSON
MY COMMISSION EXPIRES AUGUST 2, 2006
WASHINGTON COUNTY, ARKANSAS

AH

LEASE ATTACHMENT NUMBER ONE

Rent adjustments shall be made as of the commencement of each of the Dates Upon Which Rent Increases Apply and shall be determined by the following formula:

Rent as last so increased under this Lease

multiplied by:

$$1 + \frac{\text{Current Index - Base Index}}{\text{Base Index}}$$

plus

one percent (1%) of the Rent as last so increased under this Lease

Where, "Current Index" shall be the CPI *(D-1 Consumer Price Index-All City Average," "all items groups, subgroups and special groups," published monthly in the Monthly Labor Review of the Bureau of Labor Statistics of the United States Department of Labor)* for the month immediately prior to the applicable Dates Upon Which Rent Increases Apply, and Base Index shall be the CPI for the month immediately prior to the Commencement Date or the most recent Dates Upon Which Rent Increases Apply, whichever is applicable. In no event, however, shall the Rent for any period be less than the Rent as last so increased under this Lease. In the event that such CPI is no longer published or otherwise available, the adjustment provided for herein shall be by the successor (or the most nearly comparable successor index) thereto, adjusted as appropriate to the applicable dates.

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LEASE ATTACHMENT NUMBER TWO

Fuel stored in the Airport Fuel Storage Facility shall be coordinated with the Airport Administration Office and all fees and charges required by City Ordinance shall be remitted to the City of Fayetteville. Deliveries shall be coordinated so as not to overfill the fuel storage tanks. In addition to Buyer and Supplier Fees (Fuel Flowage Fees) charged by City of Fayetteville Ordinance, an In-To-Plane Fee shall be charged at the following rate schedule for each calendar year.

First:	100,000 gallons delivered in-to-plane	$.25 per gallon
Second:	100,000 gallons delivered in-to-plane	$.20 per gallon
Third:	100,000 gallons delivered in-to-plane	$.15 per gallon
Fourth: And Subsequent:	100,000 gallons delivered in-to-plane	$.10 per gallon

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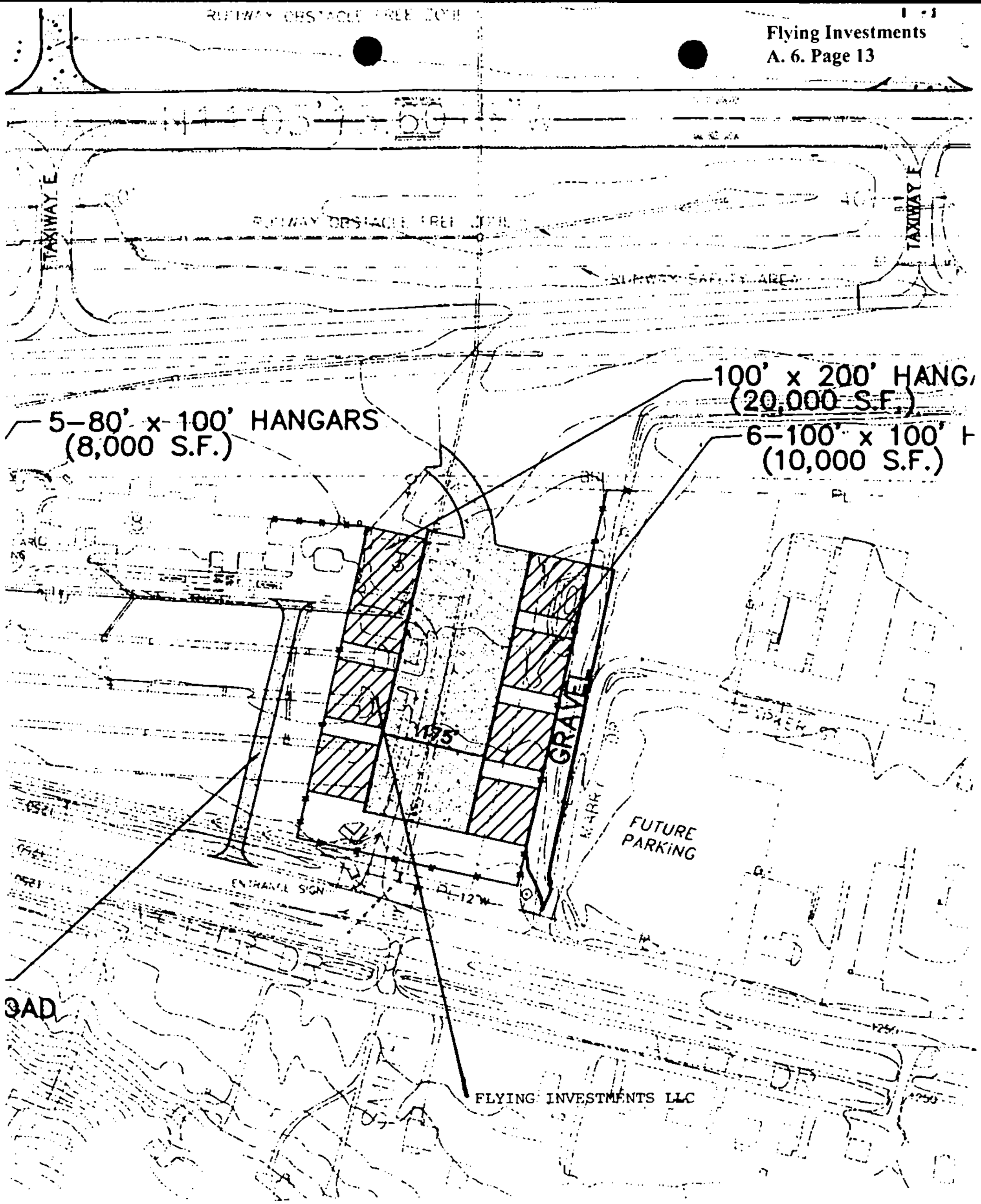
TAXIWAY E
TAXIWAY E
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(20,000 S.F.)
5-80' x 100' HANGARS
(8,000 S.F.)
6-100' x 100'
(10,000 S.F.)
175'
GRAVEL
FUTURE
PARKING
ENTRANCE SIGN
FLYING INVESTMENTS LLC

Exhibit "A"

STAFF REVIEW FORM

X AGENDA REQUEST
CONTRACT REVIEW
X GRANT REVIEW

For the Fayetteville City Council meeting of May 7, 2002

FROM:

Name	Division	Department
Rick Hoyt	Police	Police

ACTION REQUIRED: City Council authorize Mayor Coody to accept the 2001 Juvenile Accountability Incentive Block Grant Program. 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: See Budget Adjustment Approved by Council 4/15/02

$38,267.00	$4,830,093.00	Patrol and Warrant
Cost of this Request	Category/Project Budget	Category/Project Name
	1,480,061.00	Patrol & Warrant
Account Number	Funds Used To Date	Program Name
	3,350,032.00	General
Project Number	Remaining Balance	Fund

BUDGET REVIEW: X Budgeted Item ____ Budget Adjustment Attached

Budget Manager — Administrative Services Director

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

Marsha Farthing	4/19/02	Nancy Smith	4/19/02
Accounting Manager	Date	Internal Auditor	Date
	4/19/02		
City Attorney	Date	ADA Coordinator	Date
	4/19/02		
Purchasing Officer	Date	Grants Coordinator	Date

STAFF RECOMMENDATION:
Council authorizes Mayor Coody to accept the Juvenile Accountability Incentive Block Grant.

Division Head	Date
	4-18-02
Department Director	Date
	4/24/02
Administrative Services Director	Date
	4/24/02
Mayor	Date

Consent ✓
New —

Cross Reference

New Item: **Yes** **No**

Prev Ord/Res #:

Orig Contract Date:

STAFF REVIEW FORM

Description Juvenile Accountabiltiy Incentive Block Grant Meeting Date May 7, 2002

Comments: Reference Comments:

Budget Manager

Accounting Manager

The City's audit will not be available within 120 days after year end.

City Attorney

Purchasing Manager

Internal Auditor

ADA Coordinator

Grants Coordinator

FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

DEPARTMENTAL CORRESPONDENCE

TO: Mayor Dan Coody and Members of the City Council

FROM: Rick Hoyt, Interim Chief of Police

DATE: April 18, 2002

SUBJECT: Acceptance of the Juvenile Accountability Incentive Block Grant

Attached is the 2002 grant award for the Juvenile Accountability Incentive Block grant. This grant will allow the Fayetteville Police Department to perform the following services:

1. Develop and implement a comprehensive Truancy Prevention Program
2. Develop and implement a police department and community Response Plan for Missing, Exploited, or Abducted Children.
3. Develop and implement strategic and tactical planning and public education and awareness on Preventing Juvenile DUI.
4. Develop and implement police departments operational plan to assess, investigate, document, tract, and Prevent Juvenile Gangs and activity associated with juvenile crimes.

The budget for these projects is $38, 227.00. The grant provides $34,400.00 with the City providing a 10% match of $3,827.00. Please feel free to give me a call if you have any questions.

Arkansas Department of Human Services
Division of Youth Services
Two Union National Plaza, 4th Floor
P.O. Box 1437, Slot 450
Little Rock, Arkansas 72203-1437
Telephone (501) 682-8654 FAX (501) 682-1339

March 27, 2002

APR 0 _ 2002

Mayor Dan Coody
City of Fayetteville
113 W. Mountain
Fayetteville, AR 72701

Dear Mayor Coody:

The enclosed Statement of Subgrant Award packet is the official notification that the City of Fayetteville has been approved for the Juvenile Accountability Incentive Block Grant. The subgrant award is **$34,440.00** and covers the period beginning 03-01-02 through 06-30-03.

The award packet includes (1) Statement of Subgrant Award; (2) Request for Funds Form; (3) Audit Requirements; (4) Monthly Report Forms for the Subgrant Period; and (5) Implementation Report. Because the subgrant file must contain a copy of each of these items, please notify this office immediately if any of these items have been omitted.

Return the signed original Statement of Subgrant Award form to the JJDP office within 10 days from the date of this letter and retain a copy for your file. **Please be advised all original documents must be signed in blue ink.**

Your subgrant has been assigned the number **NK-2110**. Please refer to this number on all correspondence and documents related to the Subgrant.

If you have any questions about your subgrant and the conditions of the subgrant, please contact Cheryl Moten, JJ Specialist, at (501) 682-1708.

Sincerely,

Barbara L. Marsac

Barbara Marsac
Assistant Director Programs and Compliance

cc: Doyle Herndon, Director
Elbert Grimes, Administrator for Program Development

Enclosures

BM:cm

"The Department of Human Services is in compliance with Titles VI and VII of the Civil Rights Act."

Arkansas Department of Human Services
Division of Youth Services
STATEMENT OF SUBGRANT AWARD

GRANTEE NAME & ADDRESS
Arkansas Department of Human Services
Division of Youth Services/JJDP Unit, Slot 503
P.O. Box 1437
Little Rock, AR 72203-1437

X Original
____ Supplemental

Pursuant to authority of the Juvenile Justice and Delinquency Prevention Act of 1974, as amended, and in response to your subgrant application, the Arkansas Juvenile Advisory Group, has approved the subgrant described below.

1. Subgrantee Name & Address City of Fayetteville, AR 72701 113 W. Mountain Street Fayetteville, AR 72701	2. Subgrant Award Number:NK-2110 3. Fund Year:2001 4. Subgrant Period:3-01-02 - 6-30-03 5. State Program Designator: 6. Standard Program Area: 7. Date Approved:03-01-02 8. Project Director:Frank Johnson 10. Project Authorized Official:Dan Coody
9. Project Title: JAIB Grant	

PROJECT COST CATEGORY		Total Project	COMMENTS:
11. Personnel:	Salary		
	Fringe		
	Travel (Staff)		
12. Professional Services			
13. Travel (Services)		$9,378.00	
14. Equipment		$25,220.00	
15. Materials and Supplies			
16. Other Operating Expenses			
17. TOTAL APPROVED		$34,440.00	

18. This subgrant is subject to general and special subgrant conditions and rules for the administration

19. STATEMENT OF THE DIVISION OF YOUTH SERVICES AWARD: Federal funds as hereby obligated for the program described by the subgrantee in the attachments of this subgrant award. AWARDED BY: Doyle Hemdon Signature of Division Director Doyle Hemdon Typed Name Date 3-27-02	20. SUBGRANTEE ACCEPTANCE OF SUBGRANT: I accept the subgrant and all modifications, general and special conditions, and the requirements contained in the attachments of this subgrant award. ACCEPTED BY: _____ Signature of Authorized Official Dan Coody, Mayor Typed Name and Title of Authorized Official Date

DHS-1343 (R. 1/99)

Arkansas Department of Human Services
Division of Youth Services

Two Union National Plaza, 4th Floor
P.O. Box 1437, Slot 450
Little Rock, Arkansas 72203-1437
Telephone (501) 682-8654 FAX (501) 682-1339

Arkansas Department of Human Services **Division of Youth Services** **P.O. Box 1437 JJDP Unit Slot 503** **Little Rock, AR 72203-1437**	Implementation Report (Revised 3/98)
From (name and address of subgrantee) City of Fayetteville 113 W. Mountain Fayetteville AR 72701	Subgrant Number NK-2110 Date of Report
Date of Subgrant Acceptance: 03-01-02	Date of Actual Implementation:

Describe efforts taken to implement this project and how youth receiving services through this subgrant will be tracked and/or identified. **(this report must be returned within ninety days after the acceptance of the subgrant award)**

Signature of Project Director

DHS-1350 (3/98)

"The Department of Human Services is in compliance with Titles VI and VII of the Civil Rights Act."

Arkansas Department of Human Services
Division of Youth Services
SPARKS REPORT - Part 1
Report of Expenditures

Subgrant Award Number: NK-2110
Subgrantee: City of Fayetteville
State Program Designator:

Subgrant Start:03-01-02
Subgrant End: 06-30-03
Month Ending:

Report Type: Monthly X Final ____

I. EXPENDITURES BY BUDGET CATEGORY

Category	Budgeted	Total Expended Previously	Total Expended This Month	Total Expended To Date	Cash Match Monthly	Cash Match YTD
Personnel						
Salary						
Fringe						
Travel						
Professional Service						
Travel (Services)	$ 9,378.00					
Equipment	$25,220.00					
Materials & Supplies						
Other Operating Exp.						
Totals	$34,599.00					

II. STATUS OF SUBGRANT

1. Total Subgrant Award $34,599.00
2. Total Disbursements _____
   (Line 9 on Fund Request)
3. Balance Available _____
4. Total Expended This Month _____
5. Total Expended To Date _____
   (Line 10 on Fund Request)
6. Unexpended Federal Funds _____
   (2 minus 5)

CERTIFICATION: I certify that this report presents actual receipts and actual expenditures of funds for the month covered.

_____ Authorized Official

_____ Date

Arkansas Department of Human Services
Division of Youth Services/JJDP Unit, Slot 503
P.O. Box 1437
Little Rock, AR 72203-1437

SUBGRANTEE REQUEST FOR FUNDS

1. Subgrant Period 03-01-02 - 06-30-03

2. From (name, address)
City of Fayetteville
11 W. Mountain
Fayetteville AR 72701

3. Subgrant Number	4. Date of Request	5. Request No.
NK-2110		

6. Type of Request

_____ MONTHLY
_____ TOTAL AWARD
_____ OTHER (Specify)

To: Arkansas Department of Human Services
Division of Youth Services/JJDP Unit, Slot 503
P.O. Box 1437
Little Rock, AR 72203-1437 Telephone: (501) 682-9685

7. A reimbursement of funds as indicated below is hereby requested to cover expenditures for the period_____ through_____ calculated as follows:

7a. Reimbursement of funds is being requested for the following expenditures

		DYS USE ONLY
Salary	_____	_____
Fringe	_____	_____
Travel (Staff)	_____	_____
Professional Serv.	_____	_____
Travel (Services)	_____	_____
Materials & Supplies	_____	_____
Other Operating Expense	_____	_____
8. Cash reimbursement:	_____	_____
9. Total reimbursements received from start of subgrant to date: (Line 2 on Sparks report)	_____	_____
10. Total cash expenditures from start of subgrant to date: (Line 5 on Sparks Report)	_____	_____
11. Total cash on hand at present (9 minus 10): (Line 6 on Sparks Report)	_____	_____
12. Cash request (8 minus 11):	_____	

13. Submitted by:_____ _____
Authorized Official's Signature Title Date

PLEASE USE BLUE INK*

FOR DYS ONLY

14. _____ A reimbursement of funds in the amount of $_____ is approved.

15. _____ The request for funds is denied for the reasons shown on the attached letter.

16. Reviewed by_____ Date_____

Cost Center:								
	Approp	Char	Fund	Alloc	Act	Sec	Unit	Elem	Prg. Code

Division of Youth Services
SUBGRANT ACTIVITY REPORT
PART III

Name of Subgrantee
City of Fayetteville
113 W. Mountain
Fayetteville AR 72701

Subgrant No:
NK-2110
Month Covered
From_____to_____

Subgrant Period
03-01-02 -06-30-02

1. List any task completed this month to meet the project's measurable objectives.
(If additional space is needed, add additional pages.)

2. If the objectives are not being progressively met, please provide an explanation.

3. List any new or revised tasks which need to be accomplished to meet the subgrant objectives.

4. Describe any other activity which may cause a problem in accomplishing the tasks by the end of the subgrant period.

Signature of Project Director

Date Signed

Arkansas Department of Human Services
Division of Youth Services
SPARKS REPORT - Part II
Expenditure Description Report

Name and address of subgrantee	Subgrant Number	Subgrant Period:
City of Fayetteville	NK-2110	03-01-02 - 06-30-03
113 W. Mountain		
Fayetteville AR 72701	Month Covered:	

Discription of Expenditures	Amount(s)
A. personnel (name, title gross salary, benefits, staff travel-# miles x rate	
B. Professional services (firm, services provided, cost)	
C. Travel	
D. Equipment (item description, cost serial #, date of purchase	
E. Materials and Supplies (office supplies, etc.)	
F. Other operating Expenses (telephone, postage, etc.)	
Total Expenditures	

Signature of Authorized official

Date

DHS-1344 (R. 2/00)

FOREWORD

This extensively revised publication is intended to assist Department of Human Services' providers, as well as their auditors, understand the Department's audit requirements. A summary of changes and additions is presented at Appendix E.

The most significant change is to the Department's audit threshold, which has increased from $25,000 to $100,000. Among the additions is a "decision tree" to graphically supplement the text. And, unique requirements of DHS and some of its Divisions are better explained.

Overall, the publication has been brought into line with the June, 1997 revision of OMB Circular No. A-133. That revision incorporated some very substantial changes in audit policy and procedures, necessitating significant adjustments to DHS requirements. This document attempts to disseminate all of these in a clear and straightforward manner.

Compliance with the provisions of this Guide is **mandatory** for all organizations to which the Department of Human Services provides funding or other resources.

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I. EFFECTIVE DATE AND SUPERSESSION

This document is effective for audit periods ending December 31, 1998 and thereafter. It supersedes the "Department of Human Services Audit Guidelines Funded by the Arkansas Department of Human Services" dated January 10, 1992.

II. ORANIZATIONS REQUIRED TO FURNISH DHS AN AUDIT REPORT

A. Every nonprofit organization and every local government (or component thereof) receiving directly from DHS $100,000 or more in that entity's fiscal year will furnish DHS with an audit report for that fiscal year. (Note: The value of commodities, if any, is to be included in determining total funding. Also, the State portion of Medicaid funding is to be used in determining total State funding.)

B. Every organization of any type whose funding agreement with DHS contains a requirement for an audit will furnish DHS with an audit report for that entity's fiscal year(s) during any part of which such agreement was effective. This is without regard to funding level. It is the responsibility of the DHS funding divisions to notify the DHS Audit Section of such contract requirements.

III. TYPE OF AUDIT REQUIRED

A. OMB Circular A-133

An audit must be performed in accordance with Circular A-133 if federal expenditures are $300,000 or more.

B. Government Auditing Standards

A Government Auditing Standards (GAS) audit must be performed if DHS funding provided is $100,000 or more of federal, state, or federal and state combined.

Note: In most instances, Medicaid is not considered federal financial assistance and, therefore, should not be used to determine total federal funding. However, as stated previously, the State portion (currently 27%) of Medicaid is to be used in determining total State funding.

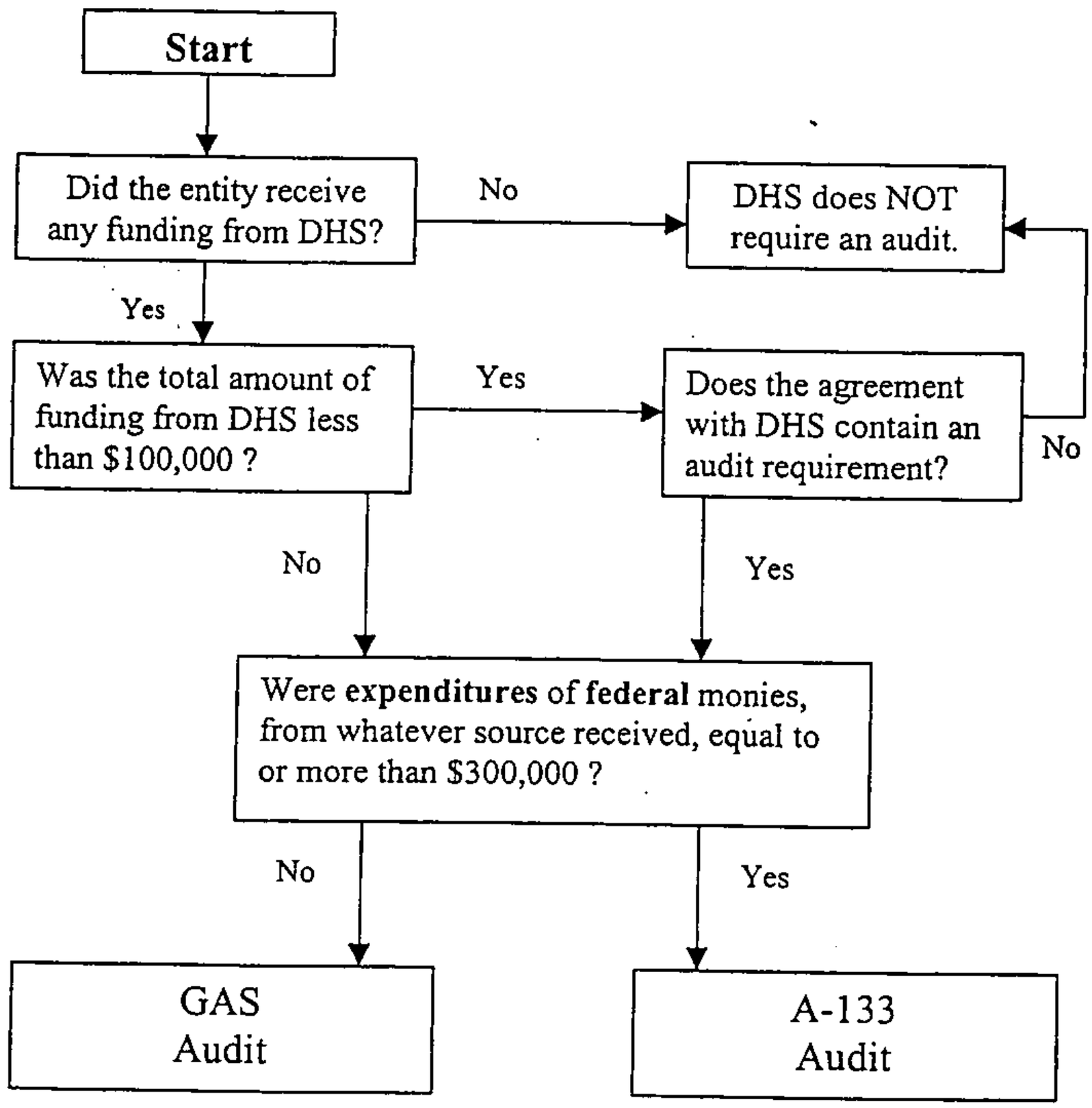
C. Examples

Each of the following examples, unless stated otherwise, assumes that at least $100,000 of the funding was provided by DHS. State dollars are received amounts; federal dollars are expended amounts.

Funding	Type of Audit
Federal (only) $300,000 or more	A-133
Federal (direct) $300,000 or more; State $100,000 or more	A-133
Federal $300,000; AR Department of Health $80,000	A-133
Federal $200,000; State $200,000	GAS
Federal $73,000; State $27,000	GAS
Federal $0; State $100,000	GAS
Federal $0; State $425,000	GAS
Federal $0; State $350,000; Medicaid $500,000	GAS
Federal $50,000; State $25,000; Medicaid $325,000; (DHS provides only Medicaid)	Audit not Required

D. Decision Tree

Following is a "decision tree" that provides an alternative method of determining who must furnish DHS an audit report and what type it must be. It may be simpler and quicker to use it than to use the text and examples preceding.



IV. DEFINITIONS

For purposes of these Guidelines, the following definitions and those in OMB Circular A-133 apply.

A. **Abuse** means furnishing excessive services to beneficiaries; violating program regulations; or performing improper practices, none of which involves prosecutable fraud.

B. **Agreement** means the formal written arrangement an entity has with DHS in order to receive funding, regardless of its actual title or the form it takes.

C. **Compliance Audit** means an audit which determines whether the auditee is complying with the provisions of laws, regulations, and contractual, grant, loan, and other assistance agreements.

D. **Fee-for-service** means a contract or agreement where the provider and the funding agency agree that the provider will be paid a predetermined amount for each unit of service performed. There may be a limitation to the total amount that will paid.

E. **Fraud** means the obtaining of something of value, unlawfully, through willful misrepresentation.

F. **Illegal Acts** means violations of laws.

G. **Provider** means an entity with an agreement with DHS to operate a program in furtherance of DHS and/or federal goals or objectives.

H. **Related Party** has the same meaning as in AICPA Professional Standards, Vol. 1, and AU Sec. 335.02.

I. **Related Party Transaction** means a transfer of resources or obligations between related parties, regardless of whether a price is charged.

J. **Single Audit** means a financial and compliance audit of the *entire operations** of the organization. It must encompass the operation as a whole and include all activities of the auditee regardless of whether funded through federal, state, other funding or a combination thereof.

**Entire operations* includes related organizations over which the organization exercises control by way of a) a majority of common board members and/or, b) financial interdependency, and/or c) a common administrator.

K. **State Financial Assistance** means assistance provided by a state agency under agreements funded with state monies.

L. **State Oversight Agency** means the state agency carrying out the responsibilities described in OMB Circular A-133, Subpart D, Subsection 400(b), as they relate to funding furnished providers by a state agency.

V. GENERAL

A. Single Audit Act and OMB Circular A-133

The 1996 Amendment of the Single Audit Act requires annual independent organization-wide audits of state and local governments and nonprofit organizations meeting certain funding level and other criteria. OMB Circular A-133, which implements the Single Audit Act as amended, is effective for fiscal years beginning after June 30, 1996. It contains significant changes and additions in audit requirements and requires auditors to apply new methods in performing audits, as set forth in Subpart E, Subsections 520, 525, and 530.

B. Department of Human Services Audit Threshold

With the increase of the A-133 threshold to $300,000 in federal expenditures, DHS now sets its threshold for single, organization-wide audits at that same level. For audits to be performed in accordance with Government Auditing Standards the DHS threshold is $100,000. (For more detailed information, see Section III - Type of Audit Required)

C. Program-Specific Audits

A-133 allows program-specific audits in Subpart B, Subsection 200 (c) when an auditee expends Federal Awards under only one Federal program and the Federal program's laws, regulations, or grant agreements do not require a financial statement audit of the auditee. This Department will accept program-specific audits performed under the above provision.

D. Cognizant and Oversight Audit Agencies

An auditee may have both a federal cognizant agency and a state oversight agency. Federal cognizant audit agencies are normally assigned on the basis of primary funding agency, but there

are exceptions. The auditor may wish to determine the federal cognizant agency, if any, prior to beginning the engagement. DHS is the state oversight agency for its providers.

E. Monitoring and Evaluation By Program Divisions and Offices

Individual program financial and compliance reviews as well as other program monitoring procedures will continue to be performed by the respective Divisions and Offices and federal agencies. Additionally, several Divisions and Offices conduct extensive examinations of provider operations as part of the licensing procedure for the provider. Major emphasis is placed on compliance matters in these examinations.

The independent auditor may wish to give consideration to these examinations when testing compliance. The level of reliance, if any, to be placed on the procedures and resulting findings from monitoring or licensure examinations is solely at the discretion of the independent auditor.

F. Costs of Audits

Expenditures for audits may be considered a direct cost or an allocated indirect cost, as determined in accordance with the provisions of applicable OMB cost principles circulars, the Federal Acquisition Regulation (FAR) (48 CFR parts 30 and 31), or other applicable cost principles or regulations. No part of the cost of a Single Audit under OMB Circular A-133 may be charged to any federal program when the entity expended less than $300,000 in federal funding in the audit year. Thus, providers and auditors must take care to see that the type of audit performed is appropriate to the level of expenditures for that year. If an auditee does not provide an acceptable report, no audit costs may be charged to any programs funded through DHS.

G. Auditor Selection

It is the responsibility of the provider to select an auditor and to pay for the audit. However, the Department of Human Services reserves the right to chose the auditor for any, or all, of its subrecipients. If the Department elects to exercise that right, the provider(s) will be given advance notice and audit fees will be paid directly by DHS. These fees, in turn, will be deducted from the Department's payments to the provider.

H. Sanctions

In case of continued inability or unwillingness on the part of the provider to have an audit conducted in accordance with established standards, federal and state agencies may take appropriate action(s), such as:

- withholding some part of award payments until the audit is submitted
- withholding or disallowing overhead costs,
- suspending awards until the audit is submitted, or
- terminating the award or assistance program.

I. Appeal

Any appeal for relief from actions initiated as a result of the provisions of these Guidelines must be made under the appeal procedures of the funding agreement.

VI. PROVIDER AND AUDITOR RESPONSIBILITIES

A. Submission of Audit Reports

All reports of audits performed under these Guidelines are to be submitted to the Director of Audits within **120 days** following the end of the auditee's fiscal year. Audits must cover the organization's fiscal year. However, if unusual circumstances require a reporting period of other than 12 months, permission to submit such a report must be obtained from the Director of Audits.

The auditee is to submit audit reports directly to:

Director of Audits
Department of Human Services
P.O. Box 1437 – Slot 900
Little Rock, AR 72203-1437

The **preferred** mode of report submission is one signed paper copy plus a 3.5-inch disk containing the same material. See Appendix C for specific requirements/restrictions governing disk submission. The alternative mode of submission is three signed paper copies and no disk.

B. Extension of Time for Submission of Audit Report

An extension of time to submit audit reports under these guidelines may be granted if a delay is unavoidable. A written request from the Executive Director or the Board of Directors must be received by the Director of Audits no later than fifteen days before the due date of the audit report and must explain the circumstances preventing its timely submission. While the auditor is not permitted to request the extension, a confirming letter from the auditor may accompany the request.

Providers who are habitually late in submitting audit reports and/or who continually request additional extensions of time in which to furnish those reports may be subject to sanctions.

C. **Auditor Qualifications** *[See also Section VII, B, Auditor Exclusion Rule]*

Audits shall be performed by independent Certified Public Accountants (CPAs) currently holding an annual permit to practice from the Arkansas State Board of Public Accountancy (ASBPA). Partnerships and corporations of CPAs practicing public accounting must comply with the ASBPA with respect to those members, stockholders, and employees required to be CPAs and to hold a permit to practice. Auditors are required to maintain professional proficiency through continuing professional education (CPE). Auditors performing audits in accordance with OMB Circular A-133 and GAS must meet the requirements for CPE stated in Chapter 3 of *Government Auditing Standards.*

The CPE requirements for an auditor of entities operating government programs, in numbers of hours and reporting periods, are: Eighty hours every two years, of which no less than 20 should be completed in any 1 year of the 2-year period. At least 24 hours of the 80 hours/2-year requirement should be in subjects directly related to the government environment and government auditing. Auditors of nonprofit organizations' activities and funding should receive training related to that environment, and any other specific or unique activities audited.

VII. RESPONSIBILITIES OF THE DEPARTMENT OF HUMAN SERVICES

A. Reviews of Audit Reports

The organization's audit report will be reviewed to determine whether:

- requirements of applicable authorities and those contained in these Guidelines were met;
- material weaknesses in internal control exist;
- material noncompliance with provisions of grants, contracts, and agreements occurred; and
- the report included findings, recommendations, and responses thereto by management.

Material weaknesses and noncompliance, other findings, recommendations, and responses will be recorded and communicated to funding and contract Divisions. A copy of the audit report will be furnished to DHS Divisions and Offices upon request.

A letter will be issued reporting the results of the review to the auditee. Informational copies will be furnished to the funding Division(s) and the auditor. One of three types of letters is issued, depending on the acceptability of the report. If it meets requirements in all material respects, an acceptance letter is issued. If the report is deficient in some respects, but can still be accepted, an "accepted with qualifications" letter is issued, describing the deficiencies found, and stating that they must be corrected in subsequent reports. If the audit report has one or more serious deficiencies, it may be necessary to issue a rejection letter, and the auditee and auditor will be asked to revise the report to bring it into compliance with applicable standards and guidelines within 30 days. If an auditee does not provide an acceptable report, no audit costs may be charged to any programs funded through DHS. An auditor continuing to submit substandard reports will be referred to the ASBPA for its review of the audit work and appropriate action. Also, the Department may elect to refuse to accept audit reports from such auditors.

B. Auditor Exclusion Rule

The Department will maintain a record of the results of review of all submitted audit reports, by both individual practitioners and by firms. Significantly substandard work of a material nature and/or repeated submission of reports indicating substandard work, less than satisfactory results of a review of the auditor's workpapers, or failure to meet one or more of the qualifications needed to perform the audit will result in a reassessment of the desirability of continuing to accept reports prepared by such auditors or audit firms.

If, after such reassessment, the Department concludes that it is not prudent, or in its best interest, to continue to accept reports prepared by such auditor or audit firm, the DHS Director shall issue a written decision to exclude, which will state the reasons for the action taken. A copy will be mailed or otherwise furnished to the excluded auditor or audit firm within five days of its writing. The decision of the Director will be final and conclusive. The exclusion shall be for a period of not less than one year.

This Department will maintain a current list of all auditors and audit firms excluded under this provision. Furthermore, with each change to the list the Department will furnish a copy of such list to each provider submitting audit reports to us.

C. Resolution of Findings

It is the responsibility of Program Divisions to resolve program audit findings for the funding they administer. All findings related to general financial management will be referred to the Office of Fiscal Management (OFM) for resolution. Program Divisions and OAS will take appropriate action to resolve audit findings within 90 days of the referral of the finding from the Audit Section. ("Referral" is the appearance of the audit report with findings and recommendations in the DHS

Quarterly Summary of Subrecipient Audit Reports.) The Audit Section has the responsibility to monitor the resolution process to ensure that a timely resolution occurs. Failure on the part of the auditee to cooperate in the resolution of audit findings may result in sanctions.

D. Confirmations

OMB Circular A-133 levies the requirement on grantees to identify to subrecipients the monies provided them. Contracts and remittance documents often give that information, but not in a readily understandable form. DHS Audit therefore offers a confirmation service with a two-fold purpose:

1) to confirm dollar amounts and
2) identify the money type(s).

A confirmation facilitates the accurate preparation of award schedules and assists in arriving at the correct decision as to which type of audit to perform.

Requests should be made on the entity's letterhead and must include all of the following: entity's full name, federal identifying number, fiscal period being audited, and auditor's name and address.

It is **not necessary** to provide a detailed listing of payments received. We will mail the confirmation directly to the auditor. Send requests to:

DHS Audit Section
P.O. Box 1437 – Slot 900
Little Rock, AR 72203-1437

Use of any other DHS address will cause undue delay in the process, as will piecemeal requests. A single, consolidated request to the above address is preferred. Timely requests are encouraged. And, fax is permissible. Responses to early requests may be intentionally delayed, at our discretion, in order to enhance the probability of capturing all payments related to the audit period.

VIII. AUDIT WORKPAPERS

A. Workpapers

AICPA, OMB Circular A-133, and GAS require that a record of the auditor's work be retained in the form of working papers. The two main purposes of workpapers, as stated by AICPA, are to provide principal support for the audit report and aid in the conduct and supervision of the audit. *Government Auditing Standards* additionally require that workpapers must contain sufficient information to enable an experienced auditor or audit quality reviewer having no previous connection with the audit to ascertain from them the evidence supporting the auditor's significant conclusions and judgments.

Workpapers must be made available, upon request, to the Audit Section of the Department of Human Services. The workpapers may also be subject to examination by other federal and state personnel reviewing the audited organization's federal and state assistance programs.

B. Retention

Workpapers shall be maintained for a minimum of 3 years from the date of the audit report, unless the auditor is notified in writing by the grantor agency, cognizant or oversight agency, or DHS Audit to extend the retention period. Also, workpapers must be kept more than three years if any appeals related to the period audited are in progress. In such instances, workpapers must be retained until final resolution is made.

IX. AUDIT REPORTS

A. General Guidance

General guidance on audit reporting is provided by AICPA's most recent audit and accounting guides and statements of position. Example audit reports, schedules, and a specialized glossary are included in SOP 98-3, *Audits of States, Local Governments, and Not-For-Profit Organizations Receiving Federal Awards. Government Auditing Standards* also contains general guidance for both financial and performance audits, and OMB Circular A-133 contains specific guidance for audits under its provisions. Not authoritative in themselves, but of value, are the publications of Practitioners Publishing Company (PPC) and Commerce Clearing House (CCH), among others serving the profession.

B. Basic Report Requirements

1. A-133 Audits

   a) an opinion or disclaimer of opinion on the financial statements and Schedule of Federal Awards,

   b) a report on compliance and internal control over financial statements performed in accordance with Government Auditing Standards,

   c) a report on compliance with requirements applicable to each major program and internal control over compliance in accordance with OMB Circular A-133,

   d) a schedule of findings and questioned costs, as stated in Subpart E, Subsection 505 (d), and

   e) a summary schedule of prior audit findings, as stated in Subpart C, Subsection 315 (b).

2. GAS Audits

a) an opinion or disclaimer of opinion on the financial statements and the Schedule of Governmental Assistance,

b) a report on the testing of compliance with laws and regulations, grants, contracts, and agreements, and

c) a report on the testing of internal controls.

The reports on internal control and compliance may be combined following examples provided by the AICPA.

C. Special Requirements of the Department of Human Services

The DHS requirements listed below are not all-inclusive. Existing and future contracts may contain additional audit requirements.

1. All Audits.

a) A supplemental data sheet which includes the following information: entity's full name, address, employer identification number, phone number, name of Director, name of contact person, and the cost of the audit.

b) Any management letter issued. A management response to such letter, as well as to any findings and recommendations, is also required to be included with the report.

c) Additional Assistance/Awards Schedules.

1) A-133 Audits. A Schedule of State Assistance is to be included and shall show the total revenues and expenditures for each program, and the state department furnishing the funding. (See Appendix D, Sample D-1) Medicaid funding, if any, is to be included in a footnote on the Schedule of Federal Assistance.

2) GAS Audits. A Schedule of Governmental Assistance is to be included and shall show revenues and expenditures for each program, federal and state; the Federal and/or state department furnishing the funding; and CFDA number, if applicable. Medicaid funding, if any, is to be included in a footnote on the schedule. See Appendix D, Sample D-2.

2. Funding Agreements.

1) The audit report shall reflect the units of service for each contract or agreement containing such a requirement. If more than one contract or agreement for the same program was in place in the provider's fiscal year, each must be accounted for separately, showing applicable dates of each. See Appendix D, Sample D-3.

2) a comparison of budget-to-actual revenues and expenditures shall be included if such a schedule is required as a condition of funding.

3. Family Day Care Home Sponsors.

Such audit reports shall include a schedule showing a comparison of the actual expense, approved budget, and the amount allowable using applicable rates. The lowest of the three is the amount allowed for administrative expenses. See Appendix D, Sample D-4.

4. Mental Health Organizations.

Such audit reports shall include an auditor's report expressing an opinion on the capability of the auditee's statistical information system to reliably document and report staff activities, units of service, and recipients of services data. The auditor's report shall also express an opinion on the fairness of the presentation of the number of direct clients served, number of direct client and community and education units of service provided, and the cost per unit of service.

APPENDIX A
AUTHORITATIVE AND RELEVANT PUBLICATIONS

The following are publications that provide guidance in performing audits of nonprofit and governmental entities.

GENERAL ACCOUNTING OFFICE

- *Government Auditing Standards - 1994 Revision* (The Yellow Book)

May be obtained from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20401 or at http://www.gao.gov/special.pubs/oc94009.pdf

OFFICE OF MANAGEMENT AND BUDGET

- Circular A-21, *Cost Principles for Educational Institutions*
- Circular A-87, *Cost Principles Applicable to Grants and Contracts with State and Local Governments*
- Circular A-102, *Grants and Cooperative Agreements With State and Local Governments*
- Circular A-110, *Uniform Administrative Requirements for Grants and Agreements With Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations*
- *Uniform Administrative Requirements for Grants and Cooperative Agreements With State and Local Governments* (OMB Common Rule)
- Circular A-122, *Cost Principles for Non-Profit Organizations*
- Circular A-133, *Audits of States, Local Governments, and Non-Profit Organizations*
- *Catalog of Federal Domestic Assistance* (CFDA)
- *OMB A-133 Compliance Supplement*

These OMB documents may be obtained from the Superintendent of Documents, U.S. Government Printing Office, Washington D.C. 20401 or at

Circulars – http://www.whitehouse.gov/WH/EOP/OMB/html/circulars/

CFDA – http://www.gsa.gov/fdac

Compliance Supplement – http://www.whitehouse.gov/WH/EOP/OMB/html/grants/A-133_compliance/

AMERICAN INSTITUTE OF CERTIFIED PUBLIC ACCOUNTANTS

- Audit and Accounting Guide, *Not-For-Profit Organizations* (most recent edition)
- Statement of Position 98-3, *Audits of State, Local Governments, and Not-For-Profit Organizations Receiving Federal Awards*

These documents may be obtained from the American Institute of Certified Public Accountants, Harborside Financial Center, 201 Plaza Three, Jersey City, NJ 07311-3881. The AICPA web site is http://www.aicpa.org

GOVERNMENTAL ACCOUNTING STANDARDS BOARD (GASB)

- *Codification of Governmental Accounting and Financial Reporting Standards* (GASB expects to update this publication annually)
- Statements
- Interpretations
- Technical Bulletins

These include codification of the National Council of Governmental Accounting (NCGA) statements and interpretations. These documents may be obtained from the Governmental Accounting Standards Board, High Ridge Park, P.O. Box 3821, Stamford, Connecticut 06905 or at http://www.rutgers.edu/accounting/raw/GASB/ .

WESTERN INTERGOVERNMENTAL AUDIT FORUM

Guidelines for Preparation of Requests for Audit Proposals. This useful document provides specific guidance in preparing RFPs for audit services. It may be obtained from the Western Intergovernmental Audit Forum, 1275 Market Street, Suite 900, San Francisco, California 94103.

ORDER OF RELIANCE ON AUTHORITATIVE LITERATURE

For those entities for which the Arkansas Department of Human Services is the oversight audit agency, the following is the order of reliance.

- Single Audit Act of 1984 and the 1996 Amendments
- OMB Circular A-133
- *Government Auditing Standards* (The Yellow Book)
- AICPA Audit and Accounting Guide(s)
- AICPA Statements on Auditing Standards and Statements of Position

These authorities and guides are revised and amended from time to time, and reliance is always upon the most recent version.

APPENDIX B
TELEPHONE NUMBERS

The Audit Section main number is (501) 682-6231.

The FAX number is (501) 682-8905.

Administration

Has the audit been received ?.....(501) 682-6234

Has an extension been granted ?.....(501) 682-6234

Auditors in provider's area.....(501) 682-6234

Auditors/Reviewers

Audit procedures or requirements.....(501) 682-8173

Questions about confirmations received.....(501) 682-8172

CFDA numbers and titles.....(501) 682-6272

To discuss audit review letters, call one of the numbers provided in the review letter.

APPENDIX C
AUDIT REPORT ON DISK

The preferred mode of report submission is one signed paper copy **and** a disk containing the same material.

The disk must be a 3.5" floppy.

It may be single or double sided and of any standard density.

It must be labeled with the entity name, audit period, and application.

Data must be written to the disk by one of the below listed applications, **or** in ASCII format.

Wordperfect	≥ 5.0
Microsoft Word	≥ 2.0
Microsoft Excel	≥ 2.1
Microsoft Works	≥ 3.0
Lotus 1-2-3	≥ 2.2

The disk is not returnable.

APPENDIX D
SAMPLE DHS SCHEDULES

Sample D-1
Schedule of State Assistance

Any Provider
Schedule of State Assistance
For the Year Ended June 30, 19XX

Program Grantor/ Program Title	Contract Number	State Revenues	State Expenditures	* Total Program Expenditures
AR Department of Human Services				
Division of Developmental Disabilities Services/Work Activity Center	999999	50,000	49,000	160,000
AR Department of Education				
Private Agency Special Education Programs (section 14 AR Act 102 of 1973)/Transition	999999	15,000	15,000	76,000
Rehabilitation Services/ Assessment/Work Adjustment training	N/A	9,000	8,000	210,000
Total Dept of Education		24,000	23,000	
Total State		74,000	72,000	

*** - This column is optional.**

Sample D-2
Schedule of Governmental Assistance

Any Provider
Schedule of Governmental Assistance
For the Year Ended June 30, 19XX

Department/Division Program	CFDA Number	Fed/State Revenues	Fed/State Expenditures	* Total Program Expenditures
Federal Assistance				
US Dept of Health and Human Services				
Child Care and Development Fund	93.596	100,000	95,000	160,000
US Dept of Agriculture				
Child and Adult Care Food Program	10.558	100,000	100,000	100, 000
Total Federal		200,000	195,000	
State Assistance				
AR Department of Human Services/CFS				
Foster Care	9999999	100,000	110,000	110,000
AR Department of Education				
	9999999	100,000	100,000	100,000
Total State		200,000	210,000	
Total Governmental Assistance		400,000	405,000	

*** - This column is optional.**

Sample D-3
Units of Service Schedule

Any Provider
Schedule of Units of Service
For the Year Ended June 30, 19XX

	Foster Care Program	Child and Adult Care Food Program	
	Foster Care Days	Breakfast	Lunch
July	100	150	100
August	100	140	100
September	100	150	80
October	110	130	90
November	90	150	90
December	100	160	80
January	90	150	80
February	110	150	90
March	90	130	80
April	100	120	90
May	110	150	100
June	100	150	100
Total	1200	1730	1080

Sample D-4
Family Day Care Home Sponsors
Schedule of Administrative Expenses

Family Day Care Home Sponsor Provider
Schedule of Administrative Expenses
(Actual to Budget)
For the Year Ended September 30, 19XX

	Actual	Approved Budget	Over (Under) Budget
Audit, Accounting and Legal	2,960	1,082	1,87
Bank Charges	44	-	4
Contract Labor	333	-	33
Insurance	-	406	(406
Office Supplies and Equipment	200	1,082	(882
Payroll Taxes	1,747	2,312	(565
Postage	574	812	(238
Printing	1,643	2,165	(522
Rent and Utilities	1,475	1,894	(419
Salaries	20,848	30,160	(9,312
Supplies	1,965	2,165	(200
Telephone	2,637	2,706	(69
Training	835	1,083	(248
Travel	9,849	8,118	1,731
Miscellaneous	18	135	(117
Total Administrative	45,128	54,120	(8,992)
Less Audit Payment Reimbursed	(2,200)	-	(2,200)
Total Net of Audit	42,928	54,120	(11,192)

	Number of Homes	Applicable Rate	Administrative Expense
October, 19XX - June, 19XX	447	$ 69	$ 30,843
	8	53	424
July, 19XX - September, 19XX	146	71	10,366
	3	54	162
Administrative Allowance at Applicable Rates			41,795
Administrative Expenses Allowed: Least of Actual, Approved Budget, or Allowance at Applicable Rate			41,795

APPENDIX E
SIGNIFICANT CHANGES

Changes from January, 1992 Guidelines –

- Increased threshold for Single audits performed in accordance with OMB Circular A-133 to $300,000 (Section III.A)
- Set threshold for Government Auditing Standards audits at $100,000 (Section III.B)
- Added notation that Medicaid is not considered Federal Financial Assistance, but the State portion is considered State Assistance, and deleted reference to Act 1147 (Section III)
- Removed restriction on program specific audits (Section V.C)
- Added information on auditor selection (Section V.G)
- Added request for electronic submission of audit reports (Section VI.A)
- Added sanctions for late submission of audit reports (Section VI.B)
- Added auditor exclusion rule (Section VII.B)
- Added specific information on the reports required for each type of audit (Section IX)
- Updated authoritative publications and added web sites (Appendix A)
- Added phone numbers of DHS Audit Section staff who can be contacted to obtain technical assistance and the status of audit reports (Appendix B)
- Added examples of DHS required schedules (Appendix D

STAFF REVIEW FORM

_x_ Agenda Request
___ Contract Review
___ Grant Review

For the Fayetteville City Council meeting of MAY 7, 2002

FROM:

CHRIS BOSCH	FIRE	FIRE
Name	Division	Department

ACTION REQUIRED:

SEE ATTACHED JUSTIFICATION

COST TO CITY:

15,100.00	$ 66,593	
Cost of this Request	Category/Project Budget	Category/Project Name
1010-3020-5302.00	$ 42,069	FIRE OPERATIONS
Account Number	Funds Used to Date	Program Name
	$ 24,522	GENERAL
Project Number	Remaining Balance	Fund

BUDGET REVIEW: X Budgeted Item X Budget Adjustment Attached

Budget Manager 4-23-02 — Administrative Services Director

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

Marsha Farthing	4/24/02		
Accounting Manager	Date	ADA Coordinator	Date
	4/24/02	Nancy Smith	4/24/02
City Attorney	Date	Internal Auditor	Date
P Vice	4/24/02		
Purchasing Officer	Date		

STAFF RECOMMENDATION: Approval of the Resolution and Budget Adjustment

Division Head	Date	Cross Reference
	4/19/02	
Department Director	Date	New Item: Yes No
	4/24/02	
Administrative Services Director	Date	Prev Ord/Res #:
Dan Coody	4/29/02	
Mayor	Date	Orig Contract Date:

Consent ✓ New ___

City of Fayetteville
Fire Department
303 W Center St
Fayetteville, AR 72701

To: Fayetteville City Council

Thru: Dan Coody, Mayor

From: Chris Bosch, Fire Chief

Date: April 22, 2002

Re: **Re-Allocation of Proceeds from Sale of Fire Apparatus**

On Friday, April 19, 2002 the Fire Department in conjunction with the Purchasing Department, opened the sealed bids for a piece of fire apparatus. This apparatus was sold to the highest bidder for a total of $15,100.00.

After closing and approving this bid we were informed, by the Budget Office, that those proceeds would be placed in the City's General Fund under the Gain/Loss Sale of Fixed Asset Account.

Since this apparatus was purchased with funds procured from the Fire Department's Capital Budget I would like to request that, upon receipt of these funds, they can be returned to the Fire Department's Operations Budget (1010-3020-5302.00) so they can be utilized to replace worn out and outdated Personal Protective Equipment for my firefighters.

If you would like any further information please feel free to call me at 575-8365. Thank you.

ca/

attachments

City of Fayetteville
Fire Department
303 W Center St
Fayetteville, AR 72701

PLEASE REVIEW THE ATTACHED AGENDA REQUEST SIGN OFF ON THE REVIEW FORM AND FORWARD TO THE NEXT PERSON ON THE LIST.

LAST PERSON ON THE LIST PLEASE RETURN TO CINDY AT THE FIRE DEPARTMENT.

THANK YOU.

Fire Apparatus
A. 8. Page 4

City of Fayetteville, Arkansas
Budget Adjustment Form

Budget Year	Department: Fire	Date Requested	Adjustment #
2002	Division: Operations	April 19, 2002	
	Program:		

Project or Item Requested:

Additional funding is requested for personal protective equipment.

Project or Item Deleted:

None. Proceeds from sale of surplus fire apparatus is proposed for this adjustment.

Justification of this Increase:

A great deal of the existing PPE is five years old or oler. PPE is considered worn out after five years of use.

Justification of this Decrease:

None

Increase Expense (Decrease Revenue)

Account Name	Amount	Account Number	Project Number
Uniforms/Personal Equip.	15,100	1010-3020-5302.00	

Decrease Expense (Increase Revenue)

Account Name	Amount	Account Number	Project Number
Gain/Loss on sale of assets	15,100	1010-0001-4881-02	

Approval Signatures

	Date
Requested By	4/19/02
Budget Coordinator MANAGER	4-23-02
Department Director	4/19/02
Admin. Services Director	4/24/02
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

STAFF REVIEW FORM

X AGENDA REQUEST
____ CONTRACT REVIEW
____ GRANT REVIEW

For the Fayetteville City Council meeting of May 7, 2002

FROM:

Ted Webber	Admin	Admin
Name	Division	Department

ACTION REQUIRED: An Ordinance authorizing the issuance and sale of up to $25 million of Sales and Use Tax capital Improvement Bonds for the Wastewater System Improvement Project.

COST TO CITY:

NA		
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 4-22-02 Administrative Services Director

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

Marsha Fleming	4/22/02		
Accounting Manager	Date	ADA Coordinator	Date
	4/23/02	Nancy Smith	4/23/02
City Attorney	Date	Internal Auditor	Date
	4/23/02		
Purchasing Officer	Date	Grant Officer	Date

STAFF RECOMMENDATION:

Division Head	Date	Cross Reference
		New Item: **Yes** **No**
Department Director	Date	
	4/24/02	Prev Ord/Res #:
Admin. Svcs Director	Date	
		Orig Contract Date:
Mayor	Date	

Consent ____
New ✓

STAFF REVIEW FORM

Description _____ Meeting Date _____

Comments:

Budget Coordinator

Reference Comments:

Accounting Manager

Reference Comments:

City Attorney

Reference Comments:

Purchasing Officer

Reference Comments:

ADA Coordinator

Reference Comments:

Internal Auditor

Reference Comments:

Grants Offcier

Reference Comments:

STAFF REVIEW FORM

X Agenda Request
___ Contract Review
___ Grant Review

For the Fayetteville City Council meeting of May 7, 2002.

FROM:

Tim Conklin	Planning	Urban Development
Name	Division	Department

ACTION REQUESTED: To approve an ordinance for RZN 02-9.00 as submitted by Julian & Jane Archer for property located at 2231 Markham Road. The property is zoned R-1, Low Density Residential and contains approximately 18.80 acres. The request is to rezone to A-1, Agricultural.

COST TO CITY:
$0

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 ADA Coordinator Date

City Attorney Date 4-19-02 Internal Auditor Date

Purchasing Officer Date

STAFF RECOMMENDATION: Staff recommends approval. This item is scheduled to be heard by the Planning Commission on Monday, April 22, 2002.

Division Head Date 4-19-02

Department Director Date 4-22-02

Administrative Services Director Date 4/19/02

Mayor Date 4/22/02

New Bus ✓
Consent ___

Cross Reference

New Item: **Yes** **No**

Prev Ord/Res#: _____

Orig Contract Date: _____

ORDINANCE NO. _____

AN ORDINANCE REZONING THAT PROPERTY DESCRIBED IN REZONING PETITION RZN 02-9.00 FOR A PARCEL CONTAINING APPROXIMATELY 18.80 ACRES LOCATED AT 2231 MARKHAM ROAD, FAYETTEVILLE, ARKANSAS, AS SUBMITTED BY JULIAN AND JANE ARCHER.

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 A-1, Agricultural 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:

By:_____
DAN COODY, Mayor

ATTEST:

By: _____
Heather Woodruff, City Clerk

EXHIBIT "A"

A PORTION OF PARCEL 765-14548-000 DESCRIBED AS FOLLOWS TO-WIT: THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 17, TOWNSHIP 16 NORTH, RANGE 30 WEST, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS, TO-WIT: BEGINNING AT THE NORTHWEST CORNER OF SAID 40 ACRE TRACT AND RUNNING, THENCE EAST 783.2 FEET; THENCE SOUTH 83 FEET; THENCE WEST 783.2 FEET; THENCE NORTH 831 FEET TO THE POINT OF BEGINNING, CONTAINING 14.94 ACRES, MORE OR LESS. ALSO, A PORTION OF PARCEL 765-14536-000 DESCRIBED AS A PART OF THE NORTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 17 IN TOWNSHIP 16 NORTH OF RANGE 30 WEST, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS, TO-WIT: BEGINNING AT THE SOUTHWEST CORNER OF SAID 40 ACRE TRACT, AND RUNNING THENCE EAST 1020 FEET; THENCE NORTH 165 FEET; THENCE WEST 1020 FEET; THENCE SOUTH 165 FEET TO THE POINT OF BEGINNING, CONTAINING 3.86 ACRES, MORE OR LESS.

FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

113 W. Mountain St.
Fayetteville, AR 72701
Telephone: (479) 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:	April 12, 2002

RZN 02-9.00: Rezoning (Archer, pp 481) was submitted by Julian & Jane Archer for property located at 2231 Markham Road. The property is zoned R-1, Low Density Residential and contains approximately 18.80 acres. The request is to rezone to A-1, Agricultural.

RZN 02-12.00: Rezoning (Archer, pp 481) was submitted by Julian & Jane Archer for property located at 2231 Markham Road. The property is zoned R-1, Low Density Residential and contains approximately 4.10 acres. The request is to rezone to A-1, Agricultural.

RECOMMENDATION:

Staff recommends approval of the requested rezonings based on the findings included as part of this report. ***(Note: Each request requires separate action by the Planning Commission.)***

PLANNING COMMISSION ACTION: **Required** **YES**
O Approved **O Denied**

Date: **April 22, 2002**

CITY COUNCIL ACTION: **Required** **YES**
O Approved **O Denied**

Date: **May 7, 2002 (1st reading)**

Comments: _____

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BACKGROUND:

The subject property was an area which housed horses and other barnyard animals for many generations until the late 1990's. At that time, the owners decided not to maintain horses on the property until a new barn could be constructed to replace one that was in poor repair. Because the property as well as the acreage surrounding it was zoned R-1 in 1970, once the animals were removed and six months passed, the non-conforming condition of permitting the animals in a residential zoning district was no longer a grandfathered right for the property owners.

Recently, a building permit was requested for a new barn for this applicant. The intent is to replace the old barn and to reestablish the use of the property for boarding and running horses owned by the property owners. Because of the current zoning of the property, staff made the applicant's aware that the uses that they were proposing were not permitted and that a rezoning would be necessary.

The applicant's have requested this rezoning in order to be able to use the pastures and barns on the property for their horses. They have further offered a Bill of Assurance in order to guarantee that the property is not used for purposes in the future which may be undesirable, such as chicken houses, feed or hog lots, trailer park, cemetery, crematorium, mausoleum, hospital and convalescent home.

This proposal is to downzone and to further restrict the property owner's development rights for the subject properties. Approval of these actions will result in the development of fewer single family homes or other types of dwellings in this area. It is necessary for this property to be zoned for agricultural uses in order for the applicant to keep horses in this location.

Prior to the issuance of a building permit for the barn proposed by the applicant, an accurate, scaled site plan will be required in order to ensure compliance with supplemental conditions which are prescribed for uses described in §163.06 and stated below:

§163.06 ANIMALS AND FOWL. The following uses, where permitted, shall be conducted no nearer than the following stated number of feet to the boundary of an R district, or to a dwelling on the same premises:

50 Feet
Animal Hospital: serving household pets and similar small animals
Commercial Breeding, Raising, Boarding: breeding, raising, or boarding of household pets or similar small animals for commercial purposes
Kennel
Egg Farm

100 Feet
Animal Hospital: serving livestock and similar animals
Boarding or Training of Horses
Dairy Farm
Poultry Farm
Farm: for raising cattle, goats, horses, sheep, rabbits, and poultry

200 Feet
Hog Raising
Livestock: assembly, breeding, feeding, sales or shipment

(Code 1991, §160.078; Code 1965, App. A, Art. 7(3); Ord. No. 1747, 6-29-70)

SURROUNDING LAND USE AND ZONING

North: Single family homes / large acreages, R-1
South: Single family homes / large acreages, R-1
East: Single family homes / large acreages, R-1
West: Single family homes / large acreages, R-1

INFRASTRUCTURE:

Access to the subject property is from Markham and Sang Streets. These are residential streets with open ditches which provide access to the University Heights neighborhood west of the University of Arkansas campus. Water is available and serves the existing residences on other portions of the applicant's property. Sewer access is not necessary for the proposed use of this property.

LAND USE PLAN: General Plan 2020 designates this site Residential. Rezoning this property to A-1, Agricultural 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. Prior to 1970, this property was zoned agriculturally and was used to house and run horses for the owners. The use of the property will remain primarily residential, as there are several single family dwellings on the site, but this change will allow the owners to reestablish their horse barn and to board their horses.**

2. A determination of whether the proposed zoning is justified and/or needed at the time the rezoning is proposed.

Finding: **In order to allow for the agricultural use of this area for boarding and riding horses, this proposed zoning is needed.**

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 or congestion. This downzoning will actually decrease the potential for additional traffic to the area by restricting the property owner's ability to further develop the number of residential lots on the property that would be possible under the current R-1 zoning.**

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 the 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**

§ 161.04 DISTRICT R-1: LOW DENSITY RESIDENTIAL.

A. Purpose. The Low Density Residential District is designed to permit and encourage the development of low density detached dwellings in suitable environments, as well as to protect existing development of these types.

B. Uses.

1. Permitted Uses.

Unit 1	City-Wide Uses by Right
Unit 26	Single-Family Dwelling

2. UsesPermissible 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
Unit 8	Single-Family and Two-Family Dwellings

C. Density.

SINGLE-FAMILY DWELLINGS	TWO FAMILY DWELLINGS
4 or Less Families Per Acre	7 or Less Families Per Acre

D. Bulk and Area Regulations.

	Single-Family	Two-Family
Lot Minimum Width	70 ft.	80 ft.
Lot Area Minimum	8,000 sq. ft.	12,000 sq.ft.
Land Area Per Dwelling Unit	8,000 sq. ft.	6,000 sq. ft.

E. Yard Requirements (feet).

FRONT YARD	SIDE YARD	REAR YARD
25	8	20

F. Building Area. On any lot the area occupied by all buildings shall not exceed 40% of the total area of such lot.

(Code 1991, §160.031)

§161.03 DISTRICT A-1 AGRICULTURAL.

A. Purposes. The regulations of the Agricultural District are designed to protect agricultural land until an orderly transition to urban development has been accomplished; prevent wasteful scattering of development in rural areas; obtain economy of public funds in the providing of public improvements and services of orderly growth; conserve the tax base; prevent unsightly development, increase scenic attractiveness; and conserve open space.

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Unit 1	City-Wide Uses by Right
Unit 3	Public Protection and Utility Facilities
Unit 6	Agriculture
Unit 7	Animal Husbandry
Unit 8	Single-Family and Two-Family Dwellings

2. Uses Permissible on Appeal to the Planning Commission.

Unit 2	City-Wide Uses by Conditional Use Permit
Unit 4	Cultural and Recreational Facilities
Unit 20	Commercial Recreation; Large Sites

C. Bulk and Area Regulations.

Lot Width Minimum	200 ft.
Lot Area Minimum: Residential Nonresidential	 2 acre 2 acre
Lot Area Per Dwelling Unit	2 acre

D. Yard Requirements (feet).

FRONT YARD	SIDE YARD	REAR YARD
35	20	35

E. Height Requirements. There shall be no maximum height limits in the A-1 District, provided, however, that any building which exceeds the height of 15 feet shall be setback from any boundary line of any residential district a distance of 1.0 foot for each foot of height in excess of 15 feet. Such setbacks shall be measured from the required yard lines.

(Code 1991, §160.030; Code 1965, App. A, Art. 5(I); Ord. No. 1747, 6-29-89)

March 25, 2002

We, Julian and Jane Archer, submit that we are the sole owners of the property in question and that it is not for sale now or in the foreseeable future. It has been in the Pratt-Markham-Waterman-Archer family for 102 years and home to a succession of horses and other farm animals continuously during that time until very recently. It has only now (on March 19, 2002) come to our attention that our grandfathered right to keep farm animals on this property lapsed when we ceased having horses there because the barn was in such poor condition and we were unaware of the ordinance that states that after a six month lapse we would lose our right to keep animals. Three or four years ago we decided not to replace the horses until we could build a new barn. Toward that end, we have been purchasing structural timbers from Colorado and oak siding from around here and drawing up plans for a new barn. The design is a classical gambrel roof, oak board and batten, red and white, 15 horse stall barn to replace the old 12 stall barn. We would not have more than 20 horses and more-than-likely nowhere near that number.

We understand that the only way we can replace the horses and build a new barn is to have the property rezoned A-1 (from R-1). Since we own all of the property surrounding the larger (a large pasture consisting of a parcel and a portion of another parcel) of the two properties at issue here, no neighbors will be impacted in any way by rezoning of the parcels, not even visually

On the same family property is a second (with two stalls) barn in good condition. This parcel as well as an adjacent one acre parcel need to be rezoned A-1 in order for horses to be there. The only effect on neighbors of rezoning these two smaller parcels adjacent to Sang Street will be the eventual pleasure of looking at horses instead of an empty barn and pasture.

It should be evident to everyone in the neighborhood by now that -horses or no horses—we have no intention of developing this hilltop property or selling it to developers, though our petitioning to have it rezoned to a more restrictive category could come only as positive news nonetheless. There will, of course, be no increase in traffic as a result, no change in appearance, and no signage.

The preservation of green spaces and areas with rural character within urban boundaries not only enhances the beauty, diversity, and texture of a city, but it touches the human spirit profoundly. And for city dwellers, children especially, to be able to see animals in a beautiful, unspoiled setting on a regular basis is psychologically healthy and moves humanity closer to a kinder, gentler society.

There is a one-inch water line near the new barn site and both of the pasture areas are served by year-round springs. This hilltop area is served by septic systems rather than city sewer.

Julian Archer
Jane Archer

Julian and Jane Archer

March 25, 2002

To the members of the Fayetteville Planning Commission:

We wanted very much to be present at the Planning Commission meeting to which our rezoning request is being submitted, especially since the barn project and having horses is very important to us, but it would entail canceling my, Julian's, classes at Drake University where I teach, and a fast turnaround trip from Des Moines to Fayetteville for a few minutes of appearance before the Commission.

We trust that our proposal will speak for itself and have, further, appointed as our representative Mr. Winston Winston who, as overseer of our property in Fayetteville, is knowledgeable and can answer most of the questions and concerns you may have.

Sincerely,

Julian Archer

Julian Archer

Jane Archer

Jane Archer

BILL OF ASSURANCE
FOR THE CITY OF FAYETTEVILLE, ARKANSAS

In order to attempt to obtain approval of a request for a zoning reclassification, the owner, developer, or buyer of this property, (hereinafter "Petitioner") Julian & Jane Ashes, 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 Chancery/ Circuit Court of Washington County 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 _____

_____

_____.

2. Other restrictions including number and type of structures upon the property are limited to _____

_____.

3. Specific activities will not be allowed upon petitioner's property include commercial chicken houses, feed lot, hog lots, trailer park, cemetery, crematorium, mausoleum, hospital, convalescent home

4. (Any other terms or conditions) _____

_____.

5. 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, Jane Archer Julian Archer as the owner, developer or buyer (Petitioner) **voluntarily offer** all such assurances and sign my name below.

Mar. 26, '02
(1.) Date 2115 Markham
Fayetteville, AR 72701
(2.) 402-29th St.
Address
Des Moines, Ia. 50312

Jane Archer
Julian Archer
Printed Name

Jane Archer
Julian Archer
Signature

NOTARY OATH

STATE OF ARKANSAS }
COUNTY OF WASHINGTON }

And now on this the 26 day of MARCH, 2002 appeared before me, Julian P.W. ARCHER and JANE G. ARCHER and after being placed upon his/her oath swore or affirmed that he/she agreed with the terms of the above Bill of Assurance and signed his/her name above.

MARCIA P. BURLEY
Commission Number 703111
My Commission Expires
MAY 09, 2003

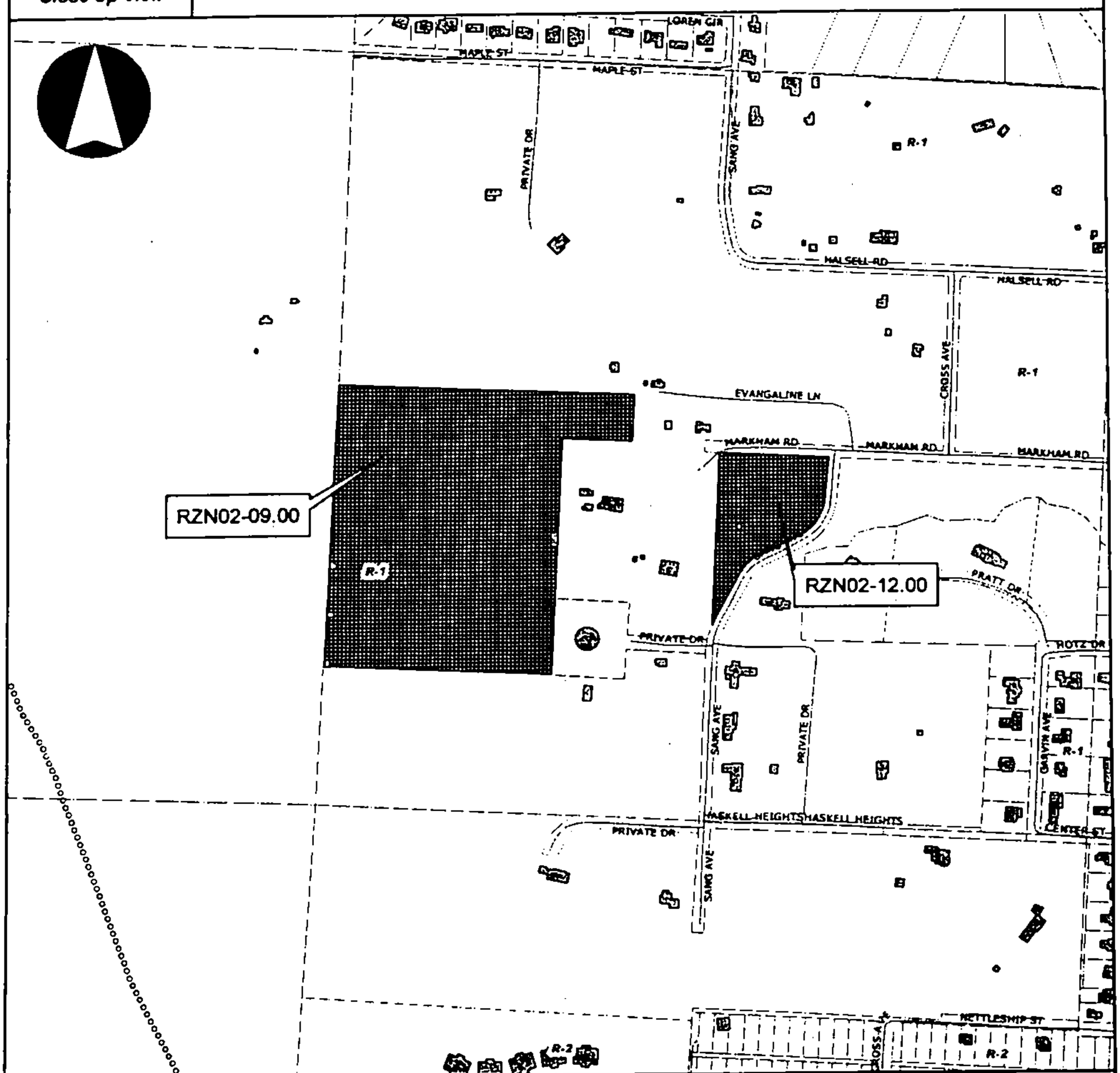
NOTARY PUBLIC
Marcia P. Burley

My Commission Expires:
MAY 09, 2003

RZN02-12.00 & 9

Close Up View

ARCHER



Overview

Legend

Subject Property
RZN02-12.00

Streets
Existing
Planned

Boundary
Planning Area
Overlay District
City Limits
Outside City

Master Street Plan
Freeway/Expressway
Principal Arterial
Minor Arterial
Collector
Historic Collector

0 125 250 500 750 1,000 Feet

STAFF REVIEW FORM

X Agenda Request
___ Contract Review
___ Grant Review

For the Fayetteville City Council meeting of May 7, 2002.

FROM:

Tim Conklin	Planning	Urban Development
Name	Division	Department

ACTION REQUESTED: To approve an ordinance for RZN 02-12.00 as submitted by Julian & Jane Archer for property located at 2231 Markham Road. The property is zoned R-1, Low Density Residential and contains approximately 4.10 acres. The request is to rezone to A-1, Agricultural.

COST TO CITY:
$0

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:

Accounting Manager Date
City Attorney 4/19/02 Date
Purchasing Officer Date

GRANTING AGENCY:

ADA Coordinator Date
Internal Auditor Date

STAFF RECOMMENDATION: Staff recommends approval. This item is scheduled to be heard by the Planning Commission on Monday, April 22, 2002.

Division Head 4-19-02 Date
Department Director 4-22-02 Date
Administrative Services Director 4/19/02 Date
Mayor 4/23/02 Date

New Bus ✓
Consent ___

Cross Reference

New Item: **Yes** **No**

Prev Ord/Res#: _____

Orig Contract Date: _____

ORDINANCE NO. _____

AN ORDINANCE REZONING THAT PROPERTY DESCRIBED IN REZONING PETITION RZN 02-12.00 FOR A PARCEL CONTAINING APPROXIMATELY 4.10 ACRES LOCATED AT 2231 MARKHAM ROAD, FAYETTEVILLE, ARKANSAS, AS SUBMITTED BY JULIAN AND JANE ARCHER.

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 A-1, Agricultural 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:

By:_____
DAN COODY, Mayor

ATTEST:

By: _____
Heather Woodruff, City Clerk

EXHIBIT "A"

A PORTION OF PARCEL 765-14529-000 DESCRIBED AS FOLLOWS: PART OF THE NORTH HALF OF THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER OF SECTION 17 IN TOWNSHIP 16 NORTH OF RANGE 30 WEST, DESCRIBED AS ONE ACRE IN THE NORTHWEST CORNER THEREOF, DESCRIBED AS BEGINNING AT THE NORTHWEST CORNER OF SAID 40 ACRE TRACT, AND RUNNING, THENCE EAST 208.67 FEET; THENCE SOUTH 208.67 FEET; THENCE WEST 208.67 FEET; THENCE NORTH 208.67 FEET TO THE POINT OF BEGINNING CONTAINING 1.0 ACRES, MORE OR LESS. ALSO, A PORTION OF PARCEL 765-14525-000 BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS: THE NORTH HALF OF THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER OF SECTION 17 TOWNSHIP 16 NORTH OF RANGE 30 WEST OF THE 5TH P.M., EXCEPT ONE ACRE OUT OF THE NORTHWEST CORNER THEREOF, CONTAINING 19 ACRES, MORE OR LESS. SUBJECT TO A 20 FOOT ROADWAY ACROSS THE NORTH SIDE THEREOF, AND A 20 FOOT ROADWAY EXTENDING FROM SAID MENTIONED ROADWAY IN A SOUTHERLY DIRECTION ACROSS SAID 19 ACRES. LESS AND EXCEPT THE FOLLOWING DESCRIBED TRACT, TO-WIT: PART OF THE NORTH HALF OF THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER OF SECTION 17, TOWNSHIP 16 NORTH OF RANGE 30 WEST, MORE PARTICULRALY DESCRIBED AS FOLLOWS, TO WIT: BEGINNING NORTH 1 DEGREE 02 MINUTES EAST 660 FEET FROM THE SOUTH WEST CORNER OF THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER AND RUNNING THENCE NORTH 89 DEGREES 22 MINUTES EAST 317 FEET TO POINT OF BEGINNING OF LAND TO BE EXCEPTED; THENCE NORTH 0 DEGREES 48 MINUTES EAST 339.3 FEET TO A ROAD; THENCE WITH EAST LINE OF ROAD NORTH 38 DEGREES 34 MINUTES EAST 113.9 FEET; THENCE NORTH 4 DEGREES 21 MINUTES EAST 222.4 FEET TO A FENCE ALONG SOUTH SIDE OF MARKHAM ROAD; THENCE SOUTH 89 DEGREES 43 MINUTES EAST 913 FEET TO A FENCE CORNER; THENCE SOUTH 0 DEGREES 40 MINUTES WEST 633.5 FEET TO A FENCE CORNER; THENCE SOUTH 89 DEGREES 22 MINUTES WEST 1002.1 FEET TO THE POINT OF BEGINNING, CONTAINING 14.4 ACRES, MORE OR LESS. ALSO LESS AND EXCEPT THE FOLLOWING DESCRIBED TRACT: A PART OF THE SOUTHEAST QUARTER (SE ¼) OF THE NORTHWEST QUARTER (NW ¼) OF SECTION 17, TOWNSHIP 16 NORTH, RANGE 30 WEST, OF THE POINT WHICH IS NORTH 1 DEGREE 02 MINUTES EAST, 660.00 FEET, ALONG THE ¼ SECTION LINE AND 44.50 FEET, EAST OF THE SOUTHWEST CORNER OF SAID 40 ACRE TRACT, AND RUNNING THENCE EAST 272.50 FEET, THENCE NORTH 0 DEGREES 48 MINUTES EAST 339.32 FEET, THENCE SOUTH 58 DEGREES 40 MINUTES WEST 213.70 FEET, THENCE SOUTH 22 DEGREES 33 MINUTES WEST 247.04 FEET TO THE POINT OF BEGINNING.

FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

113 W. Mountain St.
Fayetteville, AR 72701
Telephone: (479) 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:	April 12, 2002

RZN 02-9.00: Rezoning (Archer, pp 481) was submitted by Julian & Jane Archer for property located at 2231 Markham Road. The property is zoned R-1, Low Density Residential and contains approximately 18.80 acres. The request is to rezone to A-1, Agricultural.

RZN 02-12.00: Rezoning (Archer, pp 481) was submitted by Julian & Jane Archer for property located at 2231 Markham Road. The property is zoned R-1, Low Density Residential and contains approximately 4.10 acres. The request is to rezone to A-1, Agricultural.

RECOMMENDATION:

Staff recommends approval of the requested rezonings based on the findings included as part of this report. ***(Note: Each request requires separate action by the Planning Commission.)***

PLANNING COMMISSION ACTION: **Required** **YES**
O Approved **O Denied**

Date: April 22, 2002

CITY COUNCIL ACTION: **Required** **YES**
O Approved **O Denied**

Date: May 7, 2002 (1st reading)

Comments: _____

_____

_____

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BACKGROUND:

The subject property was an area which housed horses and other barnyard animals for many generations until the late 1990's. At that time, the owners decided not to maintain horses on the property until a new barn could be constructed to replace one that was in poor repair. Because the property as well as the acreage surrounding it was zoned R-1 in 1970, once the animals were removed and six months passed, the non-conforming condition of permitting the animals in a residential zoning district was no longer a grandfathered right for the property owners.

Recently, a building permit was requested for a new barn for this applicant. The intent is to replace the old barn and to reestablish the use of the property for boarding and running horses owned by the property owners. Because of the current zoning of the property, staff made the applicant's aware that the uses that they were proposing were not permitted and that a rezoning would be necessary.

The applicant's have requested this rezoning in order to be able to use the pastures and barns on the property for their horses. They have further offered a Bill of Assurance in order to guarantee that the property is not used for purposes in the future which may be undesirable, such as chicken houses, feed or hog lots, trailer park, cemetery, crematorium, mausoleum, hospital and convalescent home.

This proposal is to downzone and to further restrict the property owner's development rights for the subject properties. Approval of these actions will result in the development of fewer single family homes or other types of dwellings in this area. It is necessary for this property to be zoned for agricultural uses in order for the applicant to keep horses in this location.

Prior to the issuance of a building permit for the barn proposed by the applicant, an accurate, scaled site plan will be required in order to ensure compliance with supplemental conditions which are prescribed for uses described in §163.06 and stated below:

§163.06 ANIMALS AND FOWL. The following uses, where permitted, shall be conducted no nearer than the following stated number of feet to the boundary of an R district, or to a dwelling on the same premises:

50 Feet
Animal Hospital: serving household pets and similar small animals
Commercial Breeding, Raising, Boarding: breeding, raising, or boarding of household pets or similar small animals for commercial purposes
Kennel
Egg Farm

100 Feet
Animal Hospital: serving livestock and similar animals
Boarding or Training of Horses
Dairy Farm
Poultry Farm
Farm: for raising cattle, goats, horses, sheep, rabbits, and poultry

200 Feet
Hog Raising
Livestock: assembly, breeding, feeding, sales or shipment

(Code 1991, §160.078; Code 1965, App. A, Art. 7(3); Ord. No. 1747, 6-29-70)

SURROUNDING LAND USE AND ZONING

North: Single family homes / large acreages, R-1
South: Single family homes / large acreages, R-1
East: Single family homes / large acreages, R-1
West: Single family homes / large acreages, R-1

INFRASTRUCTURE:

Access to the subject property is from Markham and Sang Streets. These are residential streets with open ditches which provide access to the University Heights neighborhood west of the University of Arkansas campus. Water is available and serves the existing residences on other portions of the applicant's property. Sewer access is not necessary for the proposed use of this property.

LAND USE PLAN: General Plan 2020 designates this site Residential. Rezoning this property to A-1, Agricultural 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. Prior to 1970, this property was zoned agriculturally and was used to house and run horses for the owners. The use of the property will remain primarily residential, as there are several single family dwellings on the site, but this change will allow the owners to reestablish their horse barn and to board their horses.**

2. A determination of whether the proposed zoning is justified and/or needed at the time the rezoning is proposed.

Finding: **In order to allow for the agricultural use of this area for boarding and riding horses, this proposed zoning is needed.**

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 or congestion. This downzoning will actually decrease the potential for additional traffic to the area by restricting the property owner's ability to further develop the number of residential lots on the property that would be possible under the current R-1 zoning.**

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 the 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**

§ 161.04 DISTRICT R-1: LOW DENSITY RESIDENTIAL.

A. Purpose. The Low Density Residential District is designed to permit and encourage the development of low density detached dwellings in suitable environments, as well as to protect existing development of these types.

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(Code 1991, §160.031)

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Lot Area Per Dwelling Unit	2 acre

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35	20	35

E. Height Requirements. There shall be no maximum height limits in the A-1 District, provided, however, that any building which exceeds the height of 15 feet shall be setback from any boundary line of any residential district a distance of 1.0 foot for each foot of height in excess of 15 feet. Such setbacks shall be measured from the required yard lines.

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March 25, 2002

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We understand that the only way we can replace the horses and build a new barn is to have the property rezoned A-1 (from R-1). Since we own all of the property surrounding the larger (a large pasture consisting of a parcel and a portion of another parcel) of the two properties at issue here, no neighbors will be impacted in any way by rezoning of the parcels, not even visually

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The preservation of green spaces and areas with rural character within urban boundaries not only enhances the beauty, diversity, and texture of a city, but it touches the human spirit profoundly. And for city dwellers, children especially, to be able to see animals in a beautiful, unspoiled setting on a regular basis is psychologically healthy and moves humanity closer to a kinder, gentler society.

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Julian Archer
Jane Archer

Julian and Jane Archer

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We trust that our proposal will speak for itself and have, further, appointed as our representative Mr. Winston Winston who, as overseer of our property in Fayetteville, is knowledgeable and can answer most of the questions and concerns you may have.

Sincerely,

Julian Archer

Julian Archer

Jane Archer

Jane Archer

BILL OF ASSURANCE
FOR THE CITY OF FAYETTEVILLE, ARKANSAS

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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 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 _____

_____

_____.

2. Other restrictions including number and type of structures upon the property are limited to _____

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3. Specific activities will not be allowed upon petitioner's property include commercial chicken houses, feed for hog lots, trailer park, cemetery, crematorium, mausoleum, hospital, convalescent home

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_____.

5. 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, We Jane Archer Julian Archer as the owner, developer or buyer (Petitioner) **voluntarily offer** all such assurances and sign my name below.

Jane Archer

Julian Archer

Printed Name

Mar. 26, '02

(1.) Date 2115 Markham
Fayetteville, AR 72701

(2.) 402-29th St.

Address
Des Moines, Ia. 50312

Jane Archer

Julian Archer

Signature

NOTARY OATH

STATE OF ARKANSAS }
COUNTY OF WASHINGTON }

And now on this the 26 day of MARCH, 2002 appeared before me, Julian P.W. ARCHER and JANE G. ARCHER and after being placed upon his/her oath swore or affirmed that he/she agreed with the terms of the above Bill of Assurance and signed his/her name above.

MARCEL P. BURLEY
Commission Number 703111
My Commission Expires
MAY 09, 2003

NOTARY PUBLIC
Marcel P. Burley

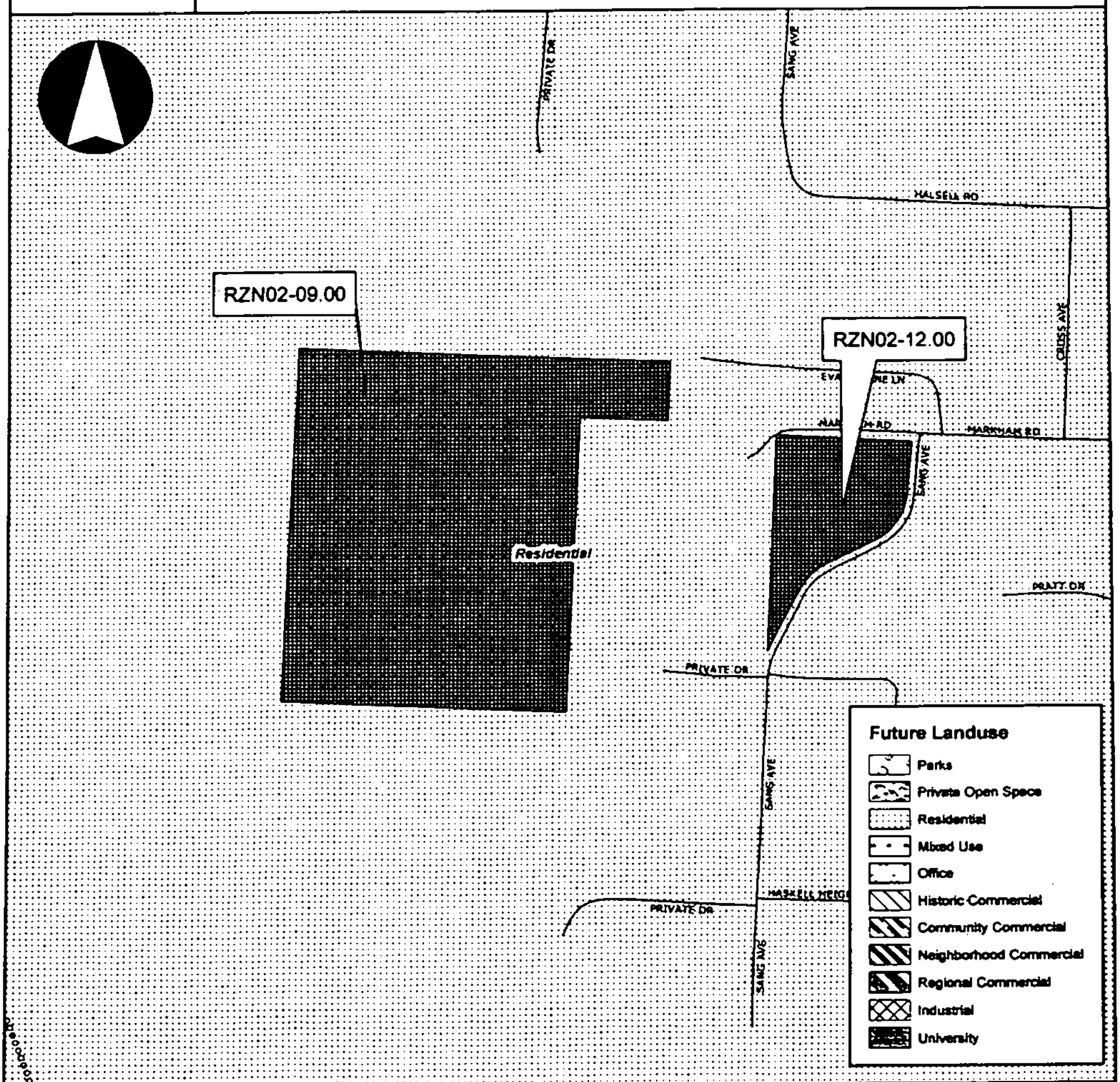
My Commission Expires:
MAY 09, 2003

15

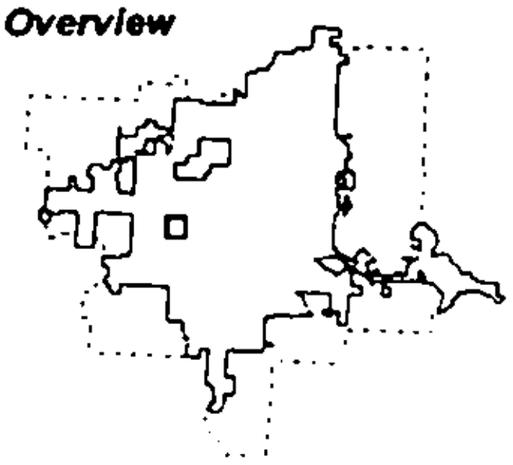
RZN02-12.00

Future Landuse

ARCHER



Overview



Legend

Subject Property

RZN02-12.00

Streets

Existing

Planned

Boundary

Planning Area

Overlay District

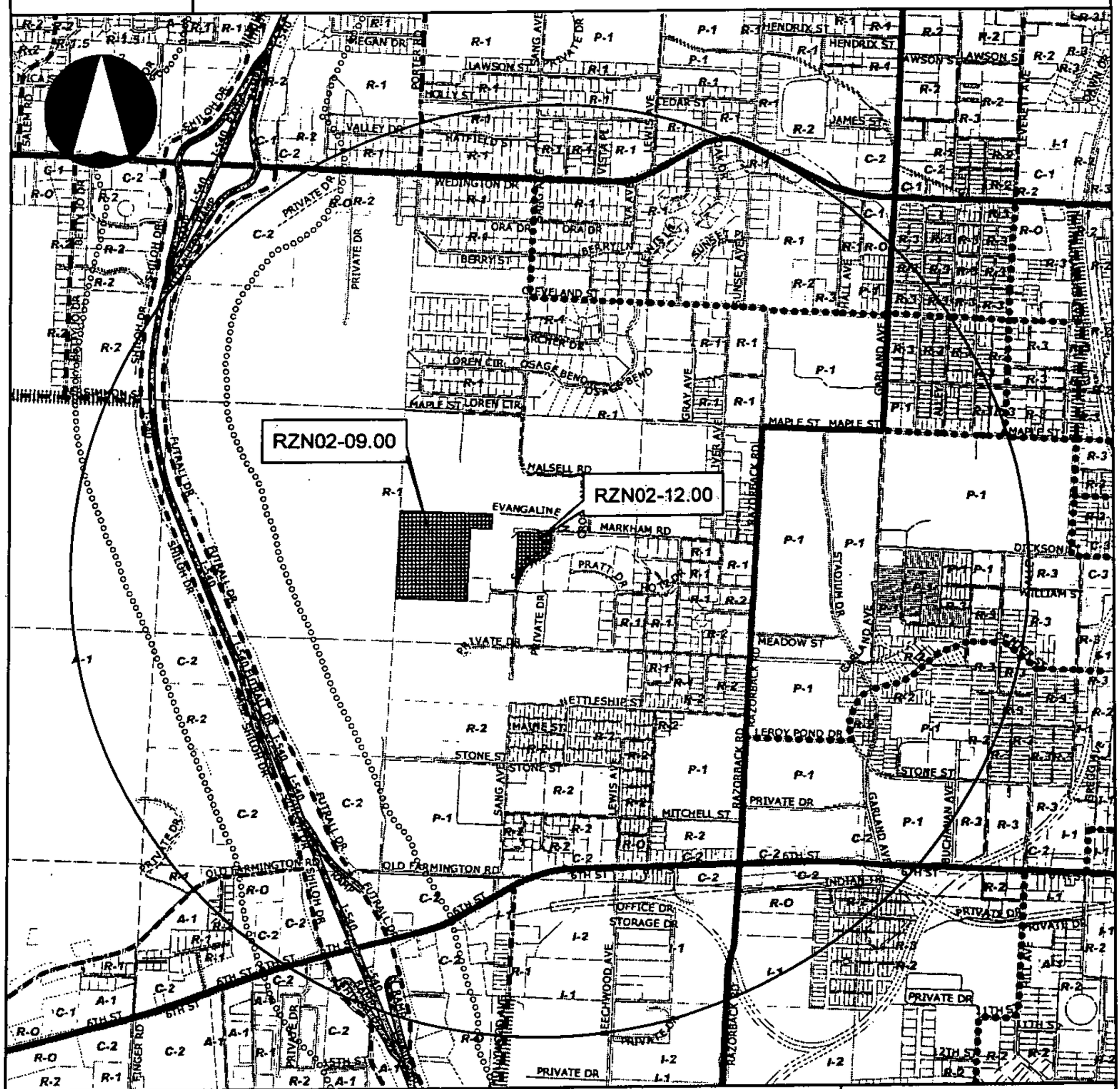
City Limits

0 125 250 500 750 1,000 Feet

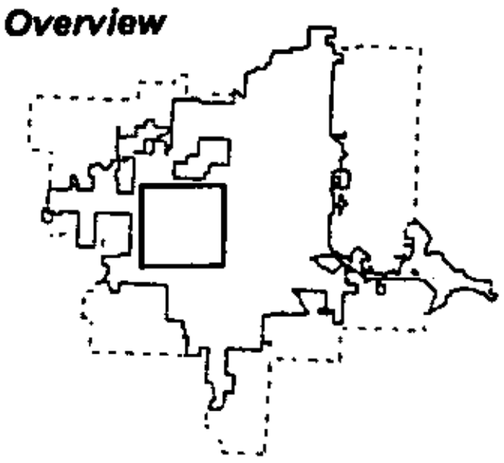
RZN02-12.00

One Mile View

ARCHER



Overview



Legend

Subject Property

RZN02-12.00

Streets

Existing

Planned

Boundary

Planning Area

Overlay District

City Limits

Outside City

Master Street Plan

Freeway/Expressway

Principal Arterial

Minor Arterial

Collector

Historic Collector

0.25 0.125 0 0.25 0.5 0.75 Miles

STAFF REVIEW FORM

X Agenda Request
___ Contract Review
___ Grant Review

For the Fayetteville City Council meeting of May 7, 2002.

FROM:

Tim Conklin	Planning	Urban Development
Name	Division	Department

ACTION REQUESTED: To approve an ordinance for VA 02-1, submitted by Greg Brockman for property located north of 15th Street and west of Duncan streets, Lots 3 & 4, Block 2, Parksdale Addition. The request is to vacate a 30' wide portion of the unimproved Price Avenue right-of-way adjacent to the aforementioned lot as shown and described on the attached map and legal description.

COST TO CITY:

$0		
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 4-19-02	ADA Coordinator	Date
City Attorney	Date	Internal Auditor	Date
Purchasing Officer	Date		

STAFF RECOMMENDATION: Staff recommended approval and on April 8, 2002, Planning Commission voted 6-0-0 to recommend and forward the vacation to the City Council.

Division Head	Date 4-19-02	**Cross Reference**
Department Director	Date 4-22-02	New Item: **Yes** **No**
Administrative Services Director	Date 4/19/02	Prev Ord/Res#: _____
Mayor	Date 4/23/02	Orig Contract Date: _____

New Bus ✓
Consent ___

ORDINANCE NO. _____

AN ORDINANCE APPROVING VA02-2.00 TO VACATE AND ABANDON A 30' WIDE PORTION OF THE UNIMPROVED PRICE AVENUE RIGHT-OF-WAY ADJACENT TO LOTS 3 AND 4, BLOCK 2, PARKSDALE ADDITION, CITY OF FAYETTEVILLE, ARKANSAS AS SHOWN ON THE ATTACHED MAP AND LEGAL DESCRIPTION.

WHEREAS, the City Council has the authority under A.C.A. §14-54-104 to vacate public grounds or portions thereof which are not required for corporate purposes, and

WHEREAS, the City Council has determined that the following described right-of-way is not required for corporate purposes.

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

Section 1. That the City of Fayetteville, Arkansas hereby vacates and abandons all of its rights together with the rights of the public generally, in and to the following described right-of-way:

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

Section 2. That a copy of this Ordinance duly certified by the City Clerk shall be filed in the office of the Recorder of the County and recorded in the Deed Records of the County.

PASSED AND APPROVED this _____ day of _____, 2002.

APPROVED:

By_____
Dan Coody, Mayor

ATTEST:

By_____
Heather Woodruff, City Clerk

EXHIBIT "A"

A PART OF PRICE AVENUE (NOT CONSTRUCTED) IN THE PARKSDALE ADDITION TO THE CITY OF FAYETTEVILLE, ARKANSAS, BEING MORE PRATICULARLY DESCRIBED AS FOLLOWS TO WIT: BEGINNING AT A PINT WHICH IS S89°48'50"W 220.00 FEET FROM THE NORTHEAST CORNER OF LOT 1, BLOCK 2, IN PARKSDALE ADDITION AND RUNNING THENCE S 33°56'59"E 213.84 FEET, THENCE S 89°30'16"W 36.38 FEET, THENCE N33°56'59"E 212.96 FEET, THENCE N89°00'29"E 36.60 FEET TO THE POINT OF BEGINNING CONTAINING 0.15 ACRES MORE OR LESS.

PC Meeting of 8 April 02

FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS
113 W. Mountain St.
Fayetteville, AR 72701

Street Right of Way Vacation
Greg Brockman

TO:	**Fayetteville Planning Commission Members**
THRU:	**Tim Conklin, City Planner**
	Sara Edwards, Associate Planner
FROM:	**Ron Petrie, Staff Engineer**
DATE:	**April 4, 2002**

Project: **VA 02-02.00: Vacation (Greg Brockman, pp 600)** was submitted by Greg Brockman for property located north of Fifteenth Street and west of Duncan Street, Lots 3 & 4, Block 2, Parksdale Addition. The request is to vacate a 30' wide portion of the unimproved Price Avenue right-of-way adjacent to the afore mentioned lots. See the attached maps and legal descriptions for the exact locations of the requested alley vacation.

No objections from the adjacent property owners have been submitted to the City.

The applicant has submitted the required notification forms to the utility companies and to the City. The results are as follows:

Ozarks Electric - Not applicable.
Southwestern Electric Power Company - No objections.
Arkansas Western Gas - No information found in file.
SW Bell - No objections.
Cox Communications - No objections.

City of Fayetteville:
Water/Sewer - No objections.
Street Department - No objections.
Solid Waste - No objections.

Recommendation: Approval of the proposed street vacation with the following condition:

1. Approval shall be granted from the Arkansas Western Gas Company prior to forwarding the request to the City Council.

PLANNING COMMISSION ACTION: __yes__Required
_____Approved _____Denied

Date: __04/08/02__

Comments:

_____

_____

_____

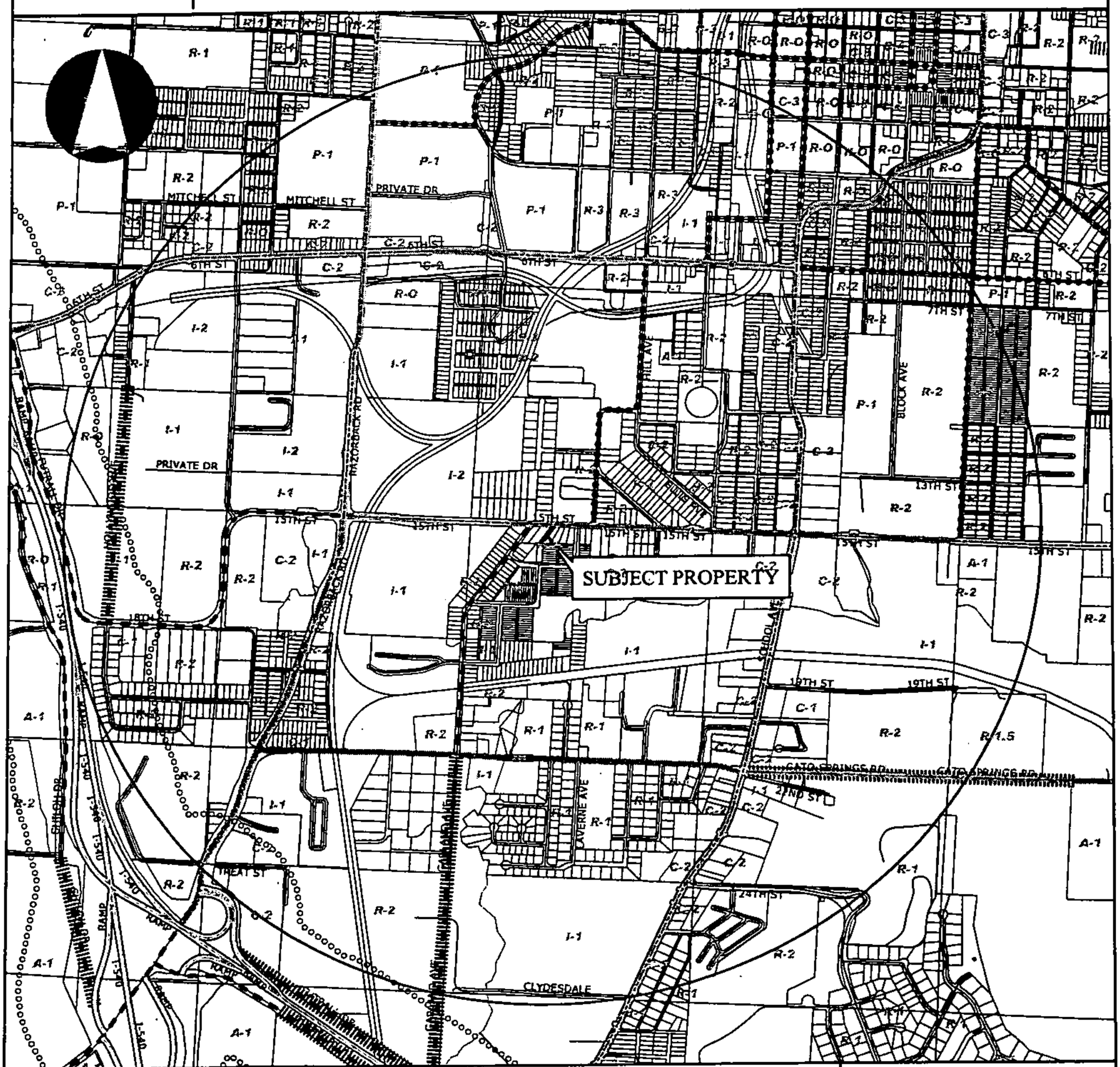
CITY COUNCIL ACTION: __yes__Required
_____Approved _____Denied

Date: ___/___/___

VAC02-2.00

One Mile View

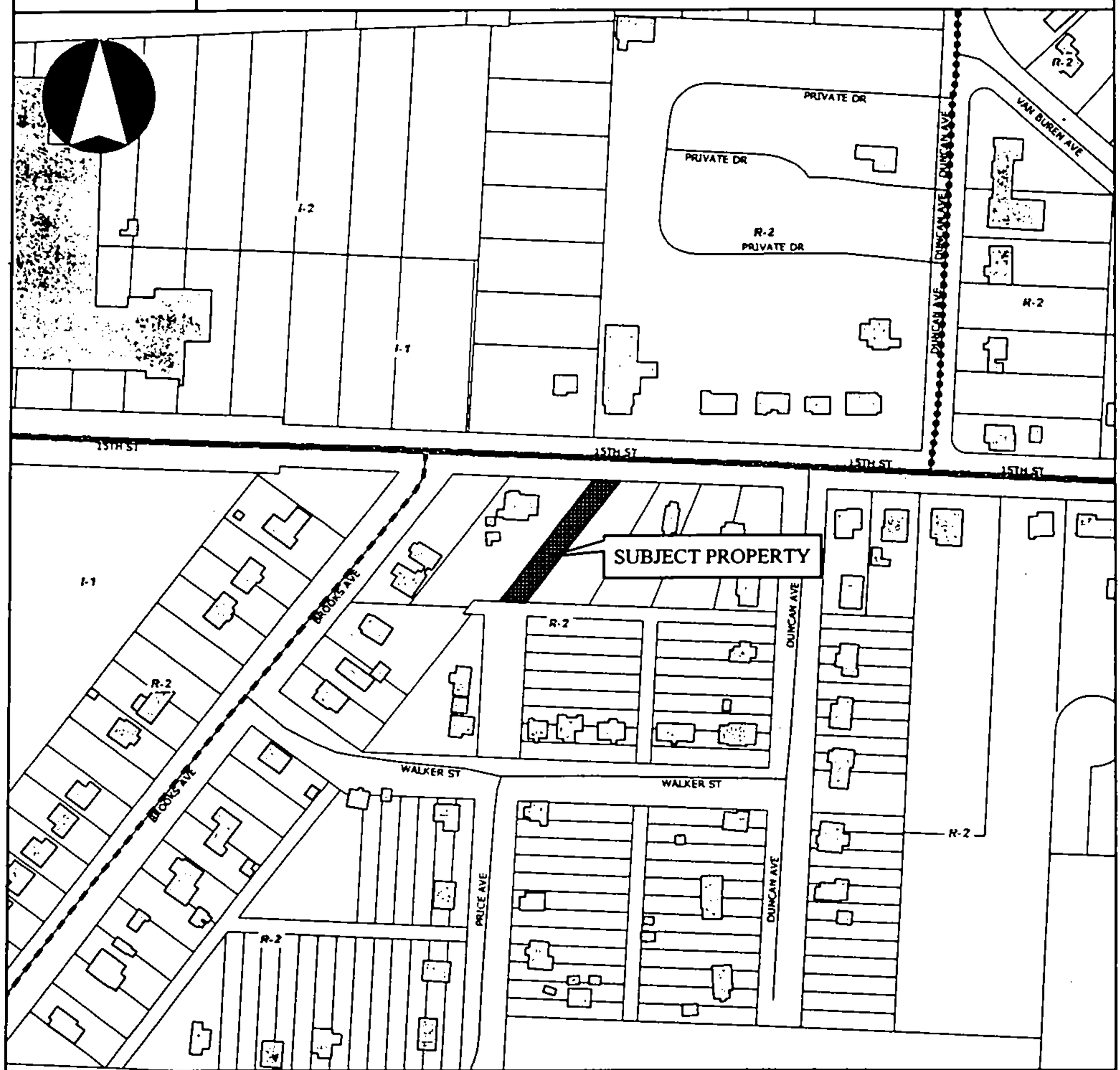
BROCKMAN



VAC02-2.00

Close Up View

BROCKMAN



VAC 02-2.00: Vacation (Brockman, pp 600) was submitted by Greg Brockman for property located south of 15th Street on Price Avenue. The property is zoned R-2, Medium Density Residential and contains approximately 0.15 acres. The request is to vacate east half of Price Avenue south of 15th Street.

Hoffman: The last item on our agenda tonight is a Vacation request, VAC 02-2.00 for Greg Brockman, which was submitted by Mr. Brockman for property located south of 15th Street on Price Avenue. The property is zoned R-2, Medium Density Residential and contains approximately 0.15 acres. The request is to vacate east half of Price Avenue south of 15th Street. See the attached maps and legal descriptions for exact alley location. There were no objections from adjacent property owners submitted to the city. Is the applicant here? It looks like we have one condition of approval.

Conklin: There is one condition of approval. We did not receive the Arkansas Western Gas approval form. However, we are recommending approving the vacation at this time subject to them getting that approval. One other bit of information, we did vacate the other half of this right-of-way in 2000 adjacent back to the west. Half of the right-of-way was already vacated.

Hoffman: That was done by the City?

Conklin: Yes, by the City of Fayetteville.

Hoffman: Should this vacation be approved at this level I believe it also goes to City Council?

Conklin: That is correct.

Hoffman: Yes, are you Mr. Brockman?

Brockman: Yes, I am here to answer any questions.

Hoffman: Is there any public comment concerning this vacation? Seeing none, I will bring it back to the Commission for comments or motions.

Motion:

Ward: I will go ahead and move that we approve 02-02 for Greg Brockman.

Hoffman: I have a motion by Commissioner Ward.

Church: I will second it.

Hoffman: I have a second by Commissioner Church, are there any further comments?

Roll Call: Upon completion of roll call the motion to approve VAC 02-02 was approved by a vote of 6-0-0.

Hoffman: The motion approves unanimously. Thank you very much. That concludes our agenda for this evening. Tim, do we have any announcements?

Conklin: I just want to make sure everybody understands why we only have six members on the Commission this evening. The terms did expire for three of our members. City Council tabled the nominations at the Council and therefore, their terms were expired and you only have six official members on the Commission. Hopefully at the next City Council meeting they will make their decision on the terms of the next three members of the Planning Commission. We are having an Impact Fee Stakeholders Committee meeting tomorrow from 1:00 to 4:00 in room 326. We are meeting with the Mill District Neighborhood for the zoning study Wednesday at 7:00 in room 111. We are planning a development review process workshop on April 25th at Genesis from 8:00 a.m. to 12:00 p.m. to talk about the development review process in Fayetteville and will be inviting architects, engineers, surveyors, and other interested parties to talk about the development review process and go over our revised development manual and have a question and answer session. Also, this Friday Tree and Trails Task Force will be meeting and we are getting very close to making recommendations with regard to open space acquisition of land. The last thing is the Dandy/Schmitt Large Scale Development was appealed to City Council. At this time it is scheduled for the April 16th City Council meeting, it may be asked to be postponed until the May 7th City Council meeting but at this time it is on the Council for the 16th. That is all that I have.

Hoffman: I have a question about our schedule and I assume this is posted on the website. You just went through lots of meetings so I just want to make sure everybody, are these posted on the city's website or can they call the Planning Division people?

Conklin: It is posted on the meetings of the week and that information is available at the City. With regard to impact fees, we have placed the final study on our website, accessfayetteville.org. That study can be downloaded. In the future, as we further develop our website more information will be available.

Hoffman: Thanks Tim. Is there any other business before us? Seeing none, we are adjourned, thank you.

Meeting adjourned: 6:46 p.m.

STAFF REVIEW FORM

_X_ AGENDA REQUEST
____ CONTRACT REVIEW
____ GRANT REVIEW

FOR: COUNCIL MEETING OF May 7, 2002 **MAYOR'S APPROVAL** _____

FROM:

Ted Webber	Administration	Administrative Services Director
Name	Division	Department

ACTION REQUIRED: An Ordinance providing for the levy of a one percent Sales and Use Tax to replace the current one percent Sales and Use Tax and providing for an expiration date for such replacement Sales and Use Tax of June 30, 2013

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 4-10-02 Administrative Services Director

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

Marsha Farthing — Accounting Manager — Date 4/10/02
Internal Auditor — Date 4/10/02
City Attorney — Date 4-5-02
ADA Coordinator — Date
Purchasing Officer — Date 4-10-02

STAFF RECOMMENDATION:

Division Head — Date
Department Director — Date
Administrative Services Director — Date 4/10/02
Mayor — Date 4/15/02

Consent ____
New Business ✓

CROSS REFERENCE

New Item: **Yes** No

Previous Ordinance/Resolution No.: _____

ORDINANCE NO. _____

AN ORDINANCE PROVIDING FOR THE LEVY OF A ONE PERCENT SALES AND USE TAX WITHIN THE CITY OF FAYETTEVILLE, ARKANSAS; TO REPLACE THE EXPIRING ONE PERCENT SALES AND USE TAX; PROVIDING FOR AN EXPIRATION DATE FOR SUCH SALES AND USE TAX OF JUNE 30, 2013 AND PRESCRIBING OTHER MATTERS PERTAINING THERETO

WHEREAS, the City Council of the City of Fayetteville, Arkansas (the "City") has determined that there is a great need for continuing improvement of municipal services and capitol improvements and for a source of revenue to finance such services and improvements; and

WHEREAS, Title 26, Chapter 75, Subchapter 2 of the Arkansas Code of 1987 Annotated (the "Authorizing Legislation") provides for the levy of a one percent (1%) city-wide sales and use tax.

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

Section 1. Under the authority of the Authorizing Legislation, there is hereby levied a one percent (1%) tax on the gross receipts from the sale at retail within the City of all items which are subject to the Arkansas Gross Receipts Tax Act of 1941, as amended (A.C.A. §26-53-101, et seq.) at a rate of one percent (1%) of the sale price of the property or, in the case of leases or rentals, of the lease or rental price (collectively, the "Sales and Use Tax"). The Sales and Use Tax shall be levied and collected only to a maximum tax of $25 for each single transaction.

Section 2. "Single transaction" is defined according to the nature of the goods purchased as follows:

A. When two or more devices in which, upon which or by which any person or property is, or may be, transported or drawn, including but not limited to, on-road vehicles, whether required to be licensed or not, off-road vehicles, farm vehicles, airplanes, water vessels, motor vehicles, or non-motorized vehicles, and mobile homes, are sold to a person by a seller, each individual unit, whether part of a "fleet" sale or not, shall be treated as a single transaction for the purpose of the Sales and Use Tax.

B. The charges for utility services, which are subject to the Sales and Use tax, and which are furnished on a continuous service basis, whether such services are paid daily, weekly, monthly, or annually, for the purposes of the Sales and Use tax, shall be computed in daily increments, and each such daily charge increment shall be considered to be a single transaction for the purposes of the Sales and Use Tax.

C. For sales of building materials and supplies to contractors, builders or other persons, a single transaction, for the purposes of the sales and Use tax, shall be deemed to be any single sale (made on a single day) which is reflected on a single invoice, receipt or statement, on which an aggregate sales (or use) tax figures have been reported and remitted to the Sate of Arkansas.

D. When two or more items of major household appliances, commercial appliances, major equipment and machinery are sold, each individual unit shall be treated as a single transaction for the purposes of the Sales and Use Tax.

E. For groceries, drug items, dry goods and other tangible personal property and/or services not expressly covered in this Section, a single transaction shall be deemed to be any single sale (made on a single day) which is reflected on a single invoice, receipt or statement, on which an aggregate sales tax figure has been reported and remitted to the State of Arkansas.

Section 3. All ordinances and parts thereof in conflict herewith are hereby repealed to the extent of such conflict.

Section 4. This Ordinance shall not take effect until an election is held on the question of levying the Sales and Use tax at which a majority of the electors voting on the question shall have approved the levy of the Sales and Use Tax and then only upon the expiration of the currently authorized one percent (1%) Sales and Use Tax passed by the Fayetteville voters on April 27, 1993, and set to expire on June 30, 2003.

PASSED and **APPROVED** this the _____ day of May, 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 May 7, 2002 **MAYOR'S APPROVAL** _____

FROM:

Ted Webber	Administration	Administrative Services Director
Name	Division	Department

ACTION REQUIRED: An Ordinance calling for a Special Election in the City of Fayetteville on the question of levying a one percent Sales and Use Tax within the City of Fayetteville, to replace the one percent Sales and Use Tax expiring on June 30, 2003 and providing for an expiration date for such Sales and Use Tax of June 30, 2013.

COST TO CITY:

$12,000 est	25,000	
Cost of this Request	Category/Project Budget	Category/Project Name
1010-1510-5318-00	9,799	City Clerk
Account Number	Funds Used to Date	Program Name
	15,201	General
Project Number	Remaining Balance	Fund

BUDGET REVIEW: _____ Budgeted Item _____ Budget Adjustment Attached

Budget Coordinator: _____ Administrative Services Director _____

CONTRACT/GRANT/LEASE REVIEW:

Marsha Farthing	4/9/02
Accounting Manager	Date
[illegible]	4/5/02
City Attorney	Date
[illegible]	4/9/02
Purchasing Officer	Date

GRANTING AGENCY: _____

Nancy Smith	4/9/02
Internal Auditor	Date
ADA Coordinator	Date

STAFF RECOMMENDATION:

Division Head	Date
Department Director	Date
[illegible]	4/9/02
Administrative Services Director	Date
[illegible]	4/10/02
Mayor	Date

CROSS REFERENCE

New Item: **Yes** No

Previous Ordinance/Resolution No.: _____

FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

ADMINISTRATIVE SERVICES DEPARTMENT CORRESPONDENCE

To: Mayor, City Council

From: Ted H. Webber, Director of Administrative Services

Date: April 9, 2002

Subject: Special Election for a 1 cent Sales and Use Tax

Background

The City's current 1 cent Sales and Use Tax, used for both General Government and Capital Improvements, expires on June 30, 2003. This tax was passed by the voters nearly a decade ago and the City depends heavily on revenue from this source to fund on-going City operations. During this time, we have collected over $84,639,000 in Sales and Use Tax Revenue.

The most recent budget preparation cycle ended with the City dipping into its reserves to fund on-going General Fund operations for fiscal year 2002 by $1,897,349. The fiscal demands in year 2001 also required that $2,372,632 in reserves be depleted to fund on-going operations. As we look forward to preparing the City's budget for fiscal 2003, I see no revenue stream to fill these gaps. Indeed, to prevent further depletion of reserves for fiscal 2003, we may need to cut City services.

Timing

We are asking to proceed with the election for the Sales and Use Tax at this time because the current tax expires in the middle of fiscal year 2003. In order for the City to be able to prepare a revenue budget for the full fiscal year 2003, we need to know what our revenue streams will be. This election is essential to the City being able to prepare this revenue budget for fiscal 2003. Our budget process for fiscal 2003 will be initiated during August of this current year.

Attached is an ordinance for City Council's consideration that calls for a special election to be held during the month of July to allow voters to approve this Sales and Use Tax.

ORDINANCE NO. _____

AN ORDINANCE CALLING A SPECIAL ELECTION IN THE CITY OF FAYETTEVILLE, ARKANSAS ON THE QUESTION OF LEVYING A ONE PERCENT SALES AND USE TAX WITHIN THE CITY OF FAYETTEVILLE, ARKANSAS TO REPLACE THE ONE PERCENT SALES AND USE TAX EXPIRING ON JUNE 30, 2003; PROVIDING FOR AN EXPIRATION DATE FOR SUCH SALES AND USE TAX OF JUNE 30, 2013

WHEREAS, the City Council of the City of Fayetteville, Arkansas (the "City") has passed on the _____ day of May, 2002, Ordinance No. _____ providing for the levy of a one percent (1%) Sales and Use Tax within the City (the "Sales and Use Tax") to replace the one percent (1%) Sales and Use Tax which expires on June 30, 2003; and

WHEREAS, the purpose of this Ordinance is to call a special election on the question of the levy of this Sales and Use Tax.

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

Section 1. That there be, and there is hereby called, a special election to be held on the _____ day of July, 2002, at which election there shall be submitted to the electors of the City the question of the levy of the Sales and Use Tax.

Section 2. That the question of levying the Sales and Use tax shall be placed on the ballot for the election in substantially the following form:

> Vote on measure by placing an "X" in the square opposite the measure either for or against.
>
> **FOR** adoption of a 1% local sales and use tax within the City of Fayetteville to begin July 1, 2003 to replace the current 1% local sales and use tax. This replacement tax shall expire on June 30, 2013. .....[ ]
>
> **AGAINST** adoption of a 1% sales and use tax within the City of Fayetteville to begin on July 1, 2003, to replace the current 1% local sales and use tax. This replacement tax shall expire on June 30, 2013. .....[ ]

Section 3. That the election shall be held and conducted and the vote canvassed and the results declared under the law and in the manner now provided for municipal elections unless otherwise provided in Title 26, Chapter 75, Subchapter 2 of the Arkansas Code of 1987 Annotated (the "Authorizing Legislation") and only qualified voters of the City shall have the right to vote at the election.

Section 4. That the results of the election shall be proclaimed by the Mayor, and his proclamation shall be published one time in a newspaper published in the City and having a general circulation therein, which Proclamation shall advise that the results as proclaimed shall be conclusive unless attacked in the courts within thirty days after the date of publication.

Section 5. That a copy of this Ordinance shall be given to the Washington County Board of Election Commissioners so that the necessary election officials and supplies may be provided. A certified copy of this Ordinance shall also be provided to the Commissioner of Revenues of the State of Arkansas as soon as practical.

Section 6. That the Mayor and City Clerk, for and on behalf of the City, be, and they are hereby, authorized and directed to do any and all things necessary to call and hold the special election as herein provided and, if the levy of the Sales and Use tax is approved by the electors, to cause the Sales and Use Tax to be collected in accordance with the Authorizing Legislation, and to perform all acts of whatever nature necessary to carry out the authority conferred by this Ordinance.

Section 7. That all ordinances and parts thereof in conflict herewith are hereby repealed to the extent of such conflict.

PASSED and **APPROVED** this the__ day of May, 2002.

APPROVED:

By: _____
DAN COODY, Mayor

ATTEST:

By: _____
Heather Woodruff, City Clerk

STAFF REVIEW FORM

X AGENDA REQUEST
____ CONTRACT REVIEW
____ GRANT REVIEW

For the Fayetteville City Council meeting of May 7, 2002

FROM:

Name	Division	Department
Greg Boettcher	Public Works	Public Works

ACTION REQUIRED: To approve transfer of Sanitary Sewer Rehabilitation Costs of $564,000.00 from CIP Sales Tax Fund to Water and Sewer Enterprise Fund, with $200,000.00 of the available CIP Sales Tax Funds to be budgeted for a Master Traffic Study, and $25,000.00 to be transferred to other Drainage Improvements.

COST TO CITY:

Cost of this Request	Category/Project Budget	Category/Project Name
$0.00	$564,000.00	

Account Number	Funds Used To Date	Program Name
	-0-	

Project Number	Remaining Balance	Fund
02017	$564,000.00	CIP Sales Tax

BUDGET REVIEW: ____ Budgeted Item X Budget Adjustment Attached

Budget Coordinator

Administrative Services Director

CONTRACT/GRANT/LEASE REVIEW:

GRANTING AGENCY: _____

	Date		Date
Accounting Manager	4/26/02	ADA Coordinator	
City Attorney	4/26/02	Internal Auditor	4/26/02
Purchasing Officer	4/26/02	Grant Officer	

STAFF RECOMMENDATION:

	Date
Division Head	04-25-02
Department Director	4/26/02
Admin. Svcs Director	4/26/02
Mayor	Date

Cross Reference

New Item: **Yes** **No**

Prev Ord/Res #: _____

Orig Contract Date: _____

STAFF REVIEW FORM

Description _____ Meeting Date _____

Comments:

Budget Coordinator

Reference Comments:

Accounting Manager

Reference Comments:

City Attorney

Reference Comments:

Purchasing Officer

Reference Comments:

ADA Coordinator

Reference Comments:

Internal Auditor

Reference Comments:

Grants Offcier

Reference Comments:

City of Fayetteville, Arkansas
Budget Adjustment Form

Budget Year	Department:	Date Requested	Adjustment #
2002	Sales Tax Capital Impro.	04/18/2002	
	Division:		
	Program:		

Project or Item Requested:

$200,000 is requested in Sales Tax Capital Improvement Fund to fund a city-wide traffic study. $25,000 is requested for Other Drainage Improvements.

Project or Item Deleted:

Funding proposed for this adjustment is from a re-allocation of a sewer system rehabilitation project from Sales Tax Capital Improvement Fund to the Water & Sewer Fund.

Justification of this Increase:

The item is requested to provide the City with an updated Master Traffic Study and funds to improve drainage near Ramey Junior High.

Justification of this Decrease:

Water & Sewer Fund has sufficient cash & investments to fund this request and comply with City policy.

Increase Expense (Decrease Revenue)

Account Name	Amount	Account Number					Project Number	
Professional Services	200,000	4470	9470		5314	00	02105	1
Bridge & Drainage Improve.	25,000	4470	9470		5817	00	02108	1
Use of Fund Balance	339,000	4470	0947		4999	99		
Sewer Improvements	564,000	5400	5700		5815	00	02017	1

Decrease Expense (Increase Revenue)

Account Name	Amount	Account Number					Project Number	
Use of Fund Balance	564,000	5400	0940		4999	99		
Sewer Improvements	564,000	4470	9470		5815	00	02017	1

Approval Signatures

	Date
Requested By	
Budget Manager	4-22-02
Department Director	4-23-02
Admin. Services Director	9/26/02
Mayor	4/26/02

Budget Office Use Only

Type: A B C (D) E

Date of Approval _____

Posted to General Ledger _____ _____

Posted to Project Accounting _____ _____

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FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

DEPARTMENTAL CORRESPONDENCE

TO: Mayor Dan Coody and
Fayetteville City Council Members

FROM: Greg Boettcher, P.E.,
Public Works Director

DATE: April 16, 2002

SUBJECT: City Council Agenda Item – May 7, 2002
Budget Transfer Request
Sanitary Sewer Rehabilitation Costs
Drainage Improvements Funding

BACKGROUND

In the development of the Fiscal Year 2002 Budget, the cost of the Sanitary Sewer Rehabilitation Program was allocated to the CIP Sales Tax Fund. Other pressing and immediate capital improvement needs have arisen (Traffic Study) for which funding is not available. Evaluation of the Water and Sewer Enterprise fund (operating fund) has found the returned earnings balance to be adequate to cover the cost of $564,000.00 for the Fiscal Year 2002 Sanitary Sewer Rehabilitation Program. The transfer of these sewer system rehabilitation costs to the Water and Sewer Fund is permissible under generally accepted accounting principles and will allow re-budgeting of a portion of the deobligated CIP Sales Tax Funds for the Master Traffic Study (estimated cost - $200,000.00). In addition, $25,000.00 is proposed to be transferred to Bridge and Drainage Improvements to fund a joint drainage activity along Sang Avenue in front of the Ramey Junior High School. (Copy of letter from Fayetteville Public Schools is attached).

DISCUSSION

The Fayetteville Water and Sewer Committee, at its April 11, 2002 meeting discussed this transfer of costs from the CIP Sales Tax Fund to the Water and Sewer Enterprise Fund. The committee has recommended approval of the action by the Fayetteville City Council.

RECOMMENDATION

It is recommended that the Fayetteville City Council approve Budget Adjustments to: (a) Delete $564,000.00 in CIP Sales Tax Funding for Sanitary Sewer Rehabilitation in Fiscal Year 2002 (b) Include $564,000.00 in Water and Sewer Enterprise Fund expenses for Sanitary Sewer Rehabilitation in Fiscal Year 2002, (c) Reserve $200,000.00 in CIP Sales Tax Funding for a Master Traffic Study and (d) Transfer $25,000.00 to Bridge and Drainage Improvements to fund a cooperative drainage project with Fayetteville Public Schools.

APR 01 2002

CELEBRATING THE PAST WHILE EMBRACING THE FUTURE
WWW.FAYAR.NET

April 1, 2002

Mr. Gregg Bottcher
Fayetteville Public Works Director
Administration Building
113 W Mountain Street
Fayetteville, Arkansas

Dear Mr. Bottcher:

The Fayetteville School District is asking the City of Fayetteville to cooperate in a cost share operation to fix serious water drainage located in front of Ramay Junior High School.

Two years ago, Lindsey Construction Company was allowed to build an apartment complex north of Ramay Junior High School. The drainage from those apartments funnels into a ditch in front of the school causing extensive erosion.

The erosion has caused a cave in at our driveway entrance to the school and has exposed utilities along the sidewalk and street. I am receiving complaints from parents for fear that their children will get hurt crossing the ditch.

The water runoff from the apartment complex should have been taken care of during the planning phase of the construction. Lindsey Construction Company should have adequately engineered the project to accept surface water.

With regards to the cost share, we will agree to pay for labor cost for the entire project if the city will pay for piping and fill dirt. We would like to do the project in two phases. The first phase is to lay piping directly in front of the school from the north to the south entrance. The second phase would be to lay piping south to connect to the storm drain at Farmington Road. The first phase needs immediate attention as it relates to the safety issue of the students.

1000 WEST STONE STREET PO BOX 849 FAYETTEVILLE, ARKANSAS 72702 (501) 444-3000

I have notified Jim Beaver and Randy Allen about this situation and they recommended that I send this request to you for further review.

Respectfully,

Roy Karr
Associate Superintendent

From: Greg Boettcher
To: Beavers, Jim
Date: 4/1/02 8:08AM
Subject: Sang Avenue

Randy Allen has received a call from Fayetteville Schools regarding the drainage ditch along Sang Avenue, North of Sixth Street. The School had previously proposed to intall the closed drainage system along this street if the City would furnish the materials. This seems to be a needed activity as the water is eroding the ditch and could pose hazards to the utilities in the area. The cost would be on the order of $20,000.00 and could fall under miscellaneous drainage. The School is to submit a written proposal detailing this matter, confirming that the School will retain an engineer to design the system (subject to City approvals) and a contract to construct the system. I was not sure if this would have any effect upon the Sang Intersection Improvements, therefore, I wanted to inform you of a possible forthcoming letter. If this may be coordinated with the other work or is a concern, please let me know. I will forward the letter proposal upon receipt.

pc: Randy Allen

STAFF REVIEW FORM

X AGENDA REQUEST
____ CONTRACT REVIEW
____ GRANT REVIEW

For the Fayetteville City Council meeting of May 7, 2002

FROM:

Name	Division	Department
Greg Boettcher	Public Works	Water & Sewer

ACTION REQUIRED: Approval to budget the $1.5 million of Water and Sewer Operating Funds, reimbursed from Bond Proceeds, towards Accelerated Water Main Replacement Activities, including approval of a budget adjustment and an addition to the Fiscal Year 2002 Capital Improvements Program.

COST TO CITY:

$1,500,000.00	-0-	Accelerated Water Replacement
Cost of this Request	Category/Project Budget	Category/Project Name
	-0-	2002 CIP Program
Account Number	Funds Used To Date	Program Name
	-0-	Water and Sewer
Project Number	Remaining Balance	Fund

BUDGET REVIEW: X Budgeted Item ____ Budget Adjustment Attached

Budget Coordinator 4-18-02 — Administrative Services Director

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

Accounting Manager	Date 4/19/02	ADA Coordinator	Date
City Attorney	Date 4/19/02	Internal Auditor	Date 4/19/02
Purchasing Officer	Date 4/19/02	Grant Officer	Date

STAFF RECOMMENDATION:

Division Head	Date 04-18-02	Cross Reference
Department Director	Date 4/19/02	New Item: **Yes** **No**
Admin. Svcs Director	Date 4/19/02	Prev Ord/Res #:
Mayor	Date	Orig Contract Date:

STAFF REVIEW FORM

Description _____ Meeting Date _____

Comments:

Budget Coordinator

Reference Comments:

Accounting Manager

Reference Comments:

City Attorney

Reference Comments:

Purchasing Officer

Reference Comments:

ADA Coordinator

Reference Comments:

Internal Auditor

Reference Comments:

Grants Offcier

Reference Comments:

FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

DEPARTMENTAL CORRESPONDENCE

TO: Mayor Dan Coody and
Fayetteville City Council Members

FROM: Greg Boettcher, P.E.,
Public Works Director

DATE: April 18, 2002

SUBJECT: **City Council Agenda Item – May 7, 2002**
Budget Adjustment – Water and Sewer Division
Accelerated Water Main Replacement

BACKGROUND

Fayetteville's water system includes more than 525 miles of pipelines that serve more than 75,000 people. Average daily water purchase volume is 13 million gallons, of which approximately 20% is unaccounted for. Target water loss rates are 12-15%, therefore, corrective actions are justified and may be expected to produce reductions in water loss. In fiscal year 2001, the Water and Sewer Division recorded 628 leaks, these events consuming a significant amount of labor, equipment and material expenses. Performance goals for the in-house water main replacement program is 8,000 feet of water line; equating to annual replacement rate of 0.3% of the system. In other terms, this level of performance requires a water main to have an average service life of 347 years. This infrastructure replacement rate is inadequate to properly maintain this asset, as evidenced by the level of pipeline failures and high loss ratios.

The Water and Sewer Division maintains records of pipeline segments with high failure rates or other serious inadequacies, with more than 50 projects being currently identified under said process. The current in-house program is not staffed or equipped to keep pace with or make progress on this growing need. Such conditions are the basis for an accelerated water main replacement program to avoid continued degradation of this municipal asset and to reduce water loss volumes.

DISCUSSION

The decision to initiate this asset preservation program surfaced when supplemental Water and Sewer Enterprise Funds became available. The retained earnings of the Water and Sewer Division's operating fund have been used to cash flow the facility planning costs of the Wastewater System Improvement Project. A drawdown of bond issue proceeds, to reimburse this temporary borrowing, shall provide $1.5 million of fund replenishment that is not budgeted for a specific purpose. It is proposed that this water and sewer fund reimbursement be budgeted for accelerated Water Main replacement activities.

The Water and Sewer committee discussed this budget adjustment at its April 11, 2002 meeting, finding the program to be acceptable and recommending presentation to the Fayetteville City Council for approval. It is proposed that the Water and Sewer Superintendent develop a list of water main segments that have the greatest cost-benefit ratio and are of such a construction nature as to be suited for construction by independent contractors (minimum service disruptions, uncongested construction routes, etc). A preliminary replacement plan for the targeted activities shall be developed by the Water and Sewer Division. Using this preliminary design, a consultant shall be selected to design, bid and provide award recommendations for the replacement project. The budget for these activities shall be set at $1.5 million.

RECOMMENDATION

It is recommended that the Fayetteville City Council approve a budget adjustment in the amount of $1.5 million for the implementation of an accelerated water main replacement program, funding to be secured from Water and Sewer Enterprise Fund's retained earnings. Also, the approval should stipulate that such a project be added to the Fiscal Year 2002 Capital Improvement Plan.

City of Fayetteville, Arkansas
Budget Adjustment Form

Water Main Replac.
C. 9. Page 5

Budget Year	Department:	Public Works	Date Requested	Adjustment #
2002	Division:	Water & Sewer Maintenance	04/18/2002	
	Program:	Capital Water Mains		

Project or Item Requested:

$1,500,000 is requested in Water & Sewer Fund to fund an accelerated water line replacement project.

Project or Item Deleted:

Funding proposed for this adjustment is from a reimbursement of bond proceeds for the WSIP.

Justification of this Increase:

The item is requested to address the high failure line segments.

Justification of this Decrease:

Water & Sewer Fund has sufficient cash & investments to fund this request and comply with City policy.

Increase Expense (Decrease Revenue)

Account Name	Amount	Account Number					Project Number	
Waterline Improvements	1,500,000	5400	5600		5808	00	02125	1

Decrease Expense (Increase Revenue)

Account Name	Amount	Account Number					Project Number	
Use of Fund Balance	1,500,000	5400	0940		4999	99		

Approval Signatures

Requested By	Date
Budget Manager	Date 4-18-02
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 / Yellow Copy: Requester

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STAFF REVIEW FORM

Burns & McDonnell
C. 10. Page 1

__X__ AGENDA REQUEST
_____ CONTRACT REVIEW
_____ GRANT REVIEW

For the Fayetteville City Council meeting of

FROM:

Name	Division	Department
Greg Boettcher	Public Works	Public Works

ACTION REQUIRED: Approval of agreement with Burns and McDonnell to perform program management services in connection with the Wastewater System Improvement Project.

COST TO CITY:

Cost of this Request	Category/Project Budget	Category/Project Name
$336,881.00	11,800,000	WSIP
Account Number	**Funds Used To Date**	**Program Name**
4480-9480-5815-00		
Project Number	**Remaining Balance**	**Fund**
98105-30	11,800,000	Sewer Plant Const. Fund

BUDGET REVIEW: _X_ Budgeted Item ____ Budget Adjustment Attached

Budget Coordinator: [signature] for SLD

Administrative Services Director: _____

CONTRACT/GRANT/LEASE REVIEW:

GRANTING AGENCY: _____

Accounting Manager: [signature] Date: 4/3/02

City Attorney: [signature] (see over →) Date: _____

ADA Coordinator: _____ Date: _____

Internal Auditor: Nancy Smith (SEE comments) Date: 4/4/02

Purchasing Officer: _____ Date: _____

Grant Officer: _____ Date: _____

STAFF RECOMMENDATION:

Division Head: _____ Date: _____

Department Director: Gy Boettcher Date: 04-03-02

Admin. Svcs Director: [signature] Date: _____

Mayor: Dan Coody Date: 4/15/02

Cross Reference

New Item: **Yes** **No**

Prev Ord/Res #: _____

Orig Contract Date: _____

Consent ____
New Business ✓

STAFF REVIEW FORM

Description _____ Meeting Date _____

Comments:

Budget Coordinator

Reference Comments:

Accounting Manager

pg 2 - not to exceed Contract Value of 336,581. On Staff review form amt equals 336,881.00

Reference Comments:

City Attorney

I will propose several changes to the proposed contract Kit

Reference Comments:

Purchasing Officer

Reference Comments:

ADA Coordinator

Reference Comments:

Internal Auditor

pg. 2 + pg. 4 show different amts. $336581 (on pg. 2) 336881 (on pg 4) + Staff review form

Reference Comments:

Grants Offcier

Reference Comments:

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: April 4, 2002

SUBJECT: **Wastewater System Improvement Project**
Program Manager and Value Engineering Services
Burns and McDonnell, Kansas City, Mo
Predesign Management Proposal (Phase I)

BACKGROUND

In November of 2001, the citizens of Fayetteville overwhelming approved a sales tax to finance the construction of a critical Wastewater System Improvements Project. This integrated system of improvements includes interceptor sewer mains, wastewater pumping stations, treatment facility upgrades and new treatment facility construction; the combination of activities representing a project of $120 million. These improvements are predicted to meet core wastewater system needs for a period of 20-years. Due to the size and complexity of this improvement program, the City Council divided the responsibility between four consulting firms: Black and Veatch (upgrading of the existing Noland Wastewater Treatment Plant), Garver Engineers (East side pumping station and interceptor sewer mains), McGoodwin, Williams and Yates (New Westside Wastewater Treatment Plant) and RJN Group (Wes tside pumping stations and interceptor sewer mains).

To approach this project from a least-cost perspective, Fayetteville secured low-interest Revolving Loan Fund financing from the Arkansas Soil and Water Conservation Commission. This federal/state loan program is implemented under the terms of a Memorandum of Agreement, said agreement including a specific

schedule for project completion. To encourage compliance with the schedule, failures to meet stipulated completion dates can result in an interest penalty that would substantially increase the financing cost for the $120 million dollar loan. Accordingly, the development of and adherence to a Project Schedule is an integral element of the Wastewater System Improvement Project.

It has been concluded that the City of Fayetteville does not have the internal resources to manage this $120 million Project; therefore, the use of outside resources shall be necessary. At the February 4, 2002 meeting of the Fayetteville Water and Sewer Committee, it was agreed that a selection committee should interview prospective service providers, a firm should be selected and contract proposal negotiated for the first phase of the work. The outsourcing process conformed to the funding agency's requirements for the selection of professional service providers, enabling said consultant's costs to be later claimed as an eligible project cost. The respondents to the request for qualifications were evaluated, with three firms being selected for formal interviews. The three firms making formal presentations were evaluated on a competitive basis using specific criteria. The highest-ranking firm was Burns and McDonnell of Kansas City, Missouri, with the anticipated scope of services to be provided being defined as "Program Management and Value Engineering Services." The formal interviews and selection process were completed on March 14, 2002 at City Hall. The selected consultant was requested to develop a scope of work and a contract proposal to meet the immediate needs of the project. In essence, this first phase of services was to include the assessment of current status, development of a project segmentation plan, development of a critical path analysis for the project activities, establishment of task schedules/costs, evaluation of separate equipment contracts and coordination of the work of the multiple consultants.

CURRENT SITUATION

Burns and McDonnell Engineering Company, Inc. has developed an agreement for professional engineering services that addresses the initial needs of the project (through predesign phase). This first phase of program management is predicted to span a period for not more than 120 days, is estimated to involve 2,758 person-hours and will represent a not-to-exceed contract value of $336,881.00. Services shall be provided on a schedule of hourly rates basis, therefore, compensation shall track the level of effort. Within this predesign phase of program management services, the consultant proposes to:

1. IDENTIFY PROGRAM STATUS

- Collect data on project status through individual meetings with city staff, consultants of record, Arkansas Soil and Water Conservation Commission and OMI.
- Quantify status of existing contracts and facility planning activities.
- Identify priority issues and develop resolution strategies.
- Prepare summary evaluation, outline recommended actions and discuss such findings at a joint meeting of stakeholders.

2. PERMITTING PROCESS ANALYSIS

- Identify, review and confirm the status of project permitting activities.
- Prepare a fatal flaw analysis of all permitting tasks, targeting those items that are critical to the project schedule.

3. CREATE STEERING DOCUMENT

- Prepare a prioritized master schedule (through design) for the Project, complete with tasks, priorities, milestone dates, phasing and responsibilities.
- Define elements to be coordinated and standardized.
- Assist in development of a standard professional services agreement for contracting with the individual consultants of record, incorporating into each agreement the negotiated compensation arrangement and a time of performance.
- Outline value engineering activities
- Standardize design criteria and work elements to maintain consisting, coordination and uniformity of individual consultant activities.
- Create standard bedding documents and general requirements for use on all contracts.

4. PREPARE PROGRAM BUDGET

- From record information and other resources, develop a comprehensive, itemized program budget complete with predicted cash flow requirements.

5. OTHER PROGRAM MANAGEMENT SERVICES

- Create a Program Management Plan for the Project that establishes procedures, responsibilities, decision processes,

and communications for the management, design and construction of the Project.

- Establish a Program Management Control System to track and control the various Project tasks. This computer-based system shall monitor, report and manage the work; as well as provide a web site for the public's access to Project information.
- Maintain a communications plan whereby stakeholders shall be informed of Project progress.
- Create a Master Program Schedule that reflects the actual verses scheduled task accomplishment. This schedule shall be cost-loaded to track budgetary compliance. Benchmark the schedule data and update throughout the term of service.
- Provide up to four formal progress reports to Fayetteville City Council.

The scope of work and preliminary schedule set out in the Professional Services Agreement represent the tasks necessary for the initial phase of program management. This phase of services shall advance the Project into the detailed design phase, with key factors properly identified (contract segments, schedules, sequences, costs). The next phase of the Program Management and Value Engineering Services shall address the value engineering and design phase services. It is expected that the third phase of services shall relate to the construction phase activities.

RECOMMENDATIONS

The large and complex Wastewater System Improvement Project requires appropriate control and management to meet mandated schedules and contain costs within budgets. The City of Fayetteville does not have the internal resources to manage this large Project, nor would it be prudent to increase staffing and resources to address this one-time need. Accordingly, it is most effective and economical for the City of Fayetteville to obtain these resource needs by outsourcing. A selection process found the Burns and McDonnell Engineering Company of Kansas City, Missouri to be the best-qualified provider for the Program Management and Value Engineering Services. The contract proposal submitted by said firm has been found to be in conformance with immediate needs and objectives. It is recommended that the Fayetteville City Council approve the Agreement for Professional Services with Burns and McDonnell Engineering Company, Inc. for a not-to-exceed amount of $336,881.00, and authorize the Mayor to execute said agreement.

AGREEMENT

For

PROFESSIONAL ENGINEERING SERVICES

Between

CITY OF FAYETTEVILLE, ARKANSAS

And

BURNS & McDONNELL ENGINEERING COMPANY, INC.

Kansas City, Missouri

THIS AGREEMENT is made as of _____, 2002, by and between City of Fayetteville, Arkansas (hereinafter called OWNER) and Burns & McDonnell Engineering Company, Inc., a Missouri Corporation specializing in consulting engineering services (hereinafter called ENGINEER).

OWNER requires professional engineering services in connection with the program management of study, design, construction, operation, maintenance, management, and financing of wastewater treatment and conveyance facilities. Therefore, OWNER and ENGINEER in consideration of their mutual covenants agree as follows:

ENGINEER shall serve as OWNER's professional engineering consultant in those assignments to which this Agreement applies, and shall give consultation and advice to OWNER during the performance of ENGINEER's services. All services shall be performed under the direction of a professional engineer registered in the State of Arkansas and qualified in the particular field.

SECTION 1 SCOPE OF SERVICES OF ENGINEER

1.1 General

1.1.1 Perform Program Management services in connection with Pre-Design Phase Projects as hereinafter stated which may include normal civil, structural, mechanical, and electrical engineering services and normal architectural design services incidental thereto.

1.1.2 Advise OWNER as to the necessity of OWNER providing or obtaining services or data from others of types described in Paragraph 2.3, make recommendations as to the possible sources of such services, and act as OWNER'S representative in connection with any such services.

1.2 Identification of Program Status

1.2.1 Consult with OWNER to determine OWNER's requirements for the Project and collect available data on contracts with Consultants of Record (Consultants).

1.2.2 Review contracts of Consultants and ascertain the schedules and deliverables due to the OWNER as part of the contracts. Examine cost-to-date and the status of billings to the OWNER for each contract.

1.2.3 Review Arkansas Department of Environmental Quality (ADEQ) requirements for Facility Plans approval. Meet with ADEQ regarding each Facility Plan being prepared.

1.2.4 Review Facility Plans and assess the level of completion. Determine the activities remaining before approval.

1.2.5 Review Water Quality Study and assess the level of completion. Determine the activities remaining before approval.

1.2.6 Conduct a one-day meeting in Fayetteville with OWNER and staff to further identify status, scheme, and schedule for the projects. Report to the OWNER the preliminary conclusions gained from examination of Facility Plans and Water Quality Study. Establish agenda and goals for joint meeting with Consultants. Establish goals and expectations and lines of communication for the Program.

1.2.7 Jointly conduct with the OWNER separate meetings with each Consultant and OML Inc. to review Program status, identify concerns and issues which may impede completion of Consultants' services, and to receive other feedback from Consultants. Review Consultants' staffing plan and schedule for completion of the pre-design activities. Determine status of property acquisition.

1.2.8 Assess the information obtained in the meetings with Consultants and prepare an evaluation and recommendations. Present the final results of the evaluation process to OWNER for final approval. This presentation will highlight the evaluation process, including status of stakeholder involvement, and identify the recommendation for proceeding with design activities.

1.3 Develop Steering Document

1.3.1 Prepare a Level 1 concept milestone schedule for the overall Program through the Design Phase which identifies tasks, phases, projects, or subprojects and prioritizes them. The concept milestone schedule will provide guidance to the OWNER and Consultants by establishing *"what's first, what's next, what's critical*, and *what can be accomplished independent of other aspects of the project"*. The concept milestone schedule will identify an initial Critical Path for the overall Program and will provide direction to the Consultants through the Design Phase. Establish a phasing plan to be followed in the design of facilities which will permit continuous provision of service by existing facilities.

1.3.2 Identify and address items requiring standardization and coordination among the Consultants. Topics anticipated include treatment processes, equipment, SCADA concepts, reliability and redundancy, and facility staffing goals.

1.3.3 Establish schedule and requirements for Value Engineering Services.

1.3.4 Develop design standards and criteria. Develop and maintain design standards for wastewater treatment plant and sewerage facilities, support facilities, and privately developed facilities to be adopted by the OWNER's Consultants. By adopting the design standards, Consultants will assume full responsibility and liability for their resulting design services. ENGINEER will review design standards provided by the Consultants. ENGINEER will prepare design standards and criteria for remaining facilities using the existing standards as a starting point. The design standards will be developed to provide overall design intent and construction quality objectives with the functional and aesthetic objectives of the OWNER. Establish CADD standards, sheet sizes, borders, and title blocks.

1.3.5 Develop standard contract language. Develop General Conditions for General Construction Contracts. Develop other documents, including Bidding and Agreement forms, and Division 1 Specifications.

1.3.6 Disseminate the Steering Document which includes design standards and criteria and standard contract language, to Consultants for use in preparation of design contracts, budgets, and scope.

1.3.7 Assist OWNER in developing standardized Professional Services Agreements, based on EJCDC documents as a starting point.

1.4 Develop Program Budget

1.4.1 Prepare the overall Program Budget utilizing Consultants' opinions of probable construction costs. Formulate independent opinions of probable design fees for the West Treatment Plant, modifications to the existing Noland Facility, the West sewer system improvements, and the East sewer system improvements. Analyze and include other likely Program Budget costs.

1.5 Evaluate Status of Permitting Process

1.5.1 Review Arkansas Department of Environmental Quality (ADEQ) requirements for permitting of facilities.

1.5.2 Identify permitting requirements for the construction and operation of the new and modified facilities.

1.5.3 Identify the status of the permitting process to date.

1.5.4 Conduct a Fatal Flaw Analysis.

1.5.5 Develop matrix illustrating the permits required, the responsibilities for obtaining them, the tasks remaining before each permit is obtained, and a schedule for completion of the permitting process.

1.6 Provide Other Program Management Services

1.6.1 Prepare a Program Management Plan (PMP) describing the responsibilities of the Program Manager, Consultants, and construction contractors involved in management, design, and construction. The PMP will establish procedures enabling the OWNER to monitor the design and construction phases of the projects. The PMP will emphasize the monitoring of cost, schedule and quality and will establish procedures to permit the OWNER to make timely decisions to properly control the Program. The PMP will describe review and approvals at all stages of the Program or projects such as design, construction, security, safety, D/M/WBE programs, logistics, and communications.

1.6.2 Establish a computer-based Program Management Control System (PMCS) to monitor and manage the Program schedule, budget, financial requirements, and D/M/WBE compliance. Establish a document tracking and control system, including shop drawings, samples, approvals, and changes to the work. The system will be used by the Program Manager

throughout the Program to advise the OWNER on schedule and financial issues and manage the design and construction process. The proposed system consists of Primavera Expedition project management software, customized to the OWNER'S documentation requirements. Primavera Project Planner (P3) scheduling software will be used for the Master Program Schedule, which will be used in conjunction with Expedition. Review OWNER's information retrieval needs and consider providing OWNER with real-time read-only access to program financial records or provision of periodic hard copy of desired reports. Establish a public/private Web-based communications to be used for inter-firm access to selected program information by the OWNER, Program Management Team, and Consultants.

1.6.3 Assist in developing a Communications Plan to involve the stakeholders during the concept development and design phase; and promote a positive image of the overall Program and the OWNER. The plan may include newsletters, press releases, message boards, and the Project web site. The plan development and implementation will be coordinated with OWNER's Public Relations staff.

1.6.4 Prepare a Master Program Schedule by refining the conceptual milestone schedule. Develop the Master Program Schedule through design development, construction documents, and construction. Cost load the schedule, based on program activities, for cash flow and spending plan analysis. Benchmark the program schedule and update based on actual progress of activities.

1.6.5 Prepare and coordinate up to four reports or presentations to the City Council, City staff, or other parties as directed by the OWNER.

1.7 It is anticipated that the above described Scope of Services can be completed in 2758 person-hours.

SECTION 2 RESPONSIBILITIES OF OWNER

OWNER shall, within a reasonable time, so as not to delay the services of ENGINEER:

2.1 Provide full information as to OWNER's requirements for the Project.

2.2 Assist ENGINEER by placing at ENGINEER's disposal all available information pertinent to the assignment including previous reports and any other data relative thereto.

2.3 Furnish ENGINEER services or data such as core borings, probings and subsurface explorations, hydrographic surveys, laboratory tests and inspections of samples, materials, and equipment; appropriate professional interpretations of all of the foregoing; property, boundary, easement, right-of-way, topographic, and utility surveys; zoning and deed restrictions; and other special data or consultations, all of which ENGINEER may rely upon in performing his services under this Agreement.

2.4 Guarantee access to and make all provisions for ENGINEER to enter upon public and private property as required for ENGINEER to perform his services under this Agreement.

2.5 Examine all studies, reports, sketches, cost opinions, Bid Documents, Drawings, proposals, and other documents presented by ENGINEER and render in writing decisions pertaining thereto.

2.6 Provide such professional legal, accounting, financial, and insurance counseling services as may be required for the Project.

2.7 Designate in writing a person to act as OWNER's representative with respect to the services to be performed under this Agreement. Such person shall have complete authority to transmit instructions, receive information, interpret and define OWNER's policies and decisions with respect to materials, equipment, elements and systems to be used in the Project, and other matters pertinent to the services covered by this Agreement.

2.8 Give prompt written notice to ENGINEER whenever OWNER observes or otherwise becomes aware of any defect in the Project.

2.9 Furnish approvals and permits from all governmental authorities having jurisdiction over the Project and such approvals and consents from others as may be necessary for completion of the Project.

2.10 If ENGINEER's standard bidding requirements, Agreement forms and General Conditions are not to be used but OWNER's documents are to be used instead, OWNER shall provide copies of such documents for ENGINEER's use in coordinating the Contract Drawings and Specifications.

SECTION 3 PERIOD OF SERVICE

3.1 ENGINEER will proceed with providing the services set forth herein immediately upon the execution of this Agreement. These services will be completed within 120 days of the execution

of this Agreement subject to adjustment from factors outside ENGINEER's control, e.g., permitting, etc.

SECTION 4 PAYMENTS TO ENGINEER

4.1 Compensation

4.1.1 Amount of Payment:

For services performed, the OWNER shall pay the ENGINEER the sum of the following:

4.1.1.1 For time expended by personnel, payment at the hourly rates indicated in the attached "Schedule of Hourly Professional Service Billing Rates" Form BMR 902. Such rates include overhead and profit. The schedule is effective to January 1, 2003, and will be revised annually.

4.1.1.2 For outside expenses incurred by ENGINEER, such as authorized travel and subsistence, including airfare, food, lodging, automobile rental, commercial services, courier deliveries, and incidental expenses, the cost to ENGINEER plus 10 percent.

4.1.1.3 For normal computer usage, computer-aided drafting (CAD), telephone, fax, photocopy and mail services, a technology charge in accordance with the "Schedule of Hourly Professional Service Billing Rates" in effect at the time the service is provided. Specialty items are not included in the technology charge. For reproduction, printing and binding of documents, and vehicle and testing apparatus usage, amounts as determined from ENGINEER's schedule of rates in effect at the time the service is provided.

4.1.1.4 For services rendered by others as subcontractor(s) to ENGINEER, such as value engineering, surveying, real property descriptions, soil borings, subsurface investigations, laboratory testing, field quality control tests, progress photographs, or other activities required or requested by OWNER, the cost to ENGINEER plus 10 percent.

4.1.2 The total payment for the Scope of Services described herein is estimated to be Three Hundred Thirty Six Thousand Eight Hundred Eighty One United States Dollars ($336,881.00), but is not a guaranteed maximum. The total payment is based on expending no more than 2758 person-hours.

4.2 Statements

4.2.1 Monthly statements, in ENGINEER's standard format, will be submitted by the ENGINEER to the OWNER. Statements will be submitted covering services and expenses incurred during the preceding month.

4.3 Payments

4.3.1 Statements are payable upon receipt. A late payment charge of 1.5 percent per month or any partial month will be added to amounts not received within 30 days of the statement date. Time is of the essence in payments of statements, and timely payment is a material part of the consideration of this Agreement. Costs, including reasonable attorney's fees, incurred by the ENGINEER in collecting any delinquent amount shall be reimbursed by the OWNER. If a portion of ENGINEER's statement is disputed by OWNER, the undisputed portion shall be paid by OWNER by the due date. The OWNER shall advise the ENGINEER in writing of the basis for any disputed portion of any statement.

4.4 Taxes

4.4.1 Taxes, other than United States federal and state income taxes, and Kansas City, Missouri earnings tax, as may be imposed by the United States, state, and local authorities, shall be in addition to the payment stated under "Amount of Payment."

SECTION 5 GENERAL CONSIDERATIONS

5.1 Insurance

5.1.1 During the course of performance of these services, ENGINEER will maintain (in United States Dollars) the following minimum insurance coverages:

Type of Coverage	Limits of Liability
Workers' Compensation	Statutory
Employers' Liability	$500,000 Each Accident

Type of Coverage	Limits of Liability
Commercial General Liability	
Bodily Injury and Property Damage	$1,000,000 Combined Single Limit
Automobile Liability:	
Bodily Injury and Property Damage	$1,000,000 Combined Single Limit

If requested, ENGINEER will provide to OWNER certificates as evidence of the specified insurance.

5.1.2 Construction Contractors shall be required to provide (or OWNER may provide) Owners' Protective Liability Insurance naming the OWNER as a Named Insured and the ENGINEER as an additional insured, or, to endorse OWNER and ENGINEER as additional insureds on construction Contractor's liability insurance policies covering claims for personal injuries and property damage. Construction Contractors shall be required to provide certificates evidencing such insurance to the OWNER and ENGINEER.

5.1.3 OWNER and ENGINEER waive all rights against each other and their officers, directors, agents, or employees for damage covered by property insurance during and after the completion of ENGINEER's services. If the services result in a Construction Phase, a provision similar to this shall be incorporated into all Construction Contracts entered into by OWNER, and all construction Contractors shall be required to provide waivers of subrogation in favor of OWNER and ENGINEER for damage or liability covered by any construction Contractor's policy of insurance.

5.2 Professional Responsibility

5.2.1 ENGINEER will exercise reasonable skill, care, and diligence in the performance of ENGINEER's services and will carry out its responsibilities in accordance with customarily accepted professional engineering practices. If the ENGINEER fails to meet the foregoing standard, ENGINEER will perform at its own cost, and without reimbursement from OWNER, the professional engineering services necessary to correct errors and omissions which are caused by ENGINEER's failure to comply with above standard, and which are reported to ENGINEER within one year from the completion of ENGINEER's services for

the Project. The obligations and representations contained in this Article are ENGINEER's sole obligation and OWNER's exclusive remedy with respect to the quality of services. OWNER's failure to properly operate and maintain the Facility or allow ENGINEER to perform such remedial services as ENGINEER may deem appropriate shall relieve ENGINEER of its obligation relative to such improper operation or maintenance.

5.2.2 In addition, subject to the limitation stated in Paragraph 5.2.4 below, ENGINEER will be responsible to OWNER for damages caused by its negligent conduct during its activities at the Project Site to the extent covered by ENGINEER's Commercial General Liability and Automobile Liability Insurance policies as specified in Paragraph 5.1.1.

5.2.3 In no event will ENGINEER be liable for any special, indirect, or consequential damages including, without limitation, damages or losses in the nature of increased Project costs, loss of revenue or profit, lost production, claims by customers of OWNER, or governmental fines or penalties.

5.2.4 The ENGINEER's aggregate liability for all damages connected with its services for the Project not excluded by the preceding subparagraph will not exceed the greater of US$100,000 or the compensation paid under this Agreement.

5.2.5 The obligations and remedies stated in this Paragraph 5.2, Professional Responsibility, are the sole and exclusive obligations of ENGINEER and remedies of OWNER, regardless of the cause of action pled including, without limitation, negligence of every character.

5.3 Cost Opinions and Projections

Cost opinions and projections prepared by ENGINEER relating to construction costs and schedules, operation and maintenance costs, equipment characteristics and performance, and operating results are based on ENGINEER's experience, qualifications, and judgment as a design professional. Since ENGINEER has no control over weather, cost and availability of labor, material and equipment, labor productivity, construction Contractors' procedures and methods, unavoidable delays, construction Contractors' methods of determining prices, economic conditions, competitive bidding or market conditions, and other factors affecting such cost opinions or projections, ENGINEER does not guarantee that actual rates, costs, performance, schedules, and related items will not vary from cost opinions and projections prepared by ENGINEER.

5.4 Changes

OWNER shall have the right to make changes within the general scope of ENGINEER's services, with an appropriate change in compensation and schedule, upon execution of a mutually acceptable amendment or change order signed by an authorized representative of the OWNER and the President or any Vice President of the ENGINEER.

5.5 Suspension of Services

Should OWNER fail to fulfill his responsibilities as provided under Section 2 to the extent that ENGINEER is unduly hindered in ENGINEER's services or if OWNER fails to make any payment to ENGINEER on account of ENGINEER's services and expenses within 90 days after receipt of ENGINEER's bill therefor, ENGINEER may, after giving seven days' written notice to OWNER, suspend services under this Agreement until OWNER has satisfied OWNER's obligations under this Agreement.

5.6 Termination

5.6.1 Services may be terminated by the OWNER or ENGINEER by seven (7) days' written notice in the event of substantial failure to perform in accordance with the Terms hereof by the other party through no fault of the terminating party. Failure on the part of the OWNER to make payments to ENGINEER when due shall be considered substantial nonperformance and cause for termination. If so terminated, OWNER shall pay ENGINEER all amounts due ENGINEER for all services properly rendered and expenses incurred to the date of receipt of notice of termination, plus reasonable costs incurred by ENGINEER in terminating the services.

5.6.2 In the event of premature termination of the Project by the OWNER and through no fault of the ENGINEER, the ENGINEER shall be entitled to: 1) recover all reasonable costs and expenses incurred to date of termination plus all costs incurred to assemble and close Project files and documents; 2) unavoidable down time in the reassignment of Project staff; 3) termination penalties/expenses related to third parties retained by ENGINEER in regard to his obligations under this contract; plus 4) a termination amount of 15 percent of the remaining portion of the total compensation (or estimated compensation) agreed to herein or by separate authorization to cover lost profits, damages, and lost opportunity costs which cannot otherwise be accurately calculated.

5.7 Delays

In the event the services of the ENGINEER are suspended or delayed by the OWNER, the ENGINEER shall be entitled to additional compensation for reasonable costs incurred by the ENGINEER in temporarily closing down or delaying the Project and reassigning Project staff (including, but not limited to, unavoidable down time and any termination expenses incurred where reassignment is not reasonably possible) and in organizing Project files, records, and work in progress for suspension and later resumption of the ENGINEER's services.

5.8 Disputes

In the event that a dispute should arise relating to the performance of the services to be provided and should that dispute result in litigation, it is agreed that the prevailing party shall be entitled to recover all reasonable costs of litigation, including staff time, court costs, attorneys' fees, and other related expenses.

5.9 Rights and Benefits

ENGINEER's services will be performed solely for the benefit of the OWNER and not for the benefit of any other persons or entities.

5.10 Dispute Resolution

5.10.1 Scope of Paragraph: The procedures of this Paragraph shall apply to any and all disputes between OWNER and ENGINEER which arise from, or in any way are related to, this Agreement, including, but not limited to the interpretation of this Agreement, the enforcement of its terms, any acts, errors, or omissions of OWNER or ENGINEER in the performance of this Agreement, and disputes concerning payment.

5.10.2 Exhaustion of Remedies Required: No action may be filed unless the parties first negotiate and, if necessary, mediate their disputes as set forth in this Paragraph. If timely Notice is given under Paragraph 5.10.3, but an action is initiated prior to exhaustion of these procedures, such action shall be stayed, upon application by either party to a court of proper jurisdiction, until the procedures in Paragraphs 5.10.3 and 5.10.4 have been complied with.

5.10.3 Notice of Dispute

5.10.3.1 For disputes arising prior to the making of final payment promptly after the occurrence of any incident, action, or failure to act upon which a claim is based, the party seeking relief shall serve the other party with a written Notice;

5.10.3.2 For disputes arising after the making of final payment, OWNER shall give ENGINEER written Notice at the address listed in Paragraph 5.18 within ninety (90) days after occurrence of any incident, accident, or first observance of defect or damage. In both instances, the Notice shall specify the nature and amount of relief sought, the reason relief should be granted, and the appropriate portions of this Agreement that authorize the relief requested.

5.10.4 Negotiation: Within seven days of receipt of the Notice, the Project Managers for the OWNER and ENGINEER shall confer in an effort to resolve the dispute. If the dispute cannot be resolved at that level, then, upon written request of either side, the matter shall be referred to the President of the ENGINEER and the following executive officer of OWNER, Mayor of City of Fayetteville. These officers shall meet at the Project Site or such other location as is agreed upon within 30 days of the written request to resolve the dispute.

5.10.5 Mediation: If the OWNER's and ENGINEER's said officers are unable to resolve the dispute, then either side may request that the matter be submitted to mediation before a mediator mutually agreed upon. If the parties cannot agree on a mediator, then the American Arbitration Association shall appoint one upon request. Any administrative or mediator's fees shall be split equally between the parties.

5.10.6 Waiver Upon Final Payment: The making of final payment by OWNER and the acceptance of same by ENGINEER and ENGINEER's subconsultants shall constitute a waiver of existing claims by the OWNER and such payee except those previously made in writing and identified as unsettled by OWNER at the time of payment, or by the payee at the time of such payee's final invoice. Except for those claims waived under Paragraph 5.1.3, final payment shall not constitute a waiver of claims by the OWNER relating to liens unsettled, or subsequent discovery of services not in compliance with this Agreement. The waivers contained in Paragraph 5.1.3 shall continue to apply after final payment is made.

5.10.7 Waiver Due to Untimely Notice: Claims arising after the making of final payment shall be barred, and no suit or demand may be filed if Notice as stated in Paragraph 5.10.3.2 is not

given. Nothing in this Paragraph shall be construed as directly or indirectly limiting the time to institute suit, but rather to give the responding party timely notice and prompt opportunity to investigate the allegations of the dispute.

5.11 The OWNER represents that it has sufficient funds or the means of obtaining funds to remit payment to the ENGINEER for services rendered by the ENGINEER.

5.12 Publications

Recognizing the importance of professional development on the part of ENGINEER's employees and the importance of ENGINEER's public relations, ENGINEER may prepare publications, such as technical papers, articles for periodicals, and press releases, pertaining to ENGINEER's services for the Project. Such publications will be provided to OWNER in draft form for OWNER's advance review. OWNER shall review such drafts promptly and provide OWNER's comments to ENGINEER. OWNER may require deletion of proprietary data or confidential information from such publications, but otherwise OWNER will not unreasonably withhold approval. The cost of ENGINEER's activities pertaining to any such publication shall be for ENGINEER's account.

5.13 Indemnification for Pollution Related Claims

For services involving or related to pollution, toxic substances, or hazardous wastes or asbestos abatement work, OWNER agrees to release, defend, indemnify, and hold harmless ENGINEER and its officers, directors, employees, agents, and consultants and from all liability, claims, demands, damages, losses, and expenses, direct, indirect or consequential, including, but not limited to, claims of OWNER and other persons and organizations, reasonable fees and expenses of attorneys and consultants, and court costs arising out of the performance of this Agreement. This indemnification provision extends to claims against ENGINEER which arise out of the actual, alleged, or threatened dispersal, escape, or release of chemicals, wastes, liquids, gases, or any other material, irritant, contaminant, or pollutant, or arising out of or resulting from asbestos abatement work.

5.14 Indemnification

5.14.1 OWNER agrees that it will require all construction Contractors to indemnify, defend, and hold harmless OWNER and ENGINEER from and against any and all loss where loss is caused or incurred or alleged to be caused or incurred in whole or in part as a result of the

negligence or other actionable fault of the Contractors, or their employees, agents, Subcontractors, and Suppliers.

5.14.2 If this Project involves construction, and ENGINEER does not provide engineering services during construction including, but not limited to, on-site observation, Site visits, submittals review, and design clarifications, OWNER agrees to indemnify and hold harmless ENGINEER from or against any liability arising from the Project or this Agreement.

5.15 Computer Models

ENGINEER may use or modify ENGINEER's proprietary computer models in service of OWNER under this Agreement, or ENGINEER may develop computer models during ENGINEER's service to OWNER under this Agreement. Such use, modification, or development by ENGINEER does not constitute a license to OWNER to use or modify ENGINEER's computer models. Said proprietary computer models shall remain the sole property of the ENGINEER. OWNER and ENGINEER will enter into a separate license agreement if OWNER wishes to use ENGINEER's computer models.

5.16 Reuse of Documents

All documents including Contract Drawings and Specifications prepared or furnished by ENGINEER (and ENGINEER's independent professional associates and consultants) pursuant to this Agreement are instruments of service in respect of the Project, and ENGINEER shall have the ownership and property interest therein whether or not the Project is completed. OWNER may make and retain copies for information and reference in connection with the use and occupancy of the Project by OWNER and others; however, such documents are not intended or represented to be suitable for reuse by OWNER or others on extensions of the Project or on any other project. Any reuse without written verification or adaptation by ENGINEER for the specific purpose intended will be at OWNER's sole risk and without liability or legal exposure to ENGINEER, or to ENGINEER's independent professional associates or consultants, and OWNER shall indemnify and hold harmless ENGINEER and ENGINEER's independent professional associates and consultants from and against all claims, damages, losses, and expenses including attorneys' fees arising out of or resulting therefrom. Any such verification or adaptation will entitle ENGINEER to further compensation at rates to be agreed upon by OWNER and ENGINEER.

5.17 Electronic Media

Any electronic media (computer disks, tapes, and similar items) furnished with respect to ENGINEER's services are for OWNER's information and convenience only. Such media are not to be considered part of ENGINEER's instruments of service. (Due to the potential that information contained in electronic media can be modified by OWNER or others, ENGINEER, at its option, may remove all indicia of ENGINEER's ownership and involvement from each electronic display.)

ENGINEER shall not be liable for loss or damage directly or indirectly, arising out of use of electronic media including, but not limited to, any loss of business or incidental or consequential damage. OWNER shall assume all risk and release, indemnify, and hold harmless ENGINEER, its officers, directors, employees, servants, agents, successors, and assigns, from and against each and every claim or cause of action that OWNER or others may have or which may arise in the future respecting use of the electronic media.

If there is a discrepancy between the electronic media files and the signed and sealed hard copies, the hard copies shall govern.

5.18 Notices

Any Notice required under this Agreement will be in writing, addressed to the appropriate party at the following addresses:

OWNER's address:

City of Fayetteville, Arkansas
113 West Mountain Street
Fayetteville, Arkansas 72701

ENGINEER's address:

Burns & McDonnell Engineering Co., Inc.
9400 Ward Parkway
Kansas City, MO 64114

5.19 Successor and Assigns

OWNER and ENGINEER each binds himself and his successors, executors, administrators, and assigns to the other party of this Agreement and to the successors, executors, administrators, and assigns of such other party, in respect to all covenants of this Agreement; except as above, neither OWNER nor ENGINEER shall assign, sublet, or transfer his interest in the Agreement without the written consent of the other.

5.20 Controlling Law

This Agreement shall be subject to, interpreted and enforced according to the laws of the State of Missouri without regard to any conflicts of law provisions.

5.21 Entire Agreement

This Agreement represents the entire Agreement between the ENGINEER and OWNER relative to the Scope of Services herein. All previous or contemporaneous agreements, representations, promises, and conditions relating to ENGINEER's services described herein are superseded. Since terms contained in purchase orders do not generally apply to professional services, in the event OWNER issues to ENGINEER a purchase order, no preprinted terms thereon shall become a part of this Agreement. Said purchase order document, whether or not signed by ENGINEER, shall be considered as a document for the OWNER's internal management of its operations.

SECTION 6 SPECIAL CONDITIONS

6.1 Additional Responsibilities of the ENGINEER:

6.1.1 The OWNER's or ASWCC's review, approval, or acceptance of design drawings, specifications, reports, and other services furnished hereunder shall not in any way relieve the ENGINEER of responsibility for the technical adequacy of the work. Neither the OWNER's nor ASWCC's review, approval or acceptance of, nor payment for any of the services shall be construed as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement.

6.1.2 The ENGINEER shall be and shall remain liable, in accordance with applicable law, for all damages to the OWNER caused by the ENGINEER's negligent performance of any of the

services furnished under this Agreement except for errors, omissions or other deficiencies to the extent attributable to the OWNER or OWNER-furnished data.

6.1.3 The ENGINEER's obligations under this clause are in addition to the ENGINEER's other express or implied assurances under this Agreement or State law and in no way diminish any other rights that the OWNER may have against the ENGINEER for faulty materials, equipment, or work.

6.2 Remedies

Except as may be otherwise provided in this Agreement, 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 the breach thereof will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the state in which the OWNER is located.

6.3 Audit: Access to Records

6.3.1 The ENGINEER shall maintain books, records, documents and other evidence directly pertinent to performance on work under this Agreement in accordance with generally accepted accounting principles and practices consistently applied in effect on the date of execution of this Agreement. The ENGINEER shall also maintain the financial information and data used by the ENGINEER in the preparation of support of the cost submission required for any negotiated agreement or change order and send to the OWNER a copy of the cost summary submitted. The United States Environmental Protection Agency, the Comptroller General of the United States, the United States Department of Labor, the OWNER, the State or any of their authorized representatives shall have access to all such books, records, documents and other evidence for the purpose of inspection, audit and copying during normal business hours. The ENGINEER will provide proper facilities for such access and inspection.

6.3.2 Records under Paragraph 6.3.1 above, shall be maintained and made available during performance on assisted work under this Agreement and until three years from the date of final payment for the project. In addition, those records which relate to any controversy arising out of such performance, or to costs or items to which an audit exception has been taken, shall be maintained and made available until three years after the date of resolution of such appeal, litigation, claim or exception.

6.3.3 This right of access clause (with respect to financial records) applies to:

6.3.3.1 negotiated prime agreements,

6.3.3.2 negotiated change orders or agreement amendments in excess of $10,000 affecting the price of any formally advertised, competitively awarded, fixed price agreement,

6.3.3.3 agreements or purchase orders under any agreement other than a formally advertised, competitively awarded, fixed price agreement. However, this right of access does not apply to a prime agreement, lower tier subagreement or purchase order awarded after effective price competition, except:

(1) with respect to record pertaining directly to subagreement performance, excluding any financial records of the ENGINEER,

(2) if there is any indication that fraud, gross abuse or corrupt practices may be involved,

(3) if the subagreement is terminated for default or for convenience.

6.4 Covenant Against Contingent Fees

The ENGINEER warrants that no person or selling agency has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the ENGINEER for the purpose of securing business. For breach or violation of this warranty, the OWNER shall have the right to annul this Agreement without liability or at its discretion, to deduct from the contract price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage or contingent fee.

6.5 Gratuities

6.5.1 If the OWNER finds after a notice and hearing that the ENGINEER, or any of the ENGINEER's agents or representatives, offered or gave gratuities (in the form of entertainment, gifts or otherwise) to any official, employee or agent of the OWNER, the State or EPA in an attempt to secure an agreement or favorable treatment in awarding, amending or making any determinations related to the performance of this Agreement, the OWNER may, by written notice to the ENGINEER, terminate this Agreement. The OWNER may also

pursue other rights and remedies that the law or this Agreement provides. However, the existence of the facts on which the OWNER bases such finding shall be in issue and may be reviewed in proceedings under the Remedies clause of the Agreement.

6.5.2 In the event this Agreement is terminated as provided in Paragraph 6.5.1, the OWNER may pursue the same remedies against the ENGINEER as it could pursue in the event of a breach of the Agreement by the ENGINEER. As a penalty, in addition to any other damages to which it may be entitled (as determined by the OWNER) which shall be not less than three nor more than ten times the costs the ENGINEER incurs in providing any such gratuities to any such officer or employee.

6.6 Arkansas Freedom of Information Act. The ENGINEER agrees that it will provide to the OWNER, at a cost to be agreed upon, all documents in its possession that are, under this Agreement, the property of the OWNER and which the OWNER believes to be subject to an Arkansas Freedom of Information Act request made to it, or, in anticipation of such a request, which it believes necessary for it to possess. The ENGINEER further agrees that it will request of all subconsultants, retained by the ENGINEER to perform services under this Agreement, to provide to the OWNER, at a cost to be agreed upon, all documents in the possession of such subconsultants that are, under this Agreement, the property of the OWNER and which the OWNER believes to be subject to an Arkansas Freedom of Information Act request made to the OWNER, or, in anticipation of such a request, which it believes necessary for the OWNER to possess. The ENGINEER will produce all documents or material in the format that are kept by the ENGINEER, or at the option of the ENGINEER, in some other format. If a specialized format is requested by the OWNER, the cost of conversion, if that additional responsibility is accepted by the ENGINEER, will be borne by the OWNER at the then prevailing rates for the parties actually performing the conversion. Production of requested items will be done with reasonable diligence, but cannot in some circumstances be within the time frame established by the Act. The above and foregoing provisions apply only to work performed from this date forward and does not apply retroactively.

Nothing in this Agreement shall constitute an acceptance of the ENGINEER or its subconsultants to the application of the Arkansas Freedom of Information Act to the ENGINEER or its subconsultants or to the ENGINEER's or subconsultant's books, records, drawings, or other items not constituting the property of the OWNER under this Agreement, nor a waiver of its

rights to object to any requests made to it pursuant to the Arkansas Freedom of Information Act by any person or entity not a party to this Agreement.

IN WITNESS WHEREOF, the City of Fayetteville, Arkansas, by and through its Mayor, and Burns & McDonnell Engineering Company, Inc., by its authorized officer have made and executed this Agreement as of the day and year first above written.

CITY OF FAYETTEVILLE, ARKANSAS

By: _____

Title: Mayor

ATTEST:

_____
City Clerk

BURNS & McDONNELL ENGINEERING COMPANY, INC.

By: _____
President, Infrastructure Group

By: _____
Project Manager

END OF AGREEMENT FOR PROFESSIONAL ENGINEERING SERVICES

STAFF REVIEW FORM

X AGENDA REQUEST
_____ CONTRACT REVIEW
_____ GRANT REVIEW

For the Fayetteville City Council meeting of May 7, 2002

FROM:

Name	Division	Department
Greg Boettcher	Public Works	Public Works

ACTION REQUIRED: Approval of Contract Amendment No.2 and a contract contingency of $25,000.00 relating to the Wastewater System Improvement Project, total approval amount being $27,511.61. As per City's request to McGoodwin, Williams and Yates, the cultural resource survey scope has been expanded to include the off-site alignment of the proposed Broyles Road Extension to serve the new West Side Wastewater Plant. The added scope of work represents a contract increase of $2,511.61.

COST TO CITY:

$27,511.61	$11,800,000.00	Professional
Cost of this Request	Category/Project Budget	Category/Project Name
4480-9480	$337,000.00	Wastewater Improvements
Account Number	Funds Used To Date	Program Name
98105	$11,463,000.00	Water and Sewer Bonds - Since 2000
Project Number	Remaining Balance	Fund

BUDGET REVIEW: X Budgeted Item ____ Budget Adjustment Attached

Budget Manager 4-12-02 Administrative Services Director

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

Accounting Manager	4/12/02 Date	ADA Coordinator	Date
City Attorney	4/15/02 Date	Internal Auditor	4/12/02 Date
Purchasing Officer	4/15/02 Date	Grant Officer	Date

STAFF RECOMMENDATION:

Division Head	Date	Cross Reference
Department Director	04-10-02 Date	New Item: Yes No
Admin. Svcs Director	Date	Prev Ord/Res #: _____
Mayor Date	4/16/02	Orig Contract Date: _____

STAFF REVIEW FORM

Description _____ Meeting Date _____

Comments:

Budget Coordinator

Reference Comments:

Accounting Manager

Reference Comments:

City Attorney

Reference Comments:

Purchasing Officer

Reference Comments:

ADA Coordinator

Reference Comments:

Internal Auditor

Reference Comments:

Grants Offcier

Reference Comments:

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: April 9, 2002

SUBJECT: **Amendment No 2**
West Side Wastewater Plant
McGoodwin, Williams and Yates, Inc.

BACKGROUND

The City of Fayetteville has an agreement with McGoodwin, Williams and Yates, Inc. regarding professional services for the West Side Wastewater Treatment Plant. Included under the scope of this agreement is the subcontracting of a cultural resource survey with the Arkansas Archaeological Survey Sponsored Research Program. This activity was originally included in the agreement as a subcontract cost of $45,000.00 and is being performed at a cost of $44,993.38. The review of this scope of study found that the proposed alignment of the Broyles Road Extension (from Highway 62 in Farmington West to the West Side Treatment Plant Site) was not included under the list of cultural survey areas. The original scope of the Cultural Resource Survey was specified to include the 300 acre site, the interceptor sewer line routes, force main routes and pumping station sites.

DISCUSSION

On March 25, 2002 McGoodwin, Williams and Yates was requested to obtain a proposal from the Sponsored Research Program to include the new off-site alignment for Broyles Road. A copy of the April 3, 2002 response letter and the proposal from the Sponsored Research Program are attached. The increased cost for the added work is $2,511.61.

Since the approval of Contract Amendment No 1 did not include any contingency funds, it is necessary for this matter to be brought before the City Council for approval. It is requested that the current approval include a contingency of $25,000.00 to allow any future minor authorizations to be handled administratively.

RECOMMENDATION

It is recommended that the Fayetteville City Council approve a budget adjustment in the amount of $27,511.61, and authorize the Mayor's execution of Contract Amendment No 2 for McGoodwin, Williams and Yates, Inc. for $2,511.61.

AMENDMENT No. 2 TO
CITY OF FAYETTEVILLE
AGREEMENT FOR ENGINEERING SERVICES
WESTSIDE WASTEWATER TREATMENT FACILITY

WHEREAS, on March 21, 2000, the City of Fayetteville (the Owner) and McGoodwin, Williams and Yates, Inc. (the Engineer) entered into an Agreement for Engineering Services in connection with the construction of the new Westside Wastewater Treatment Plant to serve the Illinois River Basin. The scope of these services included preliminary studies and preliminary design, resulting in a Preliminary Engineering Report setting forth the findings; and

WHEREAS, the Engineer has completed those services required under the original scope including preparation and submittal of the Preliminary Design Report; and

WHEREAS, The overall project (hereinafter referred to a "the Overall Project") being developed by the Owner includes an upgrade of the existing Paul Noland Wastewater Treatment Plant on the east side of the city and the sewer system collection and transmission facilities work for both the east and west sides. This work is being accomplished by three other engineering consultants; and

WHEREAS, the Owner requested that the Engineer's and it subconsultants' original scope be expanded to include services relating to the Overall Project; and

WHEREAS, the Engineer agrees to provide the requested services;

NOW THEREFORE, in consideration of the mutual covenants and agreements herein contained, the Owner and the Engineer, the parties hereto, stipulate and agree that the Agreement for Engineering Services dated March 21, 2000, is hereby amended in the following particulars:

Section IV. Services to be Furnished by the Engineer During Design Phase

Additional Services. The Engineer shall conduct other studies and analyses as required to facilitate the production and approval of the Facility Plan, environmental permitting, and public involvement as required, said activities being amended to include:

- Conduct a Cultural Resources Survey on the proposed alignment for Broyles Road, from Highway 62 (Farmington) to the proposed plant site.

These services to be furnished by the Engineer shall be subject to the agreed cost ceiling set out in Section XII.5 as amended.

Section X. Subcontracting

Add the following paragraph: "The Engineer shall furnish copies of all sub-agreements if requested by the Owner."

Section XII. Fees and Payments

1. Section A is amended as follows: The fixed set out in this section is increased to $130,624.60.
2. Attachment "A" to Contract Amendment No1 of February 5, 2002 is amended as follows:

   Sponsored Research Program - $47,392.01

3. Section D, second paragraph, first line, is amended to read as follows: "The estimated total compensation for the services set out under Section IV.A as amended is $1,538,109.61, including the fixed fee of $130.624.60 and reimbursable expenses."
4. After the last paragraph under Section D, add the following: "The Engineer shall furnish copies of invoices, billing information, and other materials as the Owner may request, to verify the accuracy of invoices and the nature of the work being performed."

All other provisions of the original agreement with Amendments, remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be duly executed this _____ day of _____, 2002.

CITY OF FAYETTEVILLE, ARKANSAS	McGOODWIN, WILLIAMS AND YATES, INC.
By: _____ Dan Coody, Mayor	By: _____ L. Carl Yates, President
ATTEST:	ATTEST:
_____ Heather Inman Woodruff, City Clerk	_____ James C. Ulmer, Vice-President

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

Telephone 501/443-3404 FAX 501/443-4340

April 3, 2002

Re: Broyles Road Extension
F&M Bank North to North City Limits
MWY Project No. F-30

Greg Boettcher, P.E.
Public Works Director
City of Fayetteville
113 W. Mountain Street
Fayetteville, Arkansas 72701

Dear Greg:

In accordance with your request, we enclose a proposal from the Arkansas Archeological Survey Sponsored Research Program for performing a cultural resource survey for the offsite construction along Broyles Road between the City's property and Highway 62 in Farmington. If the City of Fayetteville chooses to authorize this work, our firm would require a contract amendment for this project, to add the cultural resource survey to our scope of work. As payment for this additional work, we would bill the City for the actual cost of the survey as outlined in the attached proposal, plus an engineering fee of five percent (5%).

If you wish to proceed with the cultural resource survey for this Broyles Road construction in Washington County and Farmington, please advise us accordingly.

Cordially yours,

James C. Ulmer, P.E.
Vice President

JCU:vsd
Enclosure

APPROVED THIS _____ DAY OF APRIL, 2002.

_____
Greg Boettcher, P.E.
Public Works Director - City of Fayetteville

ARKANSAS ARCHEOLOGICAL SURVEY
Sponsored Research Program, 2475 N. Hatch, Fayetteville, AR 72704, Phone: (501) 575-6560, Fax (501) 575-5453

COPY

March 28, 2002

RECEIVED
APR 01 2002
McGoodwin, Williams and Yates

Mr. James C. Ulmer, P.E.
McGoodwin, Williams and Yates, Inc.
909 Rolling Hills Dr.
Fayetteville, AR 72703

RE: Broyles Road Extension

Dear Mr. Ulmer,

Thank you for your letter of March 26. I have reviewed the plans for the subject project and prepared a proposed budget (enclosed) for performing a cultural resources survey for the project area. The total cost will not exceed $2,392.01

We look forward to working with you on this project. Your signature in the space provided below will constitute a Notice to Proceed.

Sincerely,

Robert C. Mainfort, Jr.

_____

James C. Ulmer

ARKANSAS ARCHEOLOGICAL SURVEY

Sponsored Research Program

Project Name: Broyles Road Date Prepared: 3/28/02
Contractor: McGoodwin, Williams and Yates, Inc.

PERSONNEL	# Persons	# Days	Salary/Day	Subtotal	Total
FIELD					
Principal Investigator			$ 264.40	$ -	
Project Archeologist	1	1	$ 196.08	$ 196.08	
Archeological Assistants	2	1	$ 129.85	$ 259.70	
ANALYSIS/REPORT					
Principal Investigator			$ 264.40	$ -	
Project Archeologist	1	3	$ 196.08	$ 588.24	
Archeological Assistants	2	2	$ 129.85	$ 519.40	
Editor	1	0.5	$ 107.76	$ 53.88	$ 1,617.30
TRAVEL					
miles @ $0.35/mile					$ -
REPORT REPRODUCTION					$ 100.00
OTHER					
photographic and other supplies					
OVERHEAD @ 33.0%					$ 566.71
CURATION					
0.5 cubic feet artifacts @ $185/ft^3 ($93 minimum)					$ 93.00
1 inches documents @ $12.50/inch ($15 minimum)					$ 15.00
BUDGET TOTAL					$ 2,392.01

Dr. Thomas J. Green
Director

Dr. Robert C. Mainfort, Jr.
Sponsored Research Administrator

STAFF REVIEW FORM

XX AGENDA REQUEST
____ CONTRACT REVIEW
____ GRANT REVIEW

For the Fayetteville City Council meeting of May 7, 2002

FROM:

Stephen Davis	Water & Sewer Services	Admin Services
Name	Division	Department

ACTION REQUIRED: Approval of a contract amendment with Black & Veatch for water & sewer system operations and rate study services and approval of a budget adjustment.

COST TO CITY:

$133,000.00	91,039.00	Operations and Rate Study
Cost of this Request	Category/Project Budget	Category/Project Name
5400-1820-5314-00	-0-	Meter Operations
Account Number	Funds Used To Date	Program Name
02064-1	91,039.00	Water & Sewer
Project Number	Remaining Balance	Fund

BUDGET REVIEW: XX Budgeted Item XX Budget Adjustment Attached

Budget Manager 4-18-02 — Administrative Services Director

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

Accounting Manager	4/28/02 Date	Internal Auditor	4/26/02 Date
City Attorney	4/25/02 Date	ADA Coordinator	Date
Purchasing Officer	4/25/02 Date	Grant Coordinator	Date

STAFF RECOMMENDATION: Approval of contract amendment and budget adjustment.

Division Head	4-18-02 Date
Department Director	4-24-02 Date
Administrative Services Director	4/25/02 Date
Mayor	4/26/02 Date

Cross Reference

New Item: **Yes** **No**

Prev Ord/Res #: 115-01

Orig Contract Date:

Orig Contract Number:

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STAFF REVIEW FORM - Page 2

Description Operations and Rate Study (Black & Veatch) Meeting Date May 7, 2002

Comments:

Reference Comments:

Budget Manager

Accounting Manager

City Attorney

Purchasing Officer

ADA Coordinator

Internal Auditor

Grants Coordinator

FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

DEPARTMENTAL CORRESPONDENCE

TO: Mayor Coody and City Council

THROUGH: Ted H. Webber, Administrative Services Director

FROM: Stephen Davis, Budget Manager

DATE: April 24, 2002

SUBJECT: Water & Sewer System Operations and Rate Study

The City of Fayetteville is required by bond indenture to have an operations study performed by a consulting engineer every three years. This is the year the City needs to do an operations study of our water & sewer system to remain in compliance with the bond codicils.

The following scope of work has been developed to comply with the bond requirements but also to provide the opportunity to address a number of issues identified by the public as well as staff. Staff has reviewed the proposed scope of work and recommends entering into a contract amendment with Black & Veatch for this work. Black & Veatch has performed the previous operations and rate study work for the City of Fayetteville for the past twenty years. The City conducted a competitive selection in late 1998 for the operations and rate study services that began in 1999. Black & Veatch was selected from the firms that submitted proposals. They have completed all of their work timely and within budget. The Water & Sewer Committee has reviewed the scope of work and instructed staff to proceed with contract negotiations with Black & Veatch. Black & Veatch responded with a total fee proposal Not-to-exceed $152,800. Staff review of the fees proposed is in line with the cost the City paid for the past rate and operations studies except for increases in scope of work. The rate increases are consistent with the City's experience in labor cost increases over the past few years. The scope of work has increased to include the City's portion of the White River Water System that was purchased subsequent to the last rate study.

Staff has reviewed the scope of work and Black & Veatch proposed methods and fees for the services requested. Staff recommends that Part I and Part II services be performed as proposed by Black & Veatch and that Part III services except Task Series 1400 (Infrastructure Capital Replacement Funding) be performed. Staff proposes to submit Task Series 1400 services for approval within the next 12 to 18 months. Additionally, Staff requests that a project continency be authorized in the amount of $3,200. The project contingency is intended to cover any costs that may be needed for public notification, additional meetings, etc. The total cost of this request is $133,000. A budget adjustment of $42,000 is requested to fund the agreement.

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The operations and rate study portions of the engagement cost is $82,200 and is less than the amount of funding budgeted for the project. The supplemental services (Part III) add $47,600 to the cost of the project. The Part III services are proposed to address comments made during the Wastewater System Improvements Project public input process last year and to provide Staff, the Mayor and City Council with sufficient data to make informed decisions on service delivery over the next few years.

Black & Veatch has been actively involved in developing rate information and submissions to the Arkansas Soil & Water Conservation Commission as well as developing rate projections for the Wastewater System Improvements Project.

The scope of services include: a review of the system; assessments of maintenance scheduling/funding, capital replacement funding, billing structures for water, sewer and special services (disconnect/reconnect, after hours, etc.) and a rate review; an examination of other possible rate methodologies (declining block, flat block, increasing block, and equivalent residential unit for sewer); an assessment of rate affordability based on published industry and federal guidelines; and, options to sewer averaging. Sewer averaging requires a great deal of staff time and has been challenged by individual customers in the past.

Rate methodologies to be examined include the City's existing methodology (declining block) as well as other rate methods (uniform, increasing, flat, or other). A review of the City's current wholesale water contracts should be included to obtain an independent review of the terms, conditions and options available under the contracts. The result of the study will be a presentation to City Council of the billing method that is most likely to be understood by the customers of the system, is easy to administer, and produces the necessary revenue to support the system and meet the system's obligations.

Additional areas to be considered for the study are: adequacy of the existing deposit requirement and policy, late payment policy, payment options, etc.; an assessment of the current billing cycles and recommendations for adjustments, if any; and an assessment of operating practices for maintenance operations and business operations against published industry standards for best management practices operations and recommendations for improvement.

Assessment of existing rates: - The assessment of the system rates should project for a minimum of five (5) years.

Analysis of cost ratios - The operations study should include management guidance regarding the reasonableness of current operating cost ratios. These may include comparison to AWWA data or comparable communities. Are there areas of costs (labor, meter reading, etc.) that appear to be inconsistent with similar utilities and require managerial reviews? On the other side of the question, are there areas of cost which indicate favorable economics?

Unaccounted for water - The unaccounted for water should be analyzed and the need for corrective action defined. The normal range of losses should be identified (target performance), the costs of excessive loss volumes estimated, and the justification for increased efforts outlined.

Billing practices assessment - The assessment should review what options are available to offer customers within the limitations of the City's current software. The assessment could review elements of the business operations (Billing & Collections and Meter and Backflow) to determine if any customer needs are not being met that could be met within our existing system. Assess the current formal business practices for recommendations to improve efficiency and be more consistent with water industry practices.

In conclusion, the execution of a contract with Black & Veatch for an operations study would appear to be a prudent choice. With all of the work now in progress, it would be counterproductive to bring in a new rate consultant. The use of Black & Veatch will provide economy and continuity as well as allow the City to continue to move forward in as efficient manner as possible.

ADDENDUM NO. 2

To
CONTINUING SERVICES AGREEMENT

Between
City of Fayetteville and Black & Veatch Corporation

In accordance with the Agreement effective March 14, 2001 between City of Fayetteville, Arkansas (Client) and Black & Veatch Corporation (Consultant), Consultant agreed to perform consulting services as requested by Client. Client has requested Consultant to (1) prepare the Triennial Report on Operations for the period January 1, 1999 through December 31, 2001; (2) update the water and sewer rate study completed by Consultant in November 1997; and (3) provide consulting services related to evaluation of alternative rate structures, billing issues, benchmarking, and fixed asset management. Specific tasks to be completed by Consultant and associated fees are set forth in Attachment A to Addendum No. 2.

Work performed by Consultant under this Addendum No. 2 will only be undertaken at the request of Client.

City of Fayetteville, Arkansas (CLIENT)	Black & Veatch Corporation (CONSULTANT)
By: _____	By: _____
Date: _____	Date: _____

City of Fayetteville, Arkansas
Budget Adjustment Form

Budget Year	Department:	Administrative Services	Date Requested	Adjustment #
2002	Division:	Water & Sewer Services	5/7/2002	
	Program:	Meter Operations		

Project or Item Requested:

$42,000 in additional funding in the Water & Sewer Operations/Rate Study capital project.

Project or Item Deleted:

None. $42,000 from the Use of Fund Balance Account.

Justification of this Increase:

The funding is requested to approve a contract with Black & Veatch for services.

Justification of this Decrease:

Sufficient fund balance remains to comply with City Policy and Objectives.

Increase Expense (Decrease Revenue)

Account Name	Amount	Account Number					Project Number	
Professional Services	42,000	5400	1820		5314	00		

Decrease Expense (Increase Revenue)

Account Name	Amount	Account Number					Project Number	
Use of Fund Balance	42,000	5400	0940		4999	99		

Approval Signatures

Requested By	Date
Budget Manager	Date 4/19/2002
Department Director	Date
Admin. Services Director	Date 4/24/02
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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Fayetteville, Arkansas
Report on Operations
Scope of Services
April 2002

The proposed scope of services is presented in three parts. Part I - Report on Operations of the Water & Sewer System presents the specific tasks that will be performed to meet the requirements for the triennial report as specified by the bond covenants. The results of the Part I scope of services will be presented in a separately bound report suitable for presentation to the rating agencies and bond trustee.

Part II – Water and Sewer Rate Study will be conducted subsequent to the Report on Operations to make effective use of the financial analyses completed for the Report on Operations. The rate study will include the revenue and revenue requirements developed for the Report on Operations, plus allocation of costs of service and design of rates. A report will be prepared incorporating all facets of the rate studies – revenue and revenue requirements, allocation of costs, and design of rates.

Part III – Additional Services identified by the City in the request for proposal will be addressed upon authorization by the City. Findings related to these Additional Services may be presented as appendices to the rate report, or presented in separate Memorandum Reports, as appropriate and as desired by the City.

Part I - Report on Operations of the Water & Sewer System

Task Series 100 - Initial Meeting and Data Collection

The initial project component includes preparation of a data request and a meeting with City representatives to identify and discuss key project objectives and major points of interest and concern, collect and discuss data pertinent to the study, and schedule interviews and on-□ite surveys. Specific tasks anticipated are:

Task 101 Prepare and submit an initial request for financial and operational data needed for the study.

Task 102 Meet with City representatives to identify major items of interest and concern and to discuss principal objectives and policies.

Task 103 Obtain and review financial and operational data and information.

Task 104 Prepare instructions and provide assistance to appropriate City data processing, billing, and accounting personnel for the development of historical tabulations of customers' bills for water and sewer service. Summarize the bill and usage distributions for use in forecasting revenues under existing and proposed rates.

Task 105 Identify personnel to be interviewed and facilities to be observed, and establish schedules for interviews and onsite observational tours.

Task Series 200 - Engineering Evaluation

The engineering evaluation will include interviews of key water and wastewater utility personnel, observational tours of selected major water and wastewater system facilities, review of operation and maintenance policies and procedures, and review of major capital improvement programs.

Black & Veatch recognizes that the wastewater treatment plant and major lift stations are operated under contract, and anticipates that the City will elicit the contractor's cooperation for interviews and observational tours.

Specific tasks to be performed by Black & Veatch are:

Task 201 Conduct interviews with key water and wastewater utility personnel regarding policies and procedures utilized to achieve safe, efficient and economical operation.

Task 202 Review operation and maintenance record keeping practices, records and techniques to evaluate the impact on facility performance, maintenance, and reliability.

Task 203 Review operation and maintenance techniques and policies regarding scheduled maintenance, emergency maintenance, adequacy of staffing and equipment, adequacy of funds, and availability of spare parts and replacement items.

Task 204 Conduct onsite observational tours of selected above ground or readily observable water and wastewater facilities to determine the general condition of structures, improvements and equipment; and the adequacy of maintenance policy and procedures.

Task 205 Review the major capital improvement programs for the water and wastewater utilities to evaluate the adequacy of planned future facilities to meet projected service requirements.

Task Series 300 - Financial Analysis

The objective of this project component is to forecast revenue and revenue needs for the water and sanitary sewer utilities based upon existing rates and fee schedules. The adequacy of each utility's forecasted revenues to meet future revenue requirements shall be analyzed to determine the level of revenue adjustments and debt financing, if either is required, to meet forecasted

revenue requirements on a sound utility financial basis. This study component shall include the following subtasks prepared for a five year study period and separately for each utility:

Task 301 Forecasts of accounts and billed volumes will be made for the study period by considering historical growth trends, climatological patterns, local economic conditions, the potential for adding/losing major utility customers, and changes in customer class usage patterns over time. The volume projections will be made based on projected number of utility accounts and a usage per account analysis to differentiate the historical effects of account growth and increased (decreased) usage by existing customers.

Task 302 Forecasts of utility revenues under existing rates for the study period will be developed recognizing projected accounts, volumes, and usage patterns by customer class. Future revenues from miscellaneous sources such as interest earnings, service installation charges, late payment penalties, and service initiation fees will also be projected.

Task 303 Study period revenue requirements will be developed based on an analysis of historical, currently budgeted, and projected needs. The revenue requirements will be projected on a yearly basis, taking into account expected operational changes, changes in staffing or operating expenditures for new facilities, system growth by new development, anticipated extraordinary expenses, and allowances for inflation. Revenue requirements will include:

- Operation and maintenance expenses, including purchased water and contract operations of the wastewater treatment plant.
- Outlays for routine annual capital additions and replacements.
- Debt service and reserve requirements on existing and proposed bond issues
- Transfers for major capital improvements financing.
- Other cash requirements.

Task 304 Forecasts of revenues and revenue requirements will be summarized into five-year cash flow analyses for determination of revenue adequacy on an annual basis. The cash flow analyses will identify annual revisions of water and sewer utility revenues necessary to comply with bond covenant requirements, good utility practice, or sound utility financing considerations recognizing current City policy and planning.

Task Series 400 - Bond Ordinance Compliance

Concurrent with the engineering evaluation and financial analysis, Black & Veatch will evaluate the utilities' compliance with certain provisions of the Bond Ordinance No. 3638 and No. 3829 which places certain conditions and requirements on the water and sewer utilities and

which are designed to protect the interest of the bond holders. During this segment of the study, Black & Veatch proposes to:

Task 401 Verify that the following required funds have been established and that fund balances and reserves are in compliance with bond covenants:

- Revenue Fund
- Operation and Maintenance Fund
- Bond Fund
- Renewal and Replacement Fund
- Debt Service Reserve Fund
- Construction Fund

Task 402 Review insurance coverage of the water and sewer utilities.

Task 403 Verify that required debt service coverage tests are being met.

Task 404 Review other practices and procedures for compliance with the bond covenants. Items to be reviewed will include, but will not necessarily be limited to, the following:

- Required levels of bond payments are made through the designated Paying Agent on a timely basis.
- Systems are operated on a fiscal year beginning January 1.
- Systems are maintained in good condition and operated in an efficient manner at reasonable cost.
- No free water service is provided.
- The City has not mortgaged or disposed of any substantial portion of the systems.
- Required budgets have been prepared.
- No action has been taken to cause the interest on the bonds to be subject to federal income taxes.
- Improvements authorized by the Bond Ordinances are being or have been constructed.

Task Series 500 - Reports and Meetings

Black & Veatch considers communication with the client to be essential during all aspects of the study. In addition to the initial meeting specified in Task Series 100 and the onsite interviews and observation tours described in Task Series 200, Black & Veatch proposes to:

Task 501 Maintain ongoing dialogue with City representatives concerning study progress and policy issues through written and telephone communications and periodic meetings.

Task 502 Prepare a draft Report on Operations of the Water & Sewer Systems incorporating the findings, conclusions, and recommendations of all facets of the study and submit 5 copies of the report for review by City representatives. The report will cover studies under Task Series 100 through Task Series 400.

Task 503 Prepare a final Report on Operations of the Water & Sewer Systems incorporating any revisions agreed upon as a result of the City's review of the draft report, and submit 25 copies to the City.

The fee for the above Tasks 101 through 503 shall not exceed $33,400. In the event a presentation of study findings to the City Council is desired, that presentation will be made for an additional fee of $4,200. The fee for this presentation is based on two persons at 12 hours each, plus trip expenses. If the trip for presentation to the City Council of the results of the Report on Operations can be combined with a trip associated with the Water and Sewer Rate Study (Part II below), a reduced fee for the presentation may be negotiated.

Part II - Report on Revenue Requirements, Cost of Service, and Rates for Water & Sewer Service

Task Series 600 - Initial Meeting and Data Collection

It is anticipated that the initial meeting described in Task 102 will cover both Part I and Part II of the proposed studies. Additional tasks which are unique to the water and sewer rate studies are to:

Task 601 Prepare and submit an initial request for financial and operational data, in addition to that needed for the operations study, that is needed for the rate studies.

Task 602 Obtain and review financial and operational data and information required for the rate studies.

Task Series 700 - Determination of Revenue Requirements and Financial Plan

This task encompasses an evaluation of historical water and sewer utility customer accounts, volumes, and revenues under existing rates for reasonable relationships on which to base future revenue projections for the planning period. The historical water and sewer system expenditures and annual budgets for all operating and capital costs will provide the basis for projecting future water and sewer utility needs. Revenue and revenue requirements projections will be adjusted, as applicable, to recognize any changes in utility service areas and customers served, abnormal weather conditions, general economic climate, additional costs associated with the capital improvement programs, or anticipated extraordinary expenses. The analyses will provide the necessary information to develop the long-range financial plan. A comparison of projected revenues with revenue requirements and capital program funding needs will show

annual adjustments necessary in the level of water and sewer utility revenues to maintain self-sufficient enterprise operations and to retain the City's debt credit ratings.

Revenue and revenue requirements will be forecast in Tasks 301 through 304 for the Report on Operations. Additional tasks required for the water and sewer rate studies are to:

Task 701 Review and summarize the revenue, revenue requirements, and cash flow forecasts prepared for the Report on Operations Financial Analysis for use in the water and sewer rate studies. Include consideration of any minor issues or revisions that may have arisen subsequent to the completion of the Report on Operations.

Task Series 800 - Allocation of Costs of Service

This task encompasses the identification and determination of utility functional service parameters, a detailed assignment of costs to the respective functional components, and allocation of costs of service to customer classes. Cost-causative parameters for water service include average day, maximum day, and maximum hour demands; meters and meter sizes; public and private fire protection units; and number of customer bills processed. For sewer service, similar parameters will be evaluated as well as measures of wastewater strength, including but not limited to BOD5 and total suspended solids. For each of the applicable functional parameters, corresponding estimates of class units of service will be determined. Costs of service will then be allocated to customer classes based on the estimated class units of service. Specific tasks, prepared separately for the water and sewer utilities, are:

Task 801 Estimate class service characteristics associated with each of the functional cost elements recognizing the bill distribution analysis, data available from the City, engineering judgement, and experience with other utility operations with similar usage characteristics and patterns.

Task 802 Distribute costs by major system component to customer classes, using the AWWA recommended Base-Extra Capacity cost allocation methodology for the water utility and WEF recommended allocation methodology for the sewer utility. This cost allocation will use unit costs of service applicable to all system users and class units of service to determine each class' proportional responsibility for total system costs. The relative responsibility of each class of customers will be specifically determined based on each class' or users' estimated service requirements.

Task 803 Class revenues under existing rates will be compared with allocated class costs of service to determine the level of cost recovery by class, and in total, and to demonstrate any rate adjustments needed to align class revenues and allocated costs.

Task Series 900 - Design of Rates

Rate schedules to recover total revenue requirements and allocated costs by class will be designed to meet water and sewer utility service policies, pricing objectives, cost of service recovery, and practical limitations. Specific tasks required are to:

Task 901 Develop schedules of water and sewer rates, based on evaluations of existing water and sewer rate structures, that meet as many of the following objectives as practical and consistent with City policy:

- Recover total revenues needed for utility operations.
- Recognize proportional cost recovery by customer class.
- Recognize existing contractual provisions.
- Supportable by existing recordkeeping practices.
- Defendable at public hearings and in courts of law.
- Consider the needs of low-income customers.
- Consider the impact on large system users and major industries.
- Reflect practical implementation limitations.
- Meet requirements for sewer user charges system.

Task 902 Compare revenues expected from each customer class under proposed water and sewer rates with allocated costs of service to ensure the adequacy of cost recovery.

Task 903 Prepare comparisons of typical water and sewer bills under existing and proposed rates for each customer class under various levels of water usage and meter sizes to illustrate the impact of the proposed rates on a variety of individual customers.

Task Series 1000 - Reports and Meetings

A rate study report will be developed which explains our study approach, findings and recommendations. The project report will be submitted in draft form for review by City representatives before a final report is published and delivered. Meetings are planned at significant stages of the study to review study progress, receive project direction, and present draft and final report findings and recommendations. If further meetings are desired, Black & Veatch will gladly modify the proposed work plan.

Specific tasks relating to rate study meetings and reports are to:

Task 1001 A workshop with City representatives to discuss preliminary findings related to cost allocation and rate design.

Task 1002 Prepare a preliminary Report on Revenue Requirements, Cost of Service, and Rates for Water & Sewer Service, including text and tables, and deliver

5 copies of the report to the City. The report will include all rate study findings and recommendations.

Task 1003 Make agreed upon revisions to the preliminary Report on Revenue Requirements, Cost of Service, and Rates for Water & Sewer Service, and deliver 25 copies of the final report to the City.

Task 1004 Meet with the City Council to present the findings of the study.

Anticipated Requirements for City

In order for the Black & Veatch project team to conduct the studies outlined in this Scope of Services section in a timely manner, it is proposed that the City would furnish required basic data and information for the water and sewer utilities including the following items:

1. All recent financial records, audits and budgets of the water and sewer utilities' financial operations; operational statistics; facility descriptions; maps; reports of other consultants; available records of water sales and wastewater volumes and strengths; and such other data as may be available and which may be useful in the studies outlined.

2. A schedule of major capital improvements to the water and sewer systems' facilities anticipated during the study period, including general descriptions of each item of improvement, estimated construction costs, and anticipated dates of construction.

3. Summary tabulations of all customer bills by meter size issued during a recent twelve month period to all water and sewer customers. The tabulation will be done as requested by Black & Veatch and will be by customer class.

4. Policy direction on such matters as the City considers appropriate, and expeditious review of preliminary findings and reports to permit the timely completion of the study.

The fee for the above Tasks 601 through 1004 shall not exceed $44,600.

Part III – Additional Services

Task Series 1100 – Evaluation of Alternative Rate Structures

Task 1101 We will discuss with City representatives their concerns regarding existing water and sewer rate structures. We will then provide the City with written descriptions of alternative rate structures that may better meet their goals and objectives. The descriptions will include the rationale for the various structures and the advantages

and disadvantages of each. Rate forms reviewed may include, but not be limited to, declining block, inverted block, uniform rates, uniform rates by customer class, customer benefit rates, and alternatives to sewer averaging. ***It is preferable that the rate structure review be conducted prior to design of rates in Task Series 900. This will facilitate selection of a rate structure based on its relative merits, rather than its impact on individual customer bills, and will allow selection of a rate structure for design of rates.***

Task 1102 We will review all contracts for water and sewer service to which the City of Fayetteville is a party. The review will include evaluation of standard contract provisions included or omitted from the current contracts, appropriateness of the method of billing relative to the level of service provided, and level of risk inherent on both parties relative to generally accepted industry standards.

Task 1103 We will evaluate rate affordability using industry guidelines published by such agencies as USDA, EPA, AWWA, World Bank, HUD, and bond rating agencies. It is anticipated that various measures of income and income distribution for the Fayetteville area will be provided by the City. Affordability assistance programs utilized by other Cities will also be discussed.

Task 1104 We will provide written summaries of the analyses, either in conjunction with the rate study report, or as separate Project Memorandums, and will present the results of the analyses at a City Council Meeting.

The fee for the above Tasks 1101 through 1104 shall not exceed $15,600.

Task Series 1200 – Evaluation of Billing Structures and Services

Task 1201 Current policy regarding customer deposits, return of deposits, and late payment will be evaluated and compared with industry practices. Recommendations will be made regarding these policies with the goal of reducing bad debt write-offs.

Task 1202 Billing cycles and payment options, i.e., "pick-a-date" billing, will be evaluated, recognizing current billing software limitations. Potential methods of adjusting meter reading routes and billing cycles to recognize growth will be addressed.

Task 1203 We will provide written summaries of the analyses, either in conjunction with the rate study report, or as separate Project Memorandums, and will present the results of the analyses at a City Council Meeting.

The fee for the above Tasks 1201 through 1203 shall not exceed $8,000.

Task Series 1300 – Benchmarking

Task 1301 A survey form designed to collect information for benchmarking will be developed specifically for those areas of interest to the City. The form will be provided to City personnel for completion. Black & Veatch will provide assistance to City personnel via telephone to ensure that the desired information is reported.

Task 1302 In conjunction with City personnel, peer utility groups will be formed for comparison purposes. Given the range of areas of interest, as many as five different peer groups may be identified.

Task 1303 The following metric comparisons will be performed:

- Five year CIPs, separately for water and sewer
- Selected cost ratios (assume 5-7 ratios depending on the constraints of source data)
- Connection fee levels and policies
- Meter reading and billing cycles
- Meter replacement policies
- Rate Structures
- Main breaks
- Conservation driving forces
- Minimum customer charge
- Affordability programs
- High strength surcharge ranges

Data sources for benchmarking will consist of Waterstats, the American Water Works Association database; the AMSA Financial survey; and Competitiv***EDGE***, Black & Veatch's proprietary database.

Task 1304 We will provide written summaries of the analyses, consisting primarily of presentation slides, either in conjunction with the rate study report, or as separate Project Memorandums, and will present the results of the analyses at a City Council Meeting.

The fee for the above Tasks 1301 through 1304 shall not exceed $24,000.

Task Series 1400 – Infrastructure Capital Replacement Funding

Task 1401 We will review the City's policies and practices associated with the establishment of investment levels for replacement and rehabilitation. During meetings and interviews with appropriate engineering, operations, and financial staff, we will address issues including, but not limited to:

- Systems used to track preventive maintenance and repair and replacement activities.

- Financial systems used to track assets, including depreciation.
- Budgeting policies and procedures associated with the establishment of capital improvement programs and annual routing capital expenditures.
- systems used to track customer complaints.
- Customer information systems, continuing property records, work order systems and any other systems associated with asset management.

Task 1402 Based on existing asset information, both financial and operational, establish a replacement value to be used in estimating an annual level of investment needed to prevent the systems from losing value. Information required for this assessment includes:

- Financial asset records, original cost, annual depreciation and accumulated depreciation.
- System specifications such as miles of mains, size of pump stations, size of treatment facilities, etc.
- Current capital improvement program and/or master planning or facilities planning documents.

Task 1403 Review industry standards for reinvestment in systems similar in size to Fayetteville.

Task 1404 Recommend appropriate ranges of investment for system replacement and rehabilitation for the water and wastewater systems.

Task 1405 Illustrate the impact on revenue requirements and associated rates of funding recommended levels of investment.

Task 1406 We will provide written summaries of the analyses, either in conjunction with the rate study report, or as separate Project Memorandums, and will present the results of the analyses at a City Council Meeting.

The fee for the above Tasks 1401 through 1406 may range from $18,500 to $23,000. A specific not-to-exceed amount will be provided following our initial review of the fixed asset information available.

STAFF REVIEW FORM

X AGENDA REQUEST
____ CONTRACT REVIEW
____ GRANT REVIEW

the Fayetteville City Council meeting of ~~March 19~~ May 7th

FROM:

Mike McKimmey — Name
Inspection — Division
Urban Development — Department

ACTION REQUIRED:
Council approval for Raze and Removal of house at 1200 s. Roberts Rd. As per Ordinance 3948

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 — Date 12-28-01
ADA Coordinator — Date
Purchasing Officer — Date
Grant Coordinator — Date

STAFF RECOMMENDATION:
Recommend a Council review to determine if Raze and Removal is the appropriate option. If so, then make resolution to Raze and Remove.

Division Head — Date
Department Director — Date 2-28-02
Administrative Services Director — Date
Mayor — Date 3/12

Cross Reference

New Item: **Yes** **No**

Prev Ord/Res #:_____

Orig Contract Date:_____

Orig Contract Number:_____

new business

STAFF REVIEW FORM - Page 2

Description _____ Meeting Date _____

Comments:

Reference Comments:

Budget Manager

Accounting Manager

City Attorney

Purchasing Officer

ADA Coordinator

Internal Auditor

Grants Coordinator

FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

To: The Mayor and Council

From: Hugh Earnest
Urban Development Director

Date: February 28, 2002

Subject: Raze and removal of house at 1200 Roberts Rd.

Background

The owner of the property in question has been notified repeatedly over the past year of a number of serious violations of city ordinances relating to proper upkeep of the site. Our records indicate that the first complaint was received in January of 2001. As per procedure, several letters and personal contacts have been made. An initial letter detailing violations was sent in February of last year. The owner of the property has asked for, and received several time extensions.

Current Situation

The status of the property relative to its compliance with applicable city ordinances has not materially improved. A violation notice was delivered by personal service on January 21, 2002. This 30-day notice requires that a building permit be secured and restoration commenced, or initiate the demolition of the house with clean up of all debris. No movement in meeting the letter has occurred since January 21st.

Recommendation

We are requesting that the council authorize the raze and removal of this house. In the event that the owner of record cannot perform the raze and removal, it may be necessary for the city, through use of a contractor, to demolish the house and clean the property. A lien against the property to recover the monies expended would then be necessary. We have attached a number of records indicating our numerous attempts to resolve the situation.

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

CITY OF FAYETTEVILLE, ARKANSAS

113 W. Mountain, Fayetteville, Arkansas 72701 Ph: 521-7700

1-21-02

CODE ENFORCEMENT OFFICERS
VIOLATION NOTICE

Served 1:45 pm MM, PH

RE: OFFICIAL CITY NOTICE OF A CITY ORDINANCE

TO: Cora Langford (LAST) (please print) Gordon L. Langford (FIRST) (MIDDLE INITIAL)

NAME OF BUSINESS

The undersigned, being an employee of the City Building Inspection Department of the City of Fayetteville, Washington County, Arkansas, upon his oath deposes and says that he made an investigation;

on Thursday the 17 day of January, 2002 at 10:15 a.m./p.m.

at 1200 Roberts Rd

and found conditions, as set out below that exist which are contrary to current city regulations such as:

VIOLATIONS		DESCRIPTION OF VIOLATION
X Fayetteville Code of Ordinance X As Amended by City Ordinance No. 3948		Ord. 3948 Raze & Remove
SECTIONS	GENERAL	
151.20	Building Code	
152.35	Electrical Code	
157.01	Plumbing & Gas	
158.65	Sign Code	
160.115	Zoning Code	Signed received only
95.01	Health & Sanitation	Cora Lankford
155.01	Housing	date wife of Gordon Lankford 1-21-02
98.07	R-O-W	
98.04	Sidewalks	
95.04	Public Nuisance	
ord 3948	Raze & Remove	

THE ABOVE VIOLATIONS MAY BE CORRECTED IN THE FOLLOWING MANNER:

3948 Secure Building Permit and repair house or demolish house and remove all debris from Lot. (includes) outbuildings

95.01 Remove all Trash/Junk from Lot.

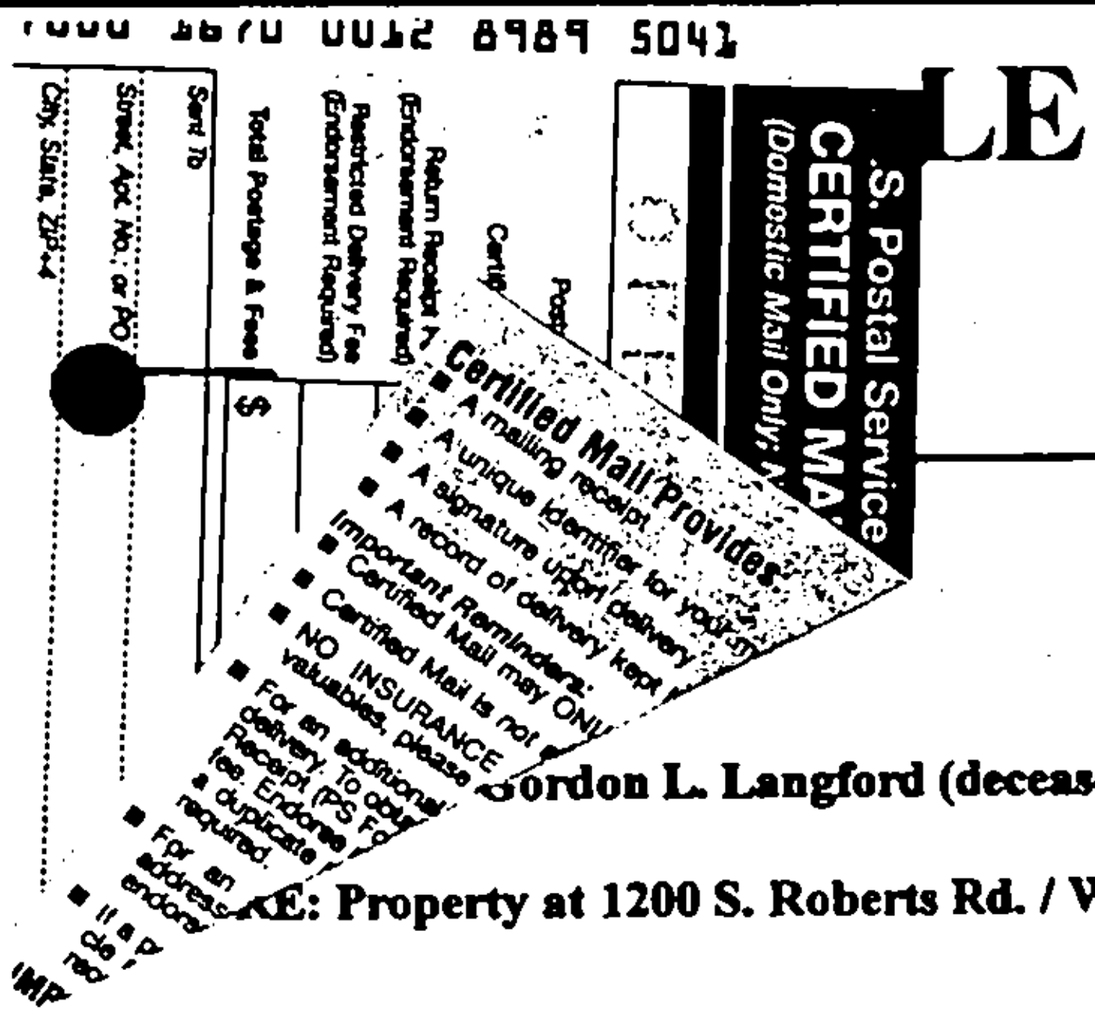
YOU ARE HEREBY NOTIFIED, AS PROVIDED FOR IN S See Above OF THE FAYETTEVILLE CODE OF ORDINANCES, THAT THE ABOVE DESCRIBED VIOLATION(S) EXIST(S) AND MUST BE CORRECTED. SHOULD SAID VIOLATION CONTINUE TO EXIST ON OR AFTER 30 days from Receipt, 2002 THE CITY WILL PROCEED WITH FURTHER LAWFUL ACTION.

VERIFICATION OF TIMELY CORRECTION MAY BE MADE BY PRESENTING THIS NOTICE TO THE INSPECTION DEPARTMENT ROOM 112, 113 WEST MOUNTAIN, FAYETTEVILLE, ARKANSAS OR BY CALLING (501) 575-8233.

Mike McKinney Sign & Property Inspector DATE 1-17-02

SIGNATURE AND IDENTIFICATION OF PERSON SERVING VIOLATION NOTICE

7000 1670 0012 8989 5041



Gordon L. Langford (deceased)

RE: Property at 1200 S. Roberts Rd. / W.C. Parcel No. 765-13109-000

This letter is to inform you that the following violations exist at the above referenced address and are in need of correction per city codes and ordinances:

1. Ordinance 3948 - Building that is Dilapidated, Unsafe, Unsanitary and Detrimental to the public welfare.

Code 95.01 - Unsightly or Unsanitary conditions on Real Property (Trash & Junk)

<u>Please obtain a building permit and make repairs or demolish the building and remove all debris from the lot.</u>

The City of Fayetteville is willing to cooperate and give you thirty [30] days to correct the violations. Please give this matter your highest attention so that further legal action will not be necessary.

Please contact the Inspection Division so we can discuss the problems and assist with advice for correction. If you have any comments or questions, please call Mike McKimmey, Property Inspector at (501) 575-8232.

Sincerely,

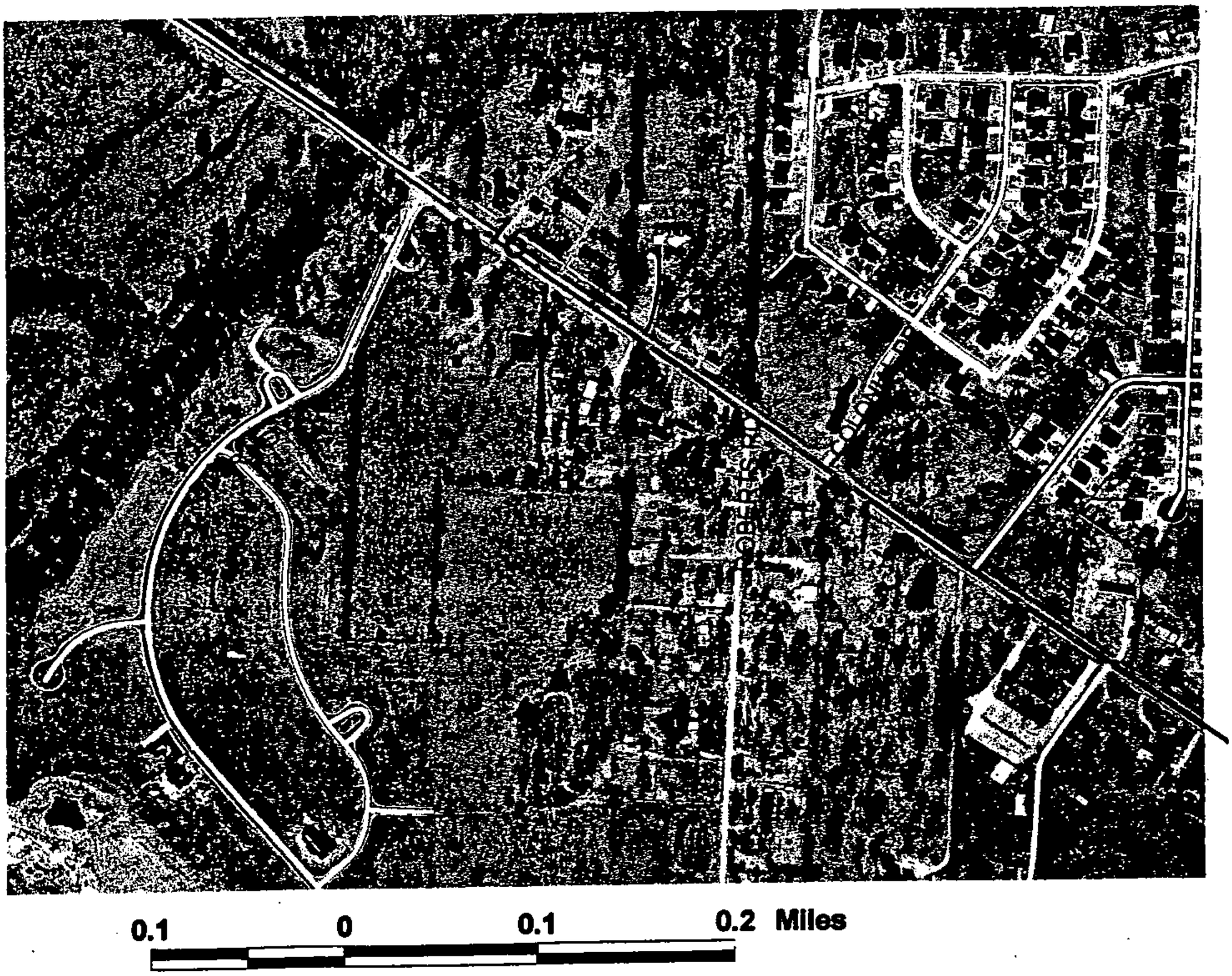
Mike McKimmey

Mike McKimmey, Property Inspector

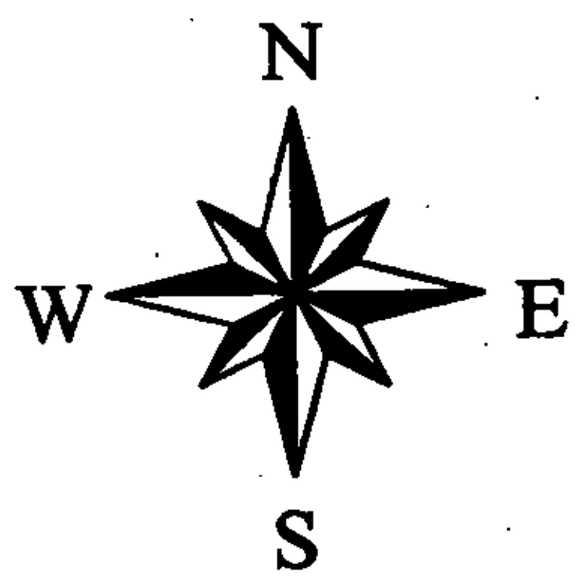
Enclosure: Ordinance 3948 - Raze & Remove
Code 95.01 - Unsightly Conditions

113 WEST MOUNTAIN 72701 501-621-7700
FAX 501-575-8257

Area Map



Hwy
STREETS



2[redacted]2

1200 Roberts Rd

DATE	REMARKS
1-17-02	MM inspected site took 4 photos. home in same condition as previous photos show.
1-17-02	Sent Reg/cert letter (copy in file) # 7000-1670-0012-8989-5041 to same person State commission of lands and tax Notice. That is Cora Langford c/o Brenda Sayer PO Box 307 Fay AR 02 Notice of violation of 3948 § 95.01 additional duplicate will be served in person
1-21-02 1:30pm	PH & MM attempted to serve void Notice to Mrs Langford @ Nantucket. MJT not in after 1:00 pm - no one knows when she lives
	Wait to opt #19. Mr Langford received and signed for copy of void Notice without PH.
2-7-02	Posted Violation @ home and took 1 picture.
2-11-02	Mrs Langford called asked if we could wait, Asked if we could help w/ Dumpster & fees. Agreed to refer back to CD (Don) Called Don @ 270 and gave him Mrs Langford's phone #.

(3)

1200 S. Roberts Rd.

DATE	REMARKS
4/26/01	Ms. Langford called and advised she has a bulk pick up scheduled the 14 day of May.
4/26/01	DI inspected property No change
5/7	some small amount of junk piled for pick up. Very Minimal Progress. Drew up violation 95.09 (MM)
-9-01	Viol. in mail
-/14/01	RE PH & MM pile in front gone - lawn mowed: Green leaf & grass improves looks but Junk & Debris still exists in large amount around South side & Behind. Took photograph
5/28/01	Mail returned unclaimed.
6/1/01	318 pm PH + DI. 1 picture from N.W., 2 pictures from W. 1 from W looking East.
6/15/01	Mr. Langford Lives @ #19 Nantucket Apts. Source - Sherlie Baker MJR. (PH) 4424132
7/27/01	Inspected MM & PH No change in property
7-01	1999 & 2000 not Paid. Baxter 99 241.15 + 3% int & penalty 2000 242.28
	commissioner of State Lands. 1999 taxes will go to state (amount)
	~~Gattis State~~ / Brenda Sayre Re PO Box 307 02
	mailed Petition to redeem to # in 21st / ~~oct~~ oct 1999 93-98
9:30AM -1701	Record of phone Phone conversation adam @ Commission of State lands office @ 501-324-9222. State land was redeemed in oct 1999 by Cora Langford (for delinquent taxes in years 93-98). Mailed to Brenda Sayre PO Box 307 Fayetteville AR, 72702. County collector states land in delinquent now for taxes years 1999 & 2000.
	Checked current county assessors record - ownership goes to Langford, Gordon L. @ this address. (Roberts Rd)

1200 S. Roberts Rd.

DATE	REMARKS
3-13-01	1055AM – No further change, took 12 pix, [redacted]
	[redacted]
	1:00PM – Note – please call Cora Lowkford @ 521-8767, she has
	FEMA coming & a truck to haul off wet ".
	2:15P (after office hrs) called Ms. Lowkford, NO ANS.
	retry shortly
	4:30P Spoke w/Ms. Lowkford, she repeated above & stated has had
	another heart attack, but will continue working on problem.
3-26	C. Langford, 521-8767, called in, Has neighbor or friend
	who is going to help, but weather prohibitive now due
	to her health.
[illegible]27	830A E. Roberts called to check status, he stated had talked
	to FEMA (against remodel or refurbish of bldg.) Has not seen any
	action at site. Requested keep working & update him on
	problem or progress. R/E 3-28
4/4/01	PH & MM inspected site – no change.
4-10-01	9:45AM – Spoke W/Ms Lowkford on phone, need to see
	progress in 48hrs, she states hurt back moving items,
	but has help coming Easter Weekend, requested she contact
	D. Hancock, x270, ASAP for dumpsters to put on site.
4/10/01	D. Hancock will hand deliver eligibility documents to quality
	for CD Help.
4-11-01	D. Hancock delivered appl. to Ms Lowkford
4-16-01	Call Ms Lowkford, D. Hancock reports app. not turned in, need
	action ASAP.
[illegible]9	11:45A – D. Hancock states he has 2PM meet w/Ms Lowkford to
	complete appl. for assistance. He will return w/appl. & proceed.

①

1200 S. Roberts Rd.

DATE	REMARKS
1-25-01	Complaint of Trash & debri, junk & cars; owned by hawkford
2-1-01	Drive by initial insp., PH & MM, compl. valid; r wccb.
2-5-01	Research owners, Gordon H. hawkford - no phone listing;
	phone lists Leroy hawkford ph 521-8767.
2-6	9:10AM E. Roberts called BR. checking on status,
	BR informed him we were beginning work on project & would
	take some time. E.R. @ X 504
	11:15AM Stop & insp., no ans, to knock, left card in dr., Valid compl.
	No. yard: includes old camp popup t/r, 2 sheds, lawn furn. (OK), broken toys,
	Frontyd; furniture (4 dinechairs, 1 recliner,) lawn mower, scattered firewood,
	Frtporch full of trash, junk, magazines & refrig.,
	So. yard; assorted junk, shed collapsed on top of mower, tires, 1 clean &
	2 public autos, rear has auto & asstd. junk visible from fort
	took 8 pix.
2-7-01	9:00AM Send 2nd letter to G.L. hawkford or occup. Rt 20 days, 2-28-01
2-20-01	Ms. Cora Langford called - received letter - gets mail there.
	Boyfriend can't do much very fast. Auto's don't belong to her
	"they belong next door and will be moved. Needs more than 20
	days, indicates that we need to see continued progress.
2-23-1	Eldon Roberts says - don't take excuses, owner knows
	how great the problem is and will resist doing anything.
	Take them legal if have to. BR
2-28-01 2:15P	No ans @ door, furn. in frtyd has been piled for pick up with
	other junk also, still much to do, Frontporch still full as are
	side and rear yards, 1 auto still remains, R/F 3-6
3-7-01	10:15A - NO chg, r/MM - pros.

Raze and Removal
C. 13. Page 11

CERTIFIED MAIL

FAYETTEVILLE

Inspection Div. HMY
CITY OF FAYETTEVILLE, ARKANSAS
WEST MOUNTAIN
FAYETTEVILLE, AR 72701-6083

7000 1670 0012 8989 5225

FAYETTEVILLE AR MAY - 9 '01

U.S. POSTAGE 3.74
PBM EIER 6764257

TURN SERVICE REQUESTED

RETURNED TO SENDER
UNCLAIMED

Gordon L. Lankford
1200 S. Roberts Rd.
Fayetteville, AR 72701

R-20 | 5-10-01

RETURNED TO SENDER
UNCLAIMED

72701X7A32-00

89 5225

U.S. Postal S
CERTIFIED
Domestic Mail O

Postage & Fees
Certified Fee
Postage

Gordon L. Lankford
Apt. No.; or PO Box No. 1200 S. Roberts Rd
City, State, Zip+4 Fayetteville, AR 72701

Certified Mail Provides:
- A mailing receipt
- A unique identifier for your mailpiece
- A signature upon delivery
- A record of delivery kept by the

Important Reminders:
- Certified Mail may ONLY
- Certified Mail is not
- NO INSURANCE valuables, plea
- For an addi delivery. T Receipt fee. F a

E, ARKANSAS

1-7700

E ENFORCEMENT OFFICERS
VIOLATION NOTICE

ORDINANCE

Gordon L.
(please print) FIRST MIDDLE INITIAL

NAME OF BUSINESS

being an employee of the City Building Inspection Department of the City of Fayetteville, Washington County, oath deposes and says that he made an investigation;

May the 7th day of May, 2001 at 10:30 a.m.

at 1200 S. Roberts Rd.

and found conditions, as set out below that exist which are contrary to current city regulations such as:

VIOLATIONS		DESCRIPTION OF VIOLATION
X Fayetteville Code of Ordinance As Amended by City Ordinance No. _____		*95.01- Unsightly or unsanitary conditions on real property. * Porch and all yards are littered with large amounts of trash, debris and junk metal.
SECTIONS	GENERAL	
151.20	Building Code	
152.35	Electrical Code	
157.01	Plumbing & Gas	
158.65	Sign Code	
160.115	Zoning Code	
95.01	Health & Sanitation	
155.01	Housing	
98.07	R-O-W	
98.04	Sidewalks	
95.04	Public Nuisance	

THE ABOVE VIOLATIONS MAY BE CORRECTED IN THE FOLLOWING MANNER:
Remove all trash, debris and junk, and dispose of same in a proper manner.

YOU ARE HEREBY NOTIFIED, AS PROVIDED FOR IN § see above OF THE FAYETTEVILLE CODE OF ORDINANCES, THAT THE ABOVE DESCRIBED VIOLATION(S) EXIST(S) AND MUST BE CORRECTED. SHOULD SAID VIOLATION CONTINUE TO EXIST ON OR AFTER 30 days from receipt. June 2001 THE CITY WILL PROCEED WITH FURTHER LAWFUL ACTION.

VERIFICATION OF TIMELY CORRECTION MAY BE MADE BY PRESENTING THIS NOTICE TO THE INSPECTION DEPARTMENT ROOM 112, 113 WEST MOUNTAIN, FAYETTEVILLE, ARKANSAS OR BY CALLING (501) 575-8233.

Mike McKinney Property Inspector DATE 5-7-01
SIGNATURE AND IDENTIFICATION OF PERSON SERVING VIOLATION NOTICE

FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

Date: 2-7-01

Owner: Gordon L. Lankford or Occupant

RE: 12005 Roberts Rd.
Fayetteville, AR 72701

It is the desire of the City of Fayetteville to assist and help the property owners as much as possible, but the violations that exist on your property require immediate attention.

The City of Fayetteville is willing to cooperate and give you twenty [20] days to correct the following violations:

1. 95.01 - Unsightly or unsanitary conditions on real property.
2. 160.115 - Parking and storage of certain vehicles.
3. * Cleanup and remove all trash, debris, junk and unlicensed inoperable vehicles on premises.

You will be invoiced by the City for all costs to correct the violations if not corrected as requested.

Please call me at (501) 575-8237 if you have comments, questions, and/or if I may be of help.

Sincerely,

Preston Hammons

Preston Hammons,
Property Inspector

COMPLAINT FORM

NATURE OF COMPLAINT: Junk + old cars

NAME OF PROPERTY OWNER:

ADDRESS OF COMPLAINT: 1200 ~~[illegible]~~ Roberts Rd

The following information would be of assistance in correcting the problem.

YOUR NAME: Eldon Roberts

ADDRESS:

PHONE NUMBER: DATE: 2/5/01

Return form to: SIGNATURE

Inspection Division, 113 W. Mountain, Fayetteville, AR 72701

DO NOT WRITE BELOW THIS LINE

DATE RECEIVED: 2-5-01 DATE CORRECTED:

ACTION TAKEN:

Washington County Real Estate Assessment Record

Parcel Number 765-13109-000 Property Type RI

Location Address 1200 ROBERTS RD

Owner LANKFORD, GORDON L.

Mailing Address 1200 ROBERTS DR
FAYETTEVILLE AR 72701

Value Information

Current year 2001

	Appraised	Assessed
Land value	16,000	2,200
Imp. value	18,250	2,981
Total value	34,250	5,181

Legal Description

Lot Block Section-Township-Range 19-16-29

Addition 19-16-29 FAYETTEVILLE OUTLOTS

Legal PT SE NW 1 A.

Deed 10/21/99 99-95852 RD 0.00 0

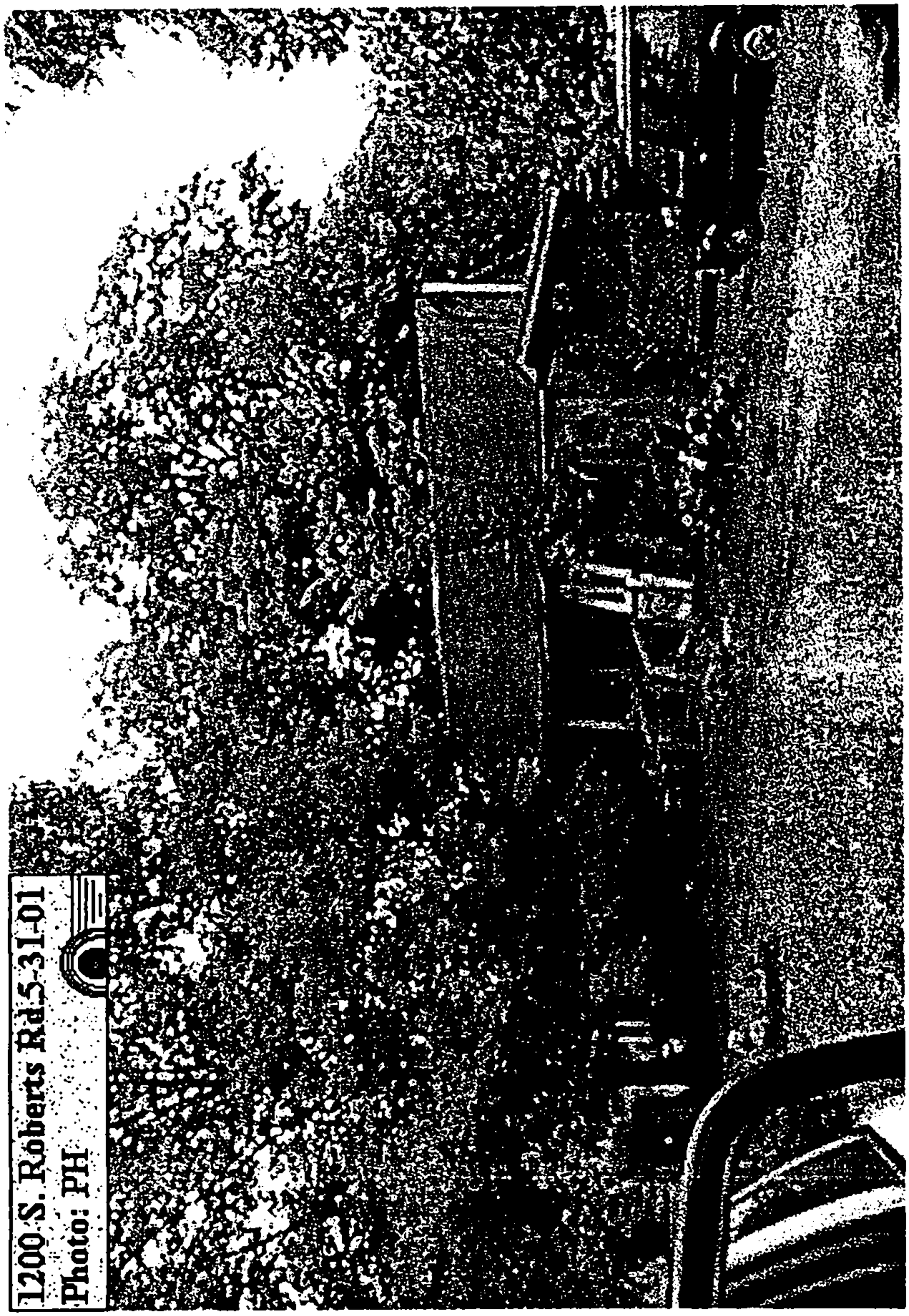
School District FAYETTEVILLE SCHOOLS City description FAYETTEVILLE

Deeds Since 1985

Parcel Number	765-13109-000
Date	10/21/99
Book	99
Page	95852
Deed Type	RD
Revenue	0.00
Sale Amount	0
Grantor	LANKFORD, GORDON L.
Other Grantors	

Notes: LRR 99-95852 RED DEED #138765

Nantucket St
442-4132



1200 S. Roberts Rd 5-31-01
Photo: PH

REDEMPTION DEED NO. 138765

CHARLIE DANIELS
COMMISSIONER OF STATE LANDS
STATE OF ARKANSAS

Issued under the provisions of Act 151 of 1891, Act 626 of 1983 and Act 814 of 1987

FILED FOR RECORD
'99 OCT 25 AM 11 1
WASHINGTON CO AR
J. HARNESS

THE STATE OF ARKANSAS:

To All Whom these Presents Shall Come— GREETINGS:

KNOW YE THAT, WHEREAS: The following described lands situated in the County of Washington in the State of Arkansas, to Wit:

Description: **PT. SE1/4 NW1/4 S.D. 011**

Section: **19** Township: **16N** Range: **29W** Acres: **1**
Addition: **OUTLOTS** City: **FAYETTEVILLE**

Parcel Number: **765-13109-000** Year Forfeited: **11-2 1993** Receipt #: **96202**

were certified to the Commissioner of State Lands, by the County Collector for the non-payment of taxes for the years hereinbelow set forth; and that the taxes, penalties, interest and cost outline below have been paid to the Commissioner of State Lands;

AND WHEREAS **GORDON L. LANKFORD (DECEASED)**
1200 ROBERTS DRIVE
FAYETTEVILLE, AR 72701

claiming to be the owner(s) of said real property, filed a petition to redeem duly verified according to the law, showing such ownership.

NOW THEREFORE, I, CHARLIE DANIELS, Commissioner of State Lands within the State of Arkansas, for and in consideration of **$1,604.44** so paid and by virtue of the authority in me vested by law, do hereby release and quitclaim unto the said **GORDON L. LANKFORD (DECEASED)** and their heirs and assigns forever all right, title and interest the State of Arkansas acquired under any forfeiture, sale or condemnation for taxes.

WITNESS MY HAND AND OFFICIAL SEAL **October 21, 1999**

Taxes	**1993 - 1998**	**$1,195.24**
Imp. Tax Due		**$0.00**
Interest		**$248.43**
Penalty		**$119.52**
County Costs		**$3.25**
Recording Fee		**$8.00**
Deed Fee		**$5.00**
Commissioner Fee		**$25.00**
Municipal Lien		**$0.00**
Total Paid:		**$1,604.44**

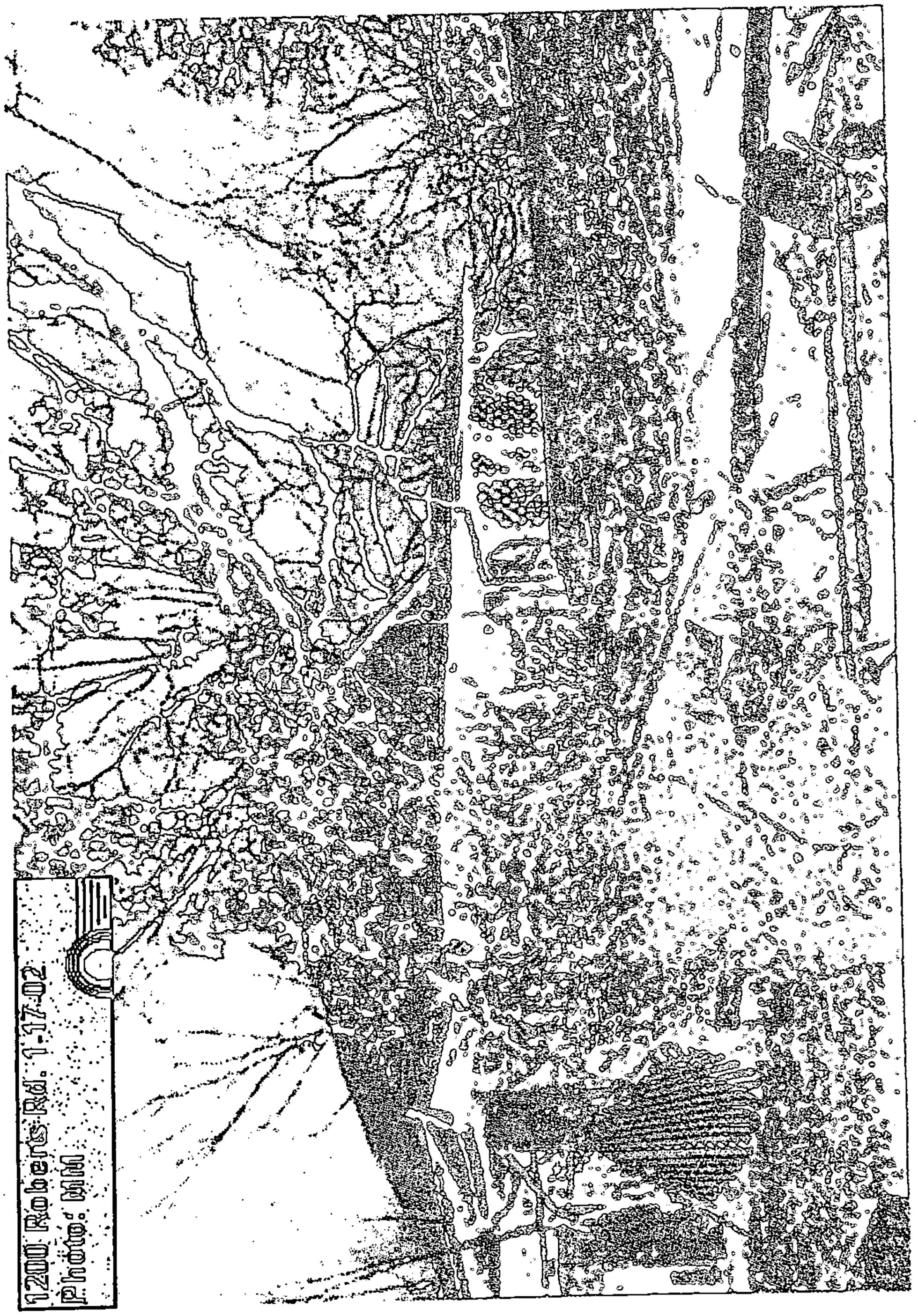
Charlie Daniels
Commissioner of State Lands

cking
Deputy Commissioner of State Lands

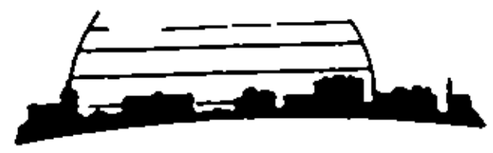
Deed
Mail to: **GORDON L. LANKFORD**
1200 ROBERTS DRIVE

FAYETTEVILLE, AR 72701

99095852


1200 Roberts Rd. 1-17-02
Photo: MM

FAYETTEVILLE



THE CITY OF FAYETTEVILLE, ARKANSAS

CITY ATTORNEY DIVISION
113 WEST MOUNTAIN, 72701
PHONE: 501-575-8313
FAX: 501-575-8315

Kit Williams
CITY ATTORNEY

DATE: 3/14/2002

TO: The Fayetteville City Council

CC: Mayor Dan Coody

FROM: David J. Whitaker, Assistant City Attorney

RE: 1200 ROBERTS ROAD DIFFICULTIES

During Staff Review, we discovered that the owner of record of the property on Roberts Road was deceased, and quite likely died without a will. This would invoke Arkansas' rules of intestate succession, a set of statutes that dictate which, if any, heirs inherit the property. We had previously given notice of the Council's intention to consider a raze and removal order to Mr. Gordon Lankford's widow, Cora Lankford. This is insufficient in light of the fact that widows are not considered 'heirs' under Arkansas law. *Johnson v. Knights of Honor*, 53 Ark. 255, 13 S.W. 794 (1890). Any children of the marriage would have a superior claim to the property.

We do not know the identities or whereabouts of any of the children, though we have been told they exist. Under such circumstances it is necessary to follow the provisions of Ordinance No. 3948 of 1996, §2.B.1., and attempt notice by publication. Our City Clerk has made arrangements for the attached notice to be published on the next two Sundays. Anyone with an interest in the property will have thirty days after the date of first publication in order to come forward and be heard. The next regularly scheduled City Council meeting after the notice period has run is May 7th, at which time you may move forward to consider the raze and removal of the building at issue.

If we can provide any further information, please let us know.

DJW

Attachments

NOTICE OF PUBLIC HEARING

The City Council of the City of Fayetteville will conduct a Public Hearing at 6:30 pm on May 7, 2002, in Room 219 of the City Administration Building, 113 W. Mountain Street, Fayetteville, Arkansas to determine whether the house or building located upon real property at 1200 Roberts Road, more particularly described as:

Pt. SE1/4 NW1/4 S.D. 011, Section 19 Township 16N, Range 29W, Outlots,

has become dilapidated, unsafe, unsanitary, or detrimental to the public welfare. Upon such a finding, the City Council will further consider whether to order the house or building to be razed and removed. Any and all persons possessing an interest in the above-named real property must make their interest known to the Clerk of the City of Fayetteville, 113 W. Mountain Street, Suite 308, Fayetteville, AR 72701, within 30 days from the first date of publication of this Notice.

Copy

AFFIDAVIT

STATE OF ARKANSAS

COUNTY OF WASHINGTON

Before the undersigned, David J. Whitaker, a Notary Public, duly qualified and acting in and for said county and state, appeared HEATHER WOODRUFF, City Clerk of the City of Fayetteville and to me well known to be the affiant herein, who stated the following under oath:

1. I, HEATHER WOODRUFF, City Clerk of the City of Fayetteville, pursuant to the Notice provisions of Ordinance No. 3948 of 1996, make this statement in order to set out the facts pertaining to the ownership of real property at 1200 Roberts Road, more particularly described as:

Pt. SE1/4 NW1/4 S.D. 011, Section 19 Township 16N, Range 29W, Outlots.

2. Documents obtained by the City of Fayetteville indicate that the last owner of record of the above referenced property was Gordon L. Lankford, who is now deceased.

3. Mr. Lankford may have surviving heirs who retain legitimate legal interests in the above referenced property.

4. Neither the identities nor the whereabouts of these surviving heirs, if any, are known to myself or other representatives of the City of Fayetteville.

5. I have, therefore, caused to be published a legal notice in a newspaper of general circulation in Washington County to be run weekly for two (2) weeks. This shall serve as notice to any and all parties that may have legitimate legal interests in the above referenced property, that the City Council of the City of Fayetteville intends to consider a Raze and Remove resolution for the structure(s) on said property. A copy of this notice is attached.

6. I have read the above and foregoing statements and swear that they are true and correct to the best of my knowledge and belief.

*******FURTHER YOUR AFFIANT SAYETH NOT*****

In witness whereof, I hereunto set my hand this 27th day of March, 2002.

Heather Woodruff, Affiant

Subscribed and sworn to before me this 27th day of March, 2002.

David J. Whitaker, Notary Public

My commission expires: December 15, 2010.

STATE OF ARKANSAS SEAL DAVID J. WHITAKER NOTARY PUBLIC WASHINGTON COUNTY My Comm. Exp. Dec. 15, 2010

ARKANSAS DEMOCRAT-GAZETTE

Northwest Arkansas Edition

N.W. Arkansas Times ------- Benton County Daily Record

P.O. Box 1607
Fayetteville, AR 72702
Phone: (479) 571-6400
Fax: (479) 442-1760

P.O. Box 1049
Bentonville, AR 72712
Phone: (479) 271-3700
Fax: (479) 845-1086

AFFIDAVIT OF PUBLICATION

I, Lois McClard, do solemnly swear that I am Legal Clerk of the Arkansas Democrat-Gazette newspaper, printed and published at Lowell, Arkansas, and that from my own personal knowledge and reference to the files of said publication, the advertisement of:

Public Hearing

was inserted in the regular editions on:

March 17, 24, 2002

** Publication Charge $ 188.76
Purchase Order _____

Subscribed and sworn to before me this 1 day of April 2002

Tammy Allen
Notary Public
My Commission expires: _____

Official Seal
TAMMY ALLEN
Notary Public-Arkansas
WASHINGTON COUNTY
My Commission Expires 11-05-2011

** Please do not pay from Affidavit. Invoice will be sent.

NOTICE OF PUBLIC HEARING

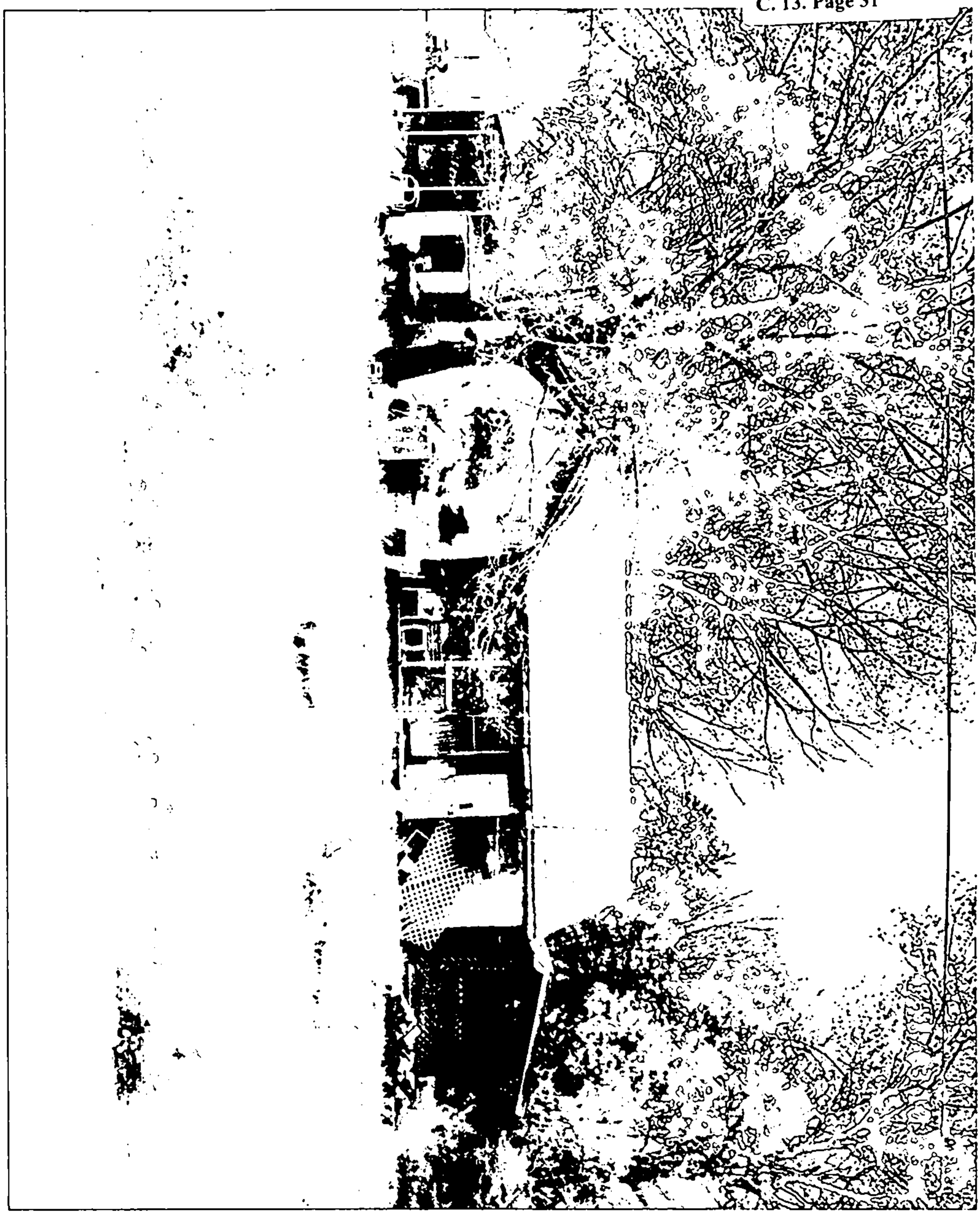
The City Council of the City of Fayetteville will conduct a Public Hearing at 6:30 pm on May 7, 2002, in Room 219 of the City Administration Building, 113 W. Mountain Street, Fayetteville, Arkansas to determine whether the house or building located upon real property at 1200 Roberts Road, more particularly described as:

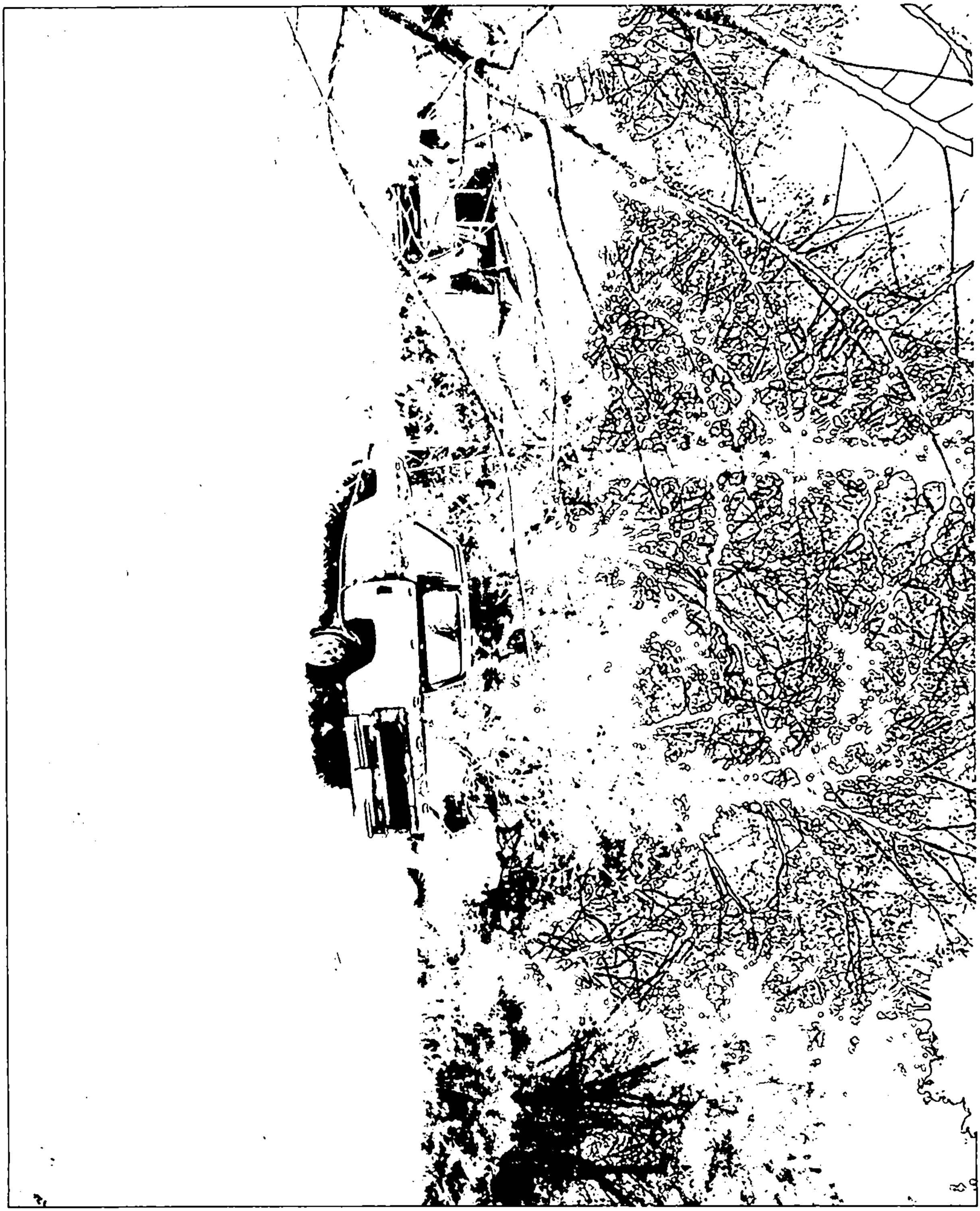
Pt. SE1/4 NW1/4 S.D. 011, Section 19 Township 16N, Range 29W, Outlots, has become dilapidated, unsafe, unsanitary, or detrimental to the public welfare. Upon such a finding, the City Council will further consider whether to order the house or building to be razed and removed. Any and all persons possessing an interest in the above-named real property must make their interest known to the Clerk of the City of Fayetteville, 113 W. Mountain Street, Suite 308, Fayetteville, AR 72701, within 30 days from the first date of publication of this Notice.

March 17, 24, 2002
5880510

1200 Roberts Rd (Cont)

E	REMARKS
4/18/2002	- PH & MM inspected property - took 2 photos - Shed on Southside removed & major part of debris removed - Front lawn mowed, Elsewhere no change -





RESOLUTION NO. _____

A RESOLUTION ORDERING THE RAZING AND REMOVAL OF A DILAPIDATED AND UNSAFE STRUCTURE OWNED BY CORA LANKFORD AND OTHERS WHOSE IDENTITIES AND WHEREABOUTS ARE UNKNOWN, LOCATED AT 1200 ROBERTS ROAD IN THE CITY OF FAYETTEVILLE, ARKANSAS.

WHEREAS, Gordon L. Lankford, late husband of Cora Lankford, is the record owner of the real property at 1200 Roberts Road, more particularly described as:

Pt. SE1/4 NW1/4 S.D. 011, Section 19 Township 16N, Range 29W, Outlots; and,

WHEREAS, the City Council has determined that the structure located on said property is dilapidated, unsightly, unsafe, and detrimental to the public welfare; and,

WHEREAS, the owner(s) of said property, having been properly served with a Violation Notice in hand, and by publication in a newspaper of general circulation in Washington County run weekly for two (2) weeks for those persons whose identities and whereabouts remain unknown, and given thirty (30) days to correct said violation, have refused to repair, or raze and remove said dilapidated, unsightly, and unsafe structure.

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

Section 1. That, by the authority granted pursuant to A.C.A. §14-56-203, and in accordance with the provisions of Ordinance No. 3948 of 1996, Cora Lankford and others unknown who may have legal interests in said property, are hereby ordered to raze and remove forthwith, the dilapidated, unsightly, and unsafe structure located on the aforementioned real property. The manner of removing said structure shall be: dismantle by hand or bulldozer, and haul all debris to a landfill.

Section 2. That, if Cora Lankford and others unknown who may have legal interests in said property do not comply with this order, the Mayor is hereby directed to cause the dilapidated, unsightly, and unsafe structure to be razed and removed; and a lien against the real property shall be granted and given the City, pursuant to A.C.A. §14-54-904, for the costs associated therewith.

PASSED and **APPROVED** this 7th day of May, 2002.

APPROVED:

By: _____
DAN COODY, Mayor

ATTEST:

By: _____
HEATHER WOODRUFF, City Clerk

DRAFT

STAFF REVIEW FORM

Agenda Request
FOR THE FAYETTEVILLE CITY COUNCIL MEETING OF May 7,2002

FROM:

Chris Bosch, Fire Chief	Fire Administration	Fire Department
Name	Division	Department

ACTION REQUIRED: Approval of an ordinance ammending § 33.046, Code of Fayetteville, to establish annual fees for Rural Fire Contracts for a two year period from June 1, 02 through May 31,04.

COST TO CITY:.

None		
Cost of this request	Category/Project Budget	Category/Project Name
Account Number	Funds Used To Date	Program Name
Project Number	Remaining Balance	TAX FUND

BUDGET REVIEW: N/A Budgeted Item N/A Budget Adjustment Attached

Budget Coordinator

Administrative Services Director

CONTRACT/LEASE REVIEW **GRANT APPLICATION REVIEW**

Accounting Manager — Date

City Attorney — Date 4/19/200 – See minor corrections

Purchasing Officer — Date

Internal Auditor — Date

Internal Auditor — Date

Internal Auditor — Date

STAFF RECOMMENDATION Staff recommends approval of this ordinance change.

Division Head — Date

Department Director — Date 4/19/02

Administrative Services Director — Date 4/19/02

Mayor — Date 4/24/02

New Business ✓
Consent —

CROSS REFERENCE

NEW ITEM: No

PREV/ORD/RES. # 4030

ORIG. CONTRACT DATE N/A

CONTRACT # N/A

From the Desk of the Director/Fire Chief

Fayetteville Fire Dept
303 W. Center St.
Fayetteville, AR. 73701
(479) 575-8365

Memo

To: Dan Coody, Mayor

From: Chris Bosch, Fire Chief CB

Date: April 19, 2002

Re: Renewal of Rural Fire Contracts

Several households outside the city limits of the City of Fayetteville currently have contracts for fire protection with the Fayetteville Fire Department. This service is beneficial to those citizens in that it allows them to utilize our City's ISO rating so they can obtain a reduced rate on their current homeowners insurance policy. These contracts are due to expire on or around May 31, 2002.

Historically, the Fire Department has utilized a standard bi-annual formula for calculating these fees with the current rate structure of $2207.00 for a residence with an "Association"[1] membership and $440.00 for a residence without an "Association" membership. Further the FFD offered a $40.00 discount for residents who contracted with a Rural Volunteer Fire Department.

After carefully reviewing the above listed fee structure it has been determined that the existing Fire Protection Contractual Fees does not cover the cost of providing these services. With this in mind I am proposing an increase in the Rural Fire Contract Fee structure, which will more effectively recover the Fire Department's cost of providing this service. In order to recover the Fire Department's cost I am recommending the new fee structure for these contract services be raised to $487.00 per contract. I would also like to propose that these fees be reviewed on an annual basis, rather than bi-annually since the cost of providing these services increases annually.

Currently the Fire Department administers approximately 325 of these agreements, which generate approximately $71,500 in annual revenue. This fee increase should generate approximately $158,275 annually, which is an additional $86,775 above what is already generated. I believe this rate increase will more effectively recover the cost of providing these services. I have attached a copy of the proposed contract for your review as well as the proposed change in ordinance language to reflect my recommendations.

If you have any questions, comments or concerns regarding this matter, please give me a call and I will be happy to provide additional information at your convenience.

Thank you.

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[1] For the purpose of these agreements an Association Membership is defined as three or more residences sharing common property boundaries with each requesting contractual fire protection from the FFD.

ORDINANCE NO._____

AN ORDINANCE AMENDING §33.046 OF THE CODE OF FAYETTEVILLE, TO SET THE FEES FOR RURAL FIRE CONTRACTS FOR THE PERIOD RUNNING FROM JUNE 1, 2002 THROUGH MAY 31,2003,

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

Section 1. That § 33.046, Providing fire suppression services outside City, Subsection (B)(1), (C)(1) and (D), of the Code of Fayetteville, is hereby repealed and the following shall be inserted in its stead:

§33.046. Providing fire suppression services outside City.

(B)(1) Each property owner or resident desiring to participate in such a contract shall pay to the City an annual fire suppression fee of $487 per property for a ~~period~~ twelve (12) month period.

(C) Annual fees for fire suppression contracts for service outside the City shall be as contained herein for a ~~one year~~ period running June 1, 2002 through May 31, 2003. twelve (12) month

PASSED AND APPROVED this _____ day of _____, 2002.

APPROVED:

By: _____
Dan Coody, Mayor

ATTEST:

By: _____
Heather Woodruff, City Clerk

ORDINANCE NO. 4148 **MICROFILMED**

AN ORDINANCE AMENDING §33.046, OF THE CODE OF FAYETTEVILLE, TO SET THE FEES FOR RURAL FIRE CONTRACTS FOR THE TWO YEAR PERIOD RUNNING JUNE 1, 1999 TO MAY 31, 2001.

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

Section 1. That §33.046, Providing fire suppression services outside City, Subsection (B)(1), (C)(1), and (D), of the Code of Fayetteville, is hereby repealed and the following shall be inserted in its stead:

§33.046 Providing fire suppression services outside City.

(B)(1) Each property owner or resident desiring to participate in such a contract shall pay to the City an annual fire suppression fee of $220 per property covered within the "Association" per twelve (12) month period.

(C)(1) Each property owner or resident desiring to participate in such a contract shall pay to the City an annual fire suppression fee of $440 per property covered per twelve (12) month period.

(D) Annual fees for fire suppression contracts for services outside the City shall be as contained herein for the two year period running June 1, 1999 to May 31, 2001.

PASSED AND APPROVED this 23rd day of March, 1999.

APPROVED:

By: Fred Hanna

Fred Hanna, Mayor

ATTEST:

By: Heather Woodruff

Heather Woodruff, City Clerk

CONTRACT FOR FIRE PROTECTION

This **Contract** executed this _____ day of _____, 20 _____, by and between the City of Fayetteville, Arkansas, hereinafter called the "City" and the undersigned owner of real property located within two (2) miles of the Fayetteville corporate limits, hereinafter called the "Property Owner".

WHEREAS, the City staffs and equips an organized Fire Department, and

WHEREAS, the Property Owner does not have fire suppression service available; and

WHEREAS, the Property Owner desires to contract with the City for the Fayetteville Fire Department to combat fires which may occur on the property described below; and

WHEREAS, under Ark. Code Ann. §14-53-102 (1987) and §33.046 of the Fayetteville Code of Ordinances, fire fighting machinery and equipment, with the necessary fire personnel to operate the same, may be used to combat fires beyond the corporate limits; and

WHEREAS, the purpose of this agreement is to set forth the terms and conditions, consistent with §33.046 of the Fayetteville Code of Ordinances, under which the Fayetteville Fire Department will combat fire on the property described below,

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the parties hereby agree as follows:

1. During the term of this agreement, the City shall provide fire suppression service to and shall combat fires occurring on the real property at the Property Owner's address listed in paragraph 7, subject to the conditions set out herein.

2. To defray costs incurred by the City in providing fire suppression service to the aforesaid property, the Property Owner shall pay to the City, in advance, an annual "Fire Suppression Fee" of $487.

3. The term of this contract shall commence upon the execution date hereof and shall expire one (1) calendar year from the date of this agreement; provided this Contract shall not be effective until receipt of the City of the "Fire Suppression Fee" prescribed herein. Prior to the receipt of said fee, this Contract shall be of no force and effect and the City Shall be under no obligation to provide fire suppression service to or combat any fire in the aforesaid area.

4. During the term of this contract, the City Shall provide fire fighting machinery and equipment, with the necessary fire personnel to operate the same, to combat fires occurring on the aforesaid property; provided, the City shall be under no obligation to respond to any fire located in said area if the Fayetteville Fire Chief determines that such response will substantially impair the ability of the Fayetteville Fire Department to provide adequate fire protection services to Fayetteville or to adequately combat fire or fires occurring in Fayetteville. In the event such a determination is made, neither the City nor any city official or employee shall be liable for any damages or loss, which occurs from any fire on the aforesaid property.

5. Neither the City of Fayetteville nor any official or employee of the Fayetteville Fire Department, involved in combating a fire on the aforesaid property shall be held liable for any damages or loss that occurs when the Fayetteville Fire Department is combating a fire located on said property.

6. All members of the Fayetteville Fire Department engaged in fighting a fire located on the aforesaid property shall be considered to be acting within their line of duty an in discharge thereof and shall not lose or forfeit any right or benefit in rank, pay, disability or retirement payments or benefits.

7. The City may terminate this agreement by giving thirty (30) days written Notice of Termination to the Property Owner at the following mailing address:

Property Owner's Name: _____
Property Address: _____
Mailing Address: _____

In the event the City terminates this agreement, the City shall refund the unused portion of the fire suppression fee on a pro-rata basis to the Property Owner. The amount of unused fire suppression fees shall be computed as follows:

Total Fire Suppression Fee Paid in Advance	-	Number of days Contract in effect / 365 Days	X	Total Fire Suppression Fee Paid in Advance	=	Amount of Refund

8. The Property Owner may terminate this agreement by giving written notice of termination, signed by the Property Owner to the Fire Chief of the City of Fayetteville, 303 W. Center St. Fayetteville, AR. 72701. In the event the Property Owner terminates this agreement all unused portions of the fee shall be retained by the City.

9. Any notice of termination shall be deemed given on the date the notice is deposited in the United States Mail, as evidenced by the postmark thereon, provided the correct postage is paid, and the notice is addressed as provided herein.

10. The Property Owner may renew this agreement for a period of one (1) year in accordance with the following procedure: During the time frame of the Contract, at least thirty (30) days prior to the termination of this agreement, the Fayetteville Fire Department will send to the Property Owner, via certified mail, a notice specifying the amount of the fire suppression fee which the City will charge for the upcoming year. If the Property Owner desires to extend the term of this Contract, the Property Owner shall remit the required fee to the City of Fayetteville Fire Department, within thirty (30) days of receipt of this notification. Upon receipt of payment of the required fire suppression service fee, this Contract shall be extended for one (1) calendar year from the date payment in full is received. Payment in full should be sent via certified mail to the Fayetteville Fire Department Fire Headquarters, 303 W. Central, Fayetteville, AR. 72701.

11. In the event this Contract is executed after June 1, 2002, the fire suppression fee payable under paragraph 2 shall be the full amount of the said agreement and this contractual agreement will extend for one calendar year from the date the original agreement.

12. Any modifications to this contractual agreement must be in submitted in writing and must be reviewed by the Fire Chief of the Fayetteville Fire Department and authorized by the Mayor of the City of Fayetteville or his/her designated representative and undersigned by the Property Owner.

IN WITNESS WHEREOF, this contract is executed on the date first above written.

CITY OF FAYETTEVILLE, ARKANSAS

By: _____
Mayor

ATTEST

By: _____
City Clerk

_____
Property Owner

Fee Received by: _____
Date Received: _____
Amount Received: _____

RESOLUTION NO. _____

A RESOLUTION TO WAIVE THE BUILDING PERMIT FEE AND OTHER DEVELOPMENTAL FEES FOR COMMUNITY DEVELOPMENT BLOCK GRANT PROJECTS

WHEREAS, the Community Development Block Grant program finances low income housing and other worthy community development projects that are of great benefit to our city; and

WHEREAS, it serves the public interest and is beneficial to the City as a whole that the Community Development Block Grant projects are built 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 all development projects done by the Community Development Block Grant Program in Fayetteville 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 all development projects done by the Community Development Block Grant Program in FayettevilleArkansas during the year 2002.

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

APPROVED:

By: _____
DAN COODY, Mayor

ATTEST:

By: _____
Heather Woodruff, City Clerk

RESOLUTION NO. _____

A RESOLUTION TO WAIVE THE BUILDING PERMIT FEE AND OTHER DEVELOPMENTAL FEES FOR THE REBUILDING OF THE FIRST CHURCH OF THE NAZARENE

WHEREAS, the First Church of the Nazarene located at 2857 N. Old Missouri Road in Fayetteville was tragically destroyed by fire in December, 2000; and

WHEREAS, the congregation and pastor have struggled to raise sufficient funds to rebuild this church on the existing lot; and

WHEREAS, it serves the public interest and is beneficial to the City as a whole that the burned out church building will be rebuilt and restored as the First Church of the Nazarene on that same lot.

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 reconstruction of the burned First Church of the Nazarene on its same lot at 2857 N. Old Missouri Road, Fayetteville 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 reconstruction of the burned First Church of the Nazarene on its same lot at 2857 N. Old Missouri Road, Fayetteville, Arkansas

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

APPROVED:

By: _____
DAN COODY, Mayor

ATTEST:

By: _____
Heather Woodruff, City Clerk

DRAFT TENTATIVE AGENDA
CITY COUNCIL
MAY 7, 2002

A meeting of the Fayetteville City Council will be held on May 7, 2002 at 6:30 p.m. in Room 219 of the City Administration Building located at 113 West Mountain Street, Fayetteville, Ar.

A. CONSENT

1. **APPROVAL OF THE MINUTES**

— waive CDBG -

2. **TRAILS GRANT:** A resolution authorizing a recreational trails grant application and authorizing resources for a 20% share of project's cost.

has pulled.

3. **MOTORLA:** A resolution awarding a contract to Motorla in the amount of $130,378.99 to upgrade the radio system to allow digital and encryption capabilities to be added to the Police Department's radios and approve a $10,000 contingency to the project.

check name. —

4. ~~**RAZORBACK SIDING:**~~ A resolution approving an agreement between the City and ~~Razorback Siding Supply~~ for the purchase of vinyl windows and vinyl siding for housing rehabilitation projects.

5. Juvenile Justice grant - police.

B. OLD BUSINESS

1. **RZN 02-7.00:** An ordinance approving rezoning request RZN 02-7.00 as submitted by Lindsey and Associates on behalf of the Estate of Marie Frankie Hughes for property located west of Porter Road and north of Valley Drive. The property is zoned R-1, Low Density Residential and contains approximately 11.94 acres. The request is to rezone to RMF-12, Moderate Density Family Residential.

C. NEW BUSINESS

1. **RZN 02-9.00:** An ordinance approving rezoning RZN 02-9 as submitted by Julian and Jane Archer for property located at 2231 Markham Road. The property is zoned R-1, Low Density Residential and contains approximately 18.80 acres. The request is to rezone to A-1, Agricultural.

2. **RZN 02-12:** An ordinance approving rezoning request Rzn 02-12 as submitted by Julian and Jan Archer for property located at 2231 Markham Road. The property is zoned R-1, Low Density Residential and contains approximately 4.10 acres. The request is to rezone to A-1, Agricultural.

3. **VA 02-1:** An ordinance submitted by Greg Brockman for property located north of 15th Street and west of Duncan Streets the request is to vacate a 30' side portion of an unimproved Price Avenue right-of-way.

Approval —

TRAFFIC STUDY: A resolution approving a transfer of Sanitary Sewer Rehabilitation Costs of $564,000 from CIP Sales Tax Fund to Water and Sewer Enterprise Fund, with $200,000 of the available CIP Sales Tax Funds to budgeted for a Master Traffic Study.

5. **WATER MAIN REPLACEMENT:** A resolution to budget the 1.5 million of Water and Sewer Operating Funds reimbursed from Bond Proceeds, towards accelerated water main replacement activities, including approval of a budget adjustment and an addition to the fiscal year 2002 Capital Improvements Program.

6. **BURNS AND MCDONNELL:** A resolution to approve an agreement with Burns and McDonnell to perform program management services in connection with the Wastewater System Improvement Project.

$3000

7. **MCGOODWIN, WILLIAMS & YATES:** A resolution approving amendment No. 2 to the contract with McGoodwin, Williams and Yates and approval of a contract contingency in the amount of $25,000 relating to the Wastewater System Improvement Project.

Contingency.

8. **BLACK AND VEATCH:** A resolution approving a contract amendment with Black and Veatch for water and sewer system operations and rate study services.

SPECIAL ELECTION: An ordinance calling for a special election on the question of levying a one percent Sales and Use Tax within the City of Fayetteville, to replace the one percent Sales and Use Tax expiring on June 30, 2003 and providing for an expiration date for such tax of June 30, 2013.

10. **SALES AND USE TAX:** An ordinance providing for the levy of a one percent sales and use tax and providing for an expiration date for such replacement Sales and Use Tax of June 30, 2013.

11. **RAZE AND REMOVAL:** An ordinance approving a raze and removal of house at ~~1200 S. Roberts as per~~ ordinance 3948.

#1 — 12) Bond issue - w/b. $25 million.

13) Fire contract →

14). Budget adjust - fire trucks. - sale - fire dept.

15) Dumas - garbage truck.

FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

TENTATIVE AGENDA
CITY COUNCIL
MAY 7, 2002

A meeting of the Fayetteville City Council will be held on May 7, 2002 at 6:30 p.m. in Room 219 of the City Administration Building located at 113 West Mountain Street, Fayetteville, Arkansas.

A. **CONSENT**

1. **APPROVAL OF THE MINUTES**

2. **TRAILS GRANT:** A resolution authorizing a recreational trails grant application and authorizing resources for a 20% share of project's cost.

3. **MOTOROLA:** A resolution awarding a contract to Motorla in the amount of $130,378.99 to upgrade the radio system to allow digital and encryption capabilities to be added to the Police Department's radios and approve a $10,000 contingency to the project.

4. **MAXIMUM AVIATION SERVICES:** A resolution approving License to Maximum Aviation Services for use of Fayetteville Municipal Airport ramp space to park temporarily out of service airliners.

5. **DON NELMS:** A resolution approving Don Nelms ground lease agreement for the purpose of constructing an aircraft hangar.

6. **FLYING INVESTMENTS:** A resolution approving Flying Investments ground lease agreement for the purpose of constructing an aircraft hangar.

7. **JUVENILE BLOCK GRANT:** A resolution accepting the 2002 Juvenile Accountability Incentive Block Grant Program. 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.

total ?

8. **FIRE APPARATUS:** A resolution approving the return of $15,100.00 to the Fire Departments Operations Budget from the sale of fire apparatus. The money will be used to replace personal protective equipment for Firefighters.

113 WEST MOUNTAIN 72701 479-521-7700
FAX 479-575-8257

B. OLD BUSINESS

1. **RZN 02-7.00:** An ordinance approving rezoning request RZN 02-7.00 as submitted by Lindsey and Associates on behalf of the Estate of Marie Frankie Hughes for property located west of Porter Road and north of Valley Drive. The property is zoned R-1, Low Density Residential and contains approximately 11.94 acres. The request is to rezone to RMF-12, Moderate Density Family Residential. The item was left on the first reading at the Apirl 16, 2002 meeting.
   Urgent to table.

C. NEW BUSINESS

1. **WASTEWATER SYSTEM IMPROVEMENTS:** An ordinance authorizing the issuance and sale of up to $25 million of Sales and Use Tax Capital Improvement Bonds for the Wastewater System Improvement Project.

2. **RZN 02-9.00:** An ordinance approving rezoning RZN 02-9.00 as submitted by Julian and Jane Archer for property located at 2231 Markham Road. The property is zoned R-1, Low Density Residential and contains approximately 18.80 acres. The request is to rezone to A-1, Agricultural.

3. **RZN 02-12.00:** An ordinance approving rezoning request RZN 02-12.00 as submitted by Julian and Jan Archer for property located at 2231 Markham Road. The property is zoned R-1, Low Density Residential and contains approximately 4.10 acres. The request is to rezone to A-1, Agricultural.

4. **VA 02-1.00:** An ordinance submitted by Greg Brockman for property located north of 15th Street and west of Duncan Streets the request is to vacate a 30' side portion of an unimproved Price Avenue right-of-way. Ark Co. Gas - approval? See Tim.

5. **PLANNING COMMISSION APPEAL:** Appeal of a Planning Commission Decision regarding LSD 02-7.00 for property located at the southwest corner of Fletcher Avenue and Rodgers Drive. - Summary. - for Tim. / NEED FINDINGS FROM TIM.

   check P.C. appeal hearing & vote

6. **SALES AND USE TAX:** An ordinance providing for the levy of a one percent sales and use tax and providing for an expiration date for such replacement Sales and Use Tax of June 30, 2013.

7. **SPECIAL ELECTION:** An ordinance calling for a special election on the question of levying a one percent Sales and Use Tax within the City of Fayetteville, to replace the one percent Sales and Use Tax expiring on June 30, 2003 and providing for an expiration date for such tax of June 30, 2013.

8. **TRAFFIC STUDY:** A resolution approving a transfer of Sanitary Sewer Rehab. Costs of $564,000 from CIP Sales Tax Fund to Water and Sewer Enterprise Fund, with $200,000 of the available CIP Sales Tax Funds to budgeted for a Master Traffic Study and $25,000 to be transferred to other Drainage Improvements.

   Consent

9. **WATER MAIN REPLACEMENT:** A resolution to budget the 1.5 million of Water and Sewer Operating Funds reimbursed from Bond Proceeds, towards accelerated water main replacement activities, including approval of a budget adjustment and an addition to the fiscal year 2002 Capital Improvements Program.

10. **BURNS AND MCDONNELL:** A resolution to approve an agreement with Burns and McDonnell to perform program management services in connection with the Wastewater System Improvement Project. need signed agreement. see Bentley.

presentation

11. **MCGOODWIN, WILLIAMS & YATES:** A resolution approving amendment No. 2 to the contract with McGoodwin, Williams and Yates and approval of a contract contingency in the amount of $25,000 relating to the Wastewater System Improvement Project. total $27,511 e/

Consent $2,511 e/

12. **BLACK AND VEATCH:** A resolution approving a contract amendment with Black and Veatch for water and sewer system operations and rate study services and approval of a budget adjustment. $133,000

Consent

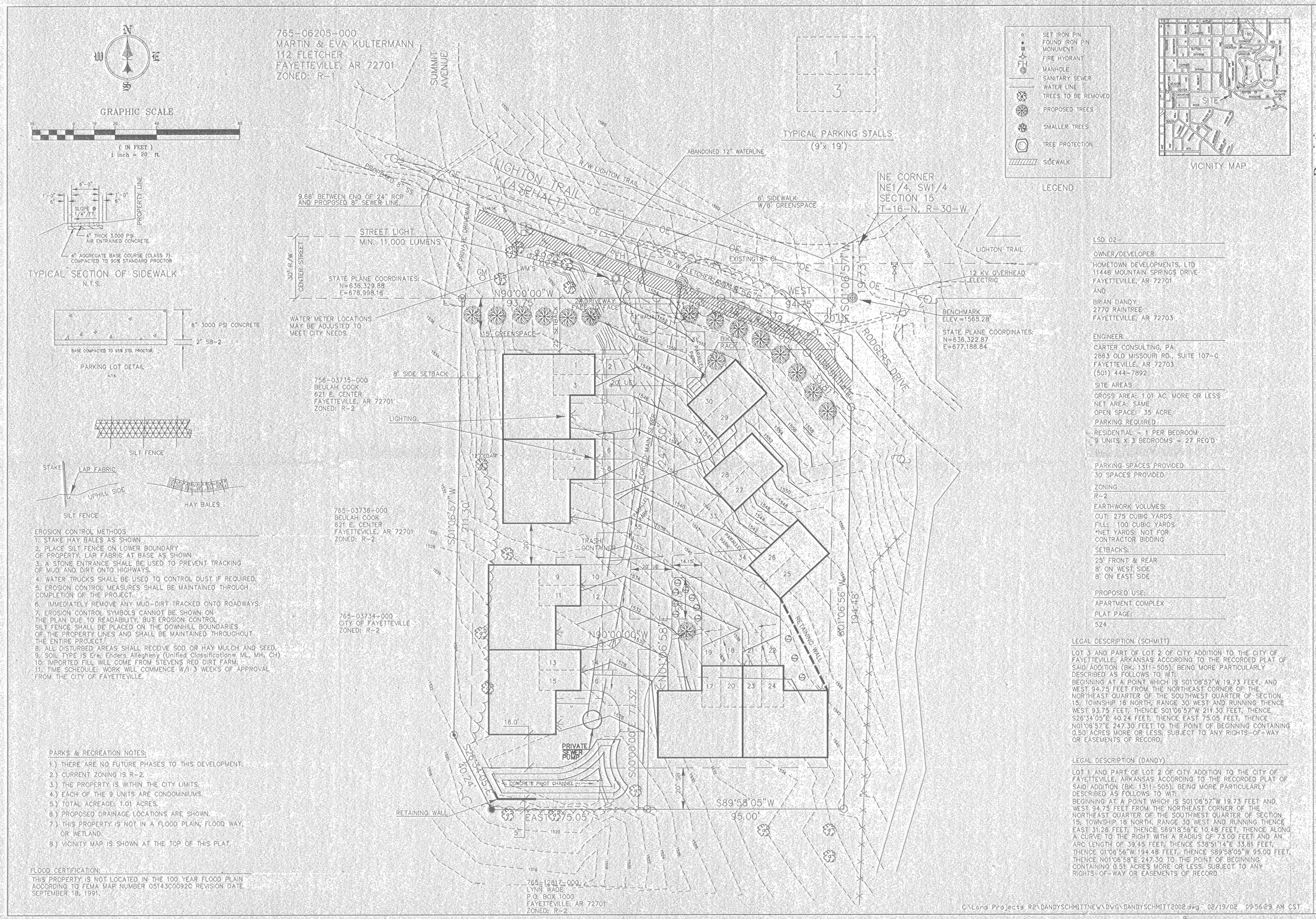
13. **RAZE AND REMOVAL:** A resolution approving a raze and removal of house at 1200 S. Roberts as per Ordinance 3948. - public hearing.

14. **RURAL FIRE CONTRACTS:** An ordinance amending the Code of Fayetteville to establish annual fees for Rural Fire Contracts for a two year period from June 1, 2002 through May 31, 2004.

Consent 15. **CDBG:** A resolution to waive the building permit fee and other development fees for the Community Development.

16. **CHURCH OF THE NAZARENE:** A resolution to waive the building permit fee and other development fees for the rebuilding of the First Church of the Nazarene.

move from agenda



EROSION CONTROL METHODS

1. STAKE HAY BALES AS SHOWN.
2. PLACE SILT FENCE ON LOWER BOUNDARY OF PROPERTY. LAP FABRIC AT BASE AS SHOWN.
3. A STONE ENTRANCE SHALL BE USED TO PREVENT TRACKING OF MUD AND DIRT ONTO HIGHWAYS.
4. WATER TRUCKS SHALL BE USED TO CONTROL DUST IF REQUIRED.
5. EROSION CONTROL MEASURES SHALL BE MAINTAINED THROUGH COMPLETION OF THE PROJECT.
6. IMMEDIATELY REMOVE ANY MUD-DIRT TRACKED ONTO ROADWAYS.
7. EROSION CONTROL SYMBOLS CANNOT BE SHOWN ON THE PLAN DUE TO READABILITY, BUT EROSION CONTROL SILT FENCE SHALL BE PLACED ON THE DOWNHILL BOUNDARIES OF THE PROPERTY LINES AND SHALL BE MAINTAINED THROUGHOUT THE ENTIRE PROJECT.
8. ALL DISTURBED AREAS SHALL RECEIVE SOD OR HAY MULCH AND SEED.
9. SOIL TYPE IS Era, Enders Allegheny (Unified Classification= ML, MH, CH)
10. IMPORTED FILL WILL COME FROM STEVENS RED DIRT FARM.
11. TIME SCHEDULE: WORK WILL COMMENCE W/I 3 WEEKS OF APPROVAL FROM THE CITY OF FAYETTEVILLE.

PARKS & RECREATION NOTES:

1.) THERE ARE NO FUTURE PHASES TO THIS DEVELOPMENT.
2.) CURRENT ZONING IS R-2.
3.) THE PROPERTY IS WITHIN THE CITY LIMITS.
4.) EACH OF THE 9 UNITS ARE CONDOMINIUMS.
5.) TOTAL ACREAGE: 1.01 ACRES.
6.) PROPOSED DRAINAGE LOCATIONS ARE SHOWN.
7.) THIS PROPERTY IS NOT IN A FLOOD PLAIN, FLOOD WAY, OR WETLAND.
8.) VICINITY MAP IS SHOWN AT THE TOP OF THIS PLAT.

FLOOD CERTIFICATION:

THIS PROPERTY IS NOT LOCATED IN THE 100 YEAR FLOOD PLAIN ACCORDING TO FEMA MAP NUMBER 05143C0092C REVISION DATE SEPTEMBER 18, 1991.

LSD 02-

OWNER/DEVELOPER

HOMETOWN DEVELOPMENTS, LTD
11446 MOUNTAIN SPRINGS DRIVE
FAYETTEVILLE, AR 72701

AND

BRIAN DANDY
2770 RAINTREE
FAYETTEVILLE, AR 72703

ENGINEER

CARTER CONSULTING, PA
2863 OLD MISSOURI RD., SUITE 107-C
FAYETTEVILLE, AR 72703
(501) 444-7892

SITE AREAS

GROSS AREA: 1.01 AC. MORE OR LESS
NET AREA: SAME
OPEN SPACE: .35 ACRE

PARKING REQUIRED

RESIDENTIAL - 1 PER BEDROOM
9 UNITS X 3 BEDROOMS = 27 REQ'D

PARKING SPACES PROVIDED

30 SPACES PROVIDED

ZONING

R-2

EARTHWORK VOLUMES:

CUT: 275 CUBIC YARDS
FILL: 100 CUBIC YARDS
*NET YARDS: NOT FOR CONTRACTOR BIDDING

SETBACKS:

25' FRONT & REAR
8' ON WEST SIDE
8' ON EAST SIDE

PROPOSED USE:

APARTMENT COMPLEX

PLAT PAGE:

524

LEGAL DESCRIPTION (SCHMITT)

LOT 3 AND PART OF LOT 2 OF CITY ADDITION TO THE CITY OF FAYETTEVILLE, ARKANSAS ACCORDING TO THE RECORDED PLAT OF SAID ADDITION (BK. 1311-505), BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS TO WIT:
BEGINNING AT A POINT WHICH IS S01°06'57"W 19.73 FEET, AND WEST 94.75 FEET FROM THE NORTHEAST CORNER OF THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 15, TOWNSHIP 16 NORTH, RANGE 30 WEST AND RUNNING THENCE WEST 93.75 FEET, THENCE S01°06'57"W 211.30 FEET, THENCE S26°34'09"E 40.24 FEET, THENCE EAST 75.05 FEET, THENCE N01°06'57"E 247.30 FEET TO THE POINT OF BEGINNING CONTAINING 0.50 ACRES MORE OR LESS, SUBJECT TO ANY RIGHTS-OF-WAY OR EASEMENTS OF RECORD.

LEGAL DESCRIPTION (DANDY)

LOT 1 AND PART OF LOT 2 OF CITY ADDITION TO THE CITY OF FAYETTEVILLE, ARKANSAS ACCORDING TO THE RECORDED PLAT OF SAID ADDITION (BK. 1311-505), BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS TO WIT:
BEGINNING AT A POINT WHICH IS S01°06'57"W 19.73 FEET AND WEST 94.75 FEET FROM THE NORTHEAST CORNER OF THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 15, TOWNSHIP 16 NORTH, RANGE 30 WEST AND RUNNING THENCE EAST 31.28 FEET, THENCE S69°18'56"E 10.48 FEET, THENCE ALONG A CURVE TO THE RIGHT WITH A RADIUS OF 73.00 FEET AND AN ARC LENGTH OF 39.45 FEET, THENCE S38°51'14"E 33.81 FEET, THENCE N01°06'56"W 194.48 FEET, THENCE S89°58'05"W 95.00 FEET, THENCE N01°06'58"E 247.30 TO THE POINT OF BEGINNING CONTAINING 0.51 ACRES MORE OR LESS, SUBJECT TO ANY RIGHTS-OF-WAY OR EASEMENTS OF RECORD.

Revisions

5MAR02	COMMENTS FROM PLAT REVIEW
18MAR02	COMMENTS FROM SUBDIVISION COMMITTEE

Carter Consulting, PA
Engineers & Surveyors
2863 OLD MISSOURI RD.
SUITE 107-C
FAYETTEVILLE, ARKANSAS 72703
(501) 444-7892 FAX 442-5480

DANDY / SCHMITT
LARGE SCALE DEVELOPMENT AND GRADING & DRAINAGE

Scale: 1" = 20'
Date: 19FEB02
Pg. No. 1/1

File with May 7, 2002 Agenda Packet

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