# FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

**FINAL AGENDA**
**CITY COUNCIL**
**JUNE 4, 2002**

A meeting of the Fayetteville City Council will be held on June 4, 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. **BRISTOL PARK:** A resolution approving a waiver of Ordinance 3793 to accept money in lieu as the park land requirement of the Bristol Park Large Scale Development.

3. **ROBINSON AVIATION:** A resolution approving a contract with the FAA and with Robinson Aviation for Fayetteville Municipal Airport tower services.

4. **APAC:** A resolution approving Change Order No. 2 to APAC-Arkansas Inc., McClinton Anchor Division.

## B. OLD BUSINESS

1. **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. The ordinance was left on the second reading at the May 21, 2002 meeting.

2. **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. The ordinance was left on the second reading at the May 21, 2002 meeting.

3. **RESOLUTION OF INTENT FOR SALES TAX:** A resolution to identify the City's intent to use tax collections if the current 1% city sales tax is extended for a second ten year term by the voters.

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

4. **SOLID WASTE CART PROGRAM:** A resolution authorizing the purchase of carts from Toter Inc. for the automated residential waste collection program. Final cost will be determined by the individual customer choices.

5. **ARKANSAS POWER STEERING & HYDRAULICS:** A resolution awarding Bid 02-24, Item 1, to Arkansas Power Steering and Hydraulics for the purchase of seven, 2003 Mack LE613 with mounted Labrie Automated Solid Waste Bodies for a total purchase price of $1,375,416.

C. **NEW BUSINESS**

1. **HOLLYBROOKE ESTATES:** A resolution to approve the offer and acceptance contract with Hollybrooke Estates Phase III for Lots 6 and 7 in the amount of $36,000 plus closing costs.

2. **RIGHT OF WAY DEDICATION:** An ordinance accepting the street right-of-way dedicated with Bridgeport Subdivision Phase VI, Copper Creek Subdivision, and Crystal Springs Subdivision, Phase II as approved by the City of Fayetteville Planning Commission.

3. **RZN 02-13.00:** An ordinance approving rezoning request RZN 02-13.00 as submitted by Mel Milholland of Milholland Engineering on behalf of Marjorie Brooks, Nanchar, Inc., and Bristol Development Group, LLC for property know as Lot 1A of CMN Business Park II, Phase I. The property is zoned C-2, Thoroughfare Commercial, and contains approximately 32.62 acres. The request is to rezone to RMF-12, Moderate Density Multi-family residential.

4. **VA 02-3.00:** An ordinance approving vacation request VA 02-3.00 as submitted by the Fayetteville School District for property located on Eagle Street west of Garland Ave. The request is to vacate a 50' wide portion of the unimproved Eagle Street right-of-way.

5. **SALEM ROAD:** A resolution awarding Bid 02-33 and approval of contract with Mobley Contractors in the amount of $108,394.00 plus a project contingency of $10,000.00 for a total cost of $118,394.00, for large scale development requirements of Salem Road at the Gary Hampton Softball Complex, and approval of a budget adjustment.

6. **CAT:** A resolution to reinstate CAT funding for the remainder of 2002 at a rate of $34,500, and approval of a budget adjustment.

D. **INFORMATIONAL**

1. **COX FRANCHISE:** Discussion of Cox Cable Franchise.

City Council June 4, 2002

| | Roll | | | | |
|---|---|---|---|---|---|
| Davis | ✓ | | | | |
| Santos | ✓ | | | | |
| Jordan | ✓ | | | | |
| Reynolds | ✓ | | | | |
| Thiel | ✓ | | | | |
| Young | ✓ | | | | |
| Marr | ✓ | | | | |
| Coody | ✓ | | | | |
| | | | | | |

Amend to minutes.

| Consent | RR. | | | | |
|---|---|---|---|---|---|
| Davis | ✓ | | | | |
| Santos | ✓ | | | | |
| Jordan | ✓ | | | | |
| Reynolds | ✓ | | | | |
| Thiel | ✓ | | | | |
| Young | ✓ | | | | |
| Marr | ✓ | | | | |
| Coody | | | | | |
| | | | | | |

City Council June 4, 2002

| Sales use tax | KS 3RD UJ. | PASS | | | |
|---|---|---|---|---|---|
| Davis | ✓ | ✓ | | | |
| Santos | ✓ | ✓ | | | |
| Jordan | ✓ | ✓ | | | |
| Reynolds | ✓ | ✓ | | | |
| Thiel | ✓ | ✓ | | | |
| Young | ✓ | ✓ | | | |
| Marr | ✓ | ✓ | | | |
| Coody | | | | | |
| | | | | | |

| Sp. Election | KS 3RD BD. | PASS | | | |
|---|---|---|---|---|---|
| Davis | ✓ | ✓ | | | |
| Santos | ✓ | ✓ | | | |
| Jordan | ✓ | ✓ | | | |
| Reynolds | ✓ | ✓ | | | |
| Thiel | ✓ | ✓ | | | |
| Young | ✓ | ✓ | | | |
| Marr | ✓ | ✓ | | | |
| Coody | | | | | |
| | | | | | |

City Council June 4, 2002

| Res. of intent | DM amend BD. ord. A ~~Re~~ Budget year 2006 | KS RJ. pass. | | | |
|---|---|---|---|---|---|
| Davis | ✓ | ✓ | | | |
| Santos | ✓ | ✓ | | | |
| Jordan | ✓ | ✓ | | | |
| Reynolds | ✓ | ✓ | | | |
| Thiel | ✓ | ✓ | | | |
| Young | ✓ | ✓ | | | |
| Marr | ✓ | ✓ | | | |
| Coody | | | | | |
| | | | | | |

| SW cont. | KS RR. to approve | | | | |
|---|---|---|---|---|---|
| Davis | ✓ | | | | |
| Santos | ✓ | | | | |
| Jordan | ✓ | | | | |
| Reynolds | ✓ | | | | |
| Thiel | ✓ | | | | |
| Young | ✓ | | | | |
| Marr | ✓ | | | | |
| Coody | | | | | |
| | | | | | |

City Council June 4, 2002

| ARK [illegible] | KS JJ | | | | |
|---|---|---|---|---|---|
| Davis | ✓ | | | | |
| Santos | ✓ | | | | |
| Jordan | ✓ | | | | |
| Reynolds | ✓ | | | | |
| Thiel | ✓ | | | | |
| Young | ✓ | | | | |
| Marr | ✓ | | | | |
| Coody | | | | | |
| | | | | | |

| ROW Dedication | 2ND BD KS | 3RD BD JJ | PASS | | |
|---|---|---|---|---|---|
| Davis | ✓ | ✓ | ✓ | | |
| Santos | ✓ | ✓ | ✓ | | |
| Jordan | ✓ | ✓ | ✓ | | |
| Reynolds | ✓ | ✓ | ✓ | | |
| Thiel | ✓ | ✓ | ✓ | | |
| Young | ✓ | ✓ | ✓ | | |
| Marr | ✓ | ✓ | ✓ | | |
| Coody | | | | | |
| | | | | | |

City Council June 4, 2002

| PZN 02-13.00 | BD 2ND. KS | KS 3RD BD. | PASS | | |
|---|---|---|---|---|---|
| Davis | ✓ | ✓ | ✓ | | |
| Santos | ✓ | ✓ | ✓ | | |
| Jordan | ✓ | ✓ | ✓ | | |
| Reynolds | ✓ | ✓ | ✓ | | |
| Thiel | ✓ | ✓ | ✓ | | |
| Young | ✓ | ✓ | ✓ | | |
| Marr | ✓ | ✓ | ✓ | | |
| Coody | | | | | |
| | | | | | |

| VA 02-300 | KS 2ND BD | BD 3RD LJ. | PASS | | |
|---|---|---|---|---|---|
| Davis | ✓ | ✓ | ✓ | | |
| Santos | ✓ | ✓ | ✓ | | |
| Jordan | ✓ | ✓ | ✓ | | |
| Reynolds | ✓ | ✓ | ✓ | | |
| Thiel | ✓ | ✓ | ✓ | | |
| Young | ✓ | ✓ | ✓ | | |
| Marr | ✓ | ✓ | ✓ | | |
| Coody | | | | | |
| | | | | | |

City Council June 4, 2002

| SALEM RD | VJ YS | | | | |
|---|---|---|---|---|---|
| Davis | ✓ | | | | |
| Santos | ✓ | | | | |
| Jordan | ✓ | | | | |
| Reynolds | ✓ | | | | |
| Thiel | ✓ | | | | |
| Young | ✓ | | | | |
| Marr | ✓ | | | | |
| Coody | | | | | |
| | | | | | |

| CAT | KS DM | | | | |
|---|---|---|---|---|---|
| Davis | ✓ | | | | |
| Santos | ✓ | | | | |
| Jordan | ✓ | | | | |
| Reynolds | ✓ | | | | |
| Thiel | ✓ | | | | |
| Young | ✓ | | | | |
| Marr | ✓ | | | | |
| Coody | | | | | |
| | | | | | |

mtg adjourned. 9:45

# FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

**FINAL AGENDA**
**CITY COUNCIL**
**JUNE 4, 2002**

A meeting of the Fayetteville City Council will be held on June 4, 2002 at 6:30 p.m. in Room 219 of the City Administration Building located at 113 West Mountain Street, Fayetteville, Arkansas.

PS 8. Amend. motion 1st. & second DAVIS.

**A. CONSENT**

1. **APPROVAL OF THE MINUTES**

PASS w/ amend. to minutes

2. **BRISTOL PARK:** A resolution approving a waiver of Ordinance 3793 to accept money in lieu as the park land requirement of the Bristol Park Large Scale Development.

3. **ROBINSON AVIATION:** A resolution approving a contract with the FAA and with Robinson Aviation for Fayetteville Municipal Airport tower services.

4. **APAC:** A resolution approving Change Order No. 2 to APAC-Arkansas Inc., McClinton Anchor Division.

**B. OLD BUSINESS**

1. **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. The ordinance was left on the second reading at the May 21, 2002 meeting.

PASS

2. **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. The ordinance was left on the second reading at the May 21, 2002 meeting.

PASS

3. **RESOLUTION OF INTENT FOR SALES TAX:** A resolution to identify the City's intent to use tax collections if the current 1% city sales tax is extended for a second ten year term by the voters.

PASS w/ amend.

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

PASS

4. **SOLID WASTE CART PROGRAM:** A resolution authorizing the purchase of carts from Toter Inc. for the automated residential waste collection program. Final cost will be determined by the individual customer choices.

PASS

5. **ARKANSAS POWER STEERING & HYDRAULICS:** A resolution awarding Bid 02-24, Item 1, to Arkansas Power Steering and Hydraulics for the purchase of seven, 2003 Mack LE613 with mounted Labrie Automated Solid Waste Bodies for a total purchase price of $1,375,416.

**C. NEW BUSINESS**

removed from agenda

1. **HOLLYBROOKE ESTATES:** A resolution to approve the offer and acceptance contract with Hollybrooke Estates Phase III for Lots 6 and 7 in the amount of $36,000 plus closing costs.

PASS

2. **RIGHT OF WAY DEDICATION:** An ordinance accepting the street right-of-way dedicated with Bridgeport Subdivision Phase VI, Copper Creek Subdivision, and Crystal Springs Subdivision, Phase II as approved by the City of Fayetteville Planning Commission.

PASS

3. **RZN 02-13.00:** An ordinance approving rezoning request RZN 02-13.00 as submitted by Mel Milholland of Milholland Engineering on behalf of Marjorie Brooks, Nanchar, Inc., and Bristol Development Group, LLC for property know as Lot 1A of CMN Business Park II, Phase I. The property is zoned C-2, Thoroughfare Commercial, and contains approximately 32.62 acres. The request is to rezone to RMF-12, Moderate Density Multi-family residential.

PASS

4. **VA 02-3.00:** An ordinance approving vacation request VA 02-3.00 as submitted by the Fayetteville School District for property located on Eagle Street west of Garland Ave. The request is to vacate a 50' wide portion of the unimproved Eagle Street right-of-way.

PASS

5. **SALEM ROAD:** A resolution awarding Bid 02-33 and approval of contract with Mobley Contractors in the amount of $108,394.00 plus a project contingency of $10,000.00 for a total cost of $118,394.00, for large scale development requirements of Salem Road at the Gary Hampton Softball Complex, and approval of a budget adjustment.

PASS

6. **CAT:** A resolution to reinstate CAT funding for the remainder of 2002 at a rate of $34,500, and approval of a budget adjustment.

**D. INFORMATIONAL**

1. **COX FRANCHISE:** Discussion of Cox Cable Franchise.

mtg adjourned 9:45

## MINUTES OF A MEETING
## OF THE
## FAYETTEVILLE 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.

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

**CONSENT**

**APPROVAL OF THE MINUTES**

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

*RESOLUTION 67-02 AS RECORDED IN THE OFFICE OF THE CITY CLERK.*

**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.

*RESOLUTION 68-02 AS RECORDED IN THE OFFICE OF THE CITY CLERK.*

**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.

*RESOLUTION 69-02 AS RECORDED IN THE OFFICE OF THE CITY CLERK.*

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

*RESOLUTION 70-02 AS RECORDED IN THE OFFICE OF THE CITY CLERK.*

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

*RESOLUTION 71-02 AS RECORDED IN THE OFFICE OF THE CITY CLERK.*

**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.

*RESOLUTION 72-02 AS RECORDED IN THE OFFICE OF THE CITY CLERK.*

**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.

*RESOLUTION 73-02 AS RECORDED IN THE OFFICE OF THE CITY CLERK.*

**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.

*RESOLUTION 74-02 AS RECORDED IN THE OFFICE OF THE CITY CLERK.*

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

*RESOLUTION 75-02 AS RECORDED IN THE OFFICE OF THE CITY CLERK.*

**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.

*RESOLUTION 76-02 AS RECORDED IN THE OFFICE OF THE CITY CLERK.*

**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.

*RESOLUTION 77-02 AS RECORDED IN THE OFFICE OF THE CITY CLERK.*

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

**OLD BUSINESS**

**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 April 16, 2002 meeting.

**Alderman Davis moved to table the item. Alderman Young seconded. Upon roll call the motion carried unanimously.**

*ORDINANCE WAS TABLED.*

**NEW BUSINESS**

**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.

*Mr. Williams read the ordinance for the first time.*

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

*Mr. Williams read the ordinance for the second time.*

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

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

Alderman Davis asked if there were any changes coming to the bond market in the near future.

Mr. Dennis Hunt, Stevens Inc., stated the fed fund rate had not been changed. Most analysis believe that it will be at least until August. They will have this transaction completed prior to that date if there were any changes in the fed fund rate. In response to questions, he stated they would do duel tracking. They will apply for a rating on this issue. They will analyze how the bonds could be marketed with that particular rating, and analyze that against the cost of bond insurance premium, whichever would be the most economically advantageous to the city was what they would recommend to the city.

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

*ORDINANCE 4309 AS RECORDED IN THE OFFICE OF THE CITY CLERK.*

**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.

Mayor Coody stated the city was currently collecting this money. They started this in 1993 with a sunset in 2003. This one penny brought in between twelve and thirteen million dollars per year. This helped fund their fire and police. This would be an ongoing tax, that they collected currently. This was not a new tax. This tax would start at the sunset of the pervious one. There would not be any overlap.

Alderman Davis stated he had not seen the ordinance that had been passed in 1993. Did this read verbatim to what was done at that time or had changes had been made.

Mr. Williams stated he had reviewed the previous ordinances and then looked at the current law, which had not changed significantly. There had been some minor changes on how they defined a single transaction. This ordinance tracked very closely with their previous ordinance.

*Mr. Williams read the ordinance for the first time.*

Mr. Pete Reagan, President of the Fayetteville Firefighters Local Association, stated in 1999 the Insurance Services Office preformed a fire defense analysis of the Fayetteville Fire Department. They had been able to keep their ISO Rating of 4, but the report brought to light the realities we realized for the last fifteen years. That reality is that they have not grown with the rest of the city. They were not able to meet their goal of the four minute response times. Their resources have been stretched thin. In 1963, the city had four fire stations twenty-nine years ago. In 1978, they added a fifth fire station, that was twenty-four years ago. Today they still served their city with five fire stations. He was not sure how many runs they made twenty-nine years ago, but they are anticipating 5,000 runs this year. The 1999 ISO Report gave them a rating of 1.82 out of a possible 4 points for fire station locations. This was less than fifty percent of the possible points. What they were saying was that they did not have enough firefighters, apparatus, or fire stations. The International Association of Firefighters preformed a graphic information study on their city this year. They have seen the draft and they were saying the same thing. They were short firefighters, fire apparatus and fire stations. National Fire Protection Code 1710 recommends a minimum staffing on an engine company with four persons and a minimum staffing of a latter company of four persons. Unless they existed a high target area or high raise complex, such as the University of Arkansas. They then recommended five to six personnel per company. They were currently staffed with three. They were in desperate need of at least three new fire stations with apparatus, forty-five firefighters and a fully equipped reserved apparatus both engines and trucks. Their new fire chief had the insight to build the Fayetteville Fire Department into the best fire department in the State of Arkansas. They could not build this department without money and it will take millions of dollars to accomplish this. He was representing all eighty-three members of the Fayetteville Fire Department to ask them to support the one-cent sales tax. Without it there would be fire station closings and firefighters will be laid off their jobs.

Chief Bosh stated the Fire Department was working diligently to ensure that they provide a comprehensive blank of public safety and fire service and rescue services. They were in the process of working on their strategic plan for their organization which would help them to address the needs of their community. They were in need of additional personnel and station resources.

Detective Tad Scott, President of the Fraternal Order of Police, stated he understood the dire situation that the city was going to be in without the restructuring of the sales tax. He wanted to express their support in favor of the restructuring as well as the election for the sales tax. It concerned him, not just as a police officer, but his fellow employees and citizens. It also affected their ability to maintain their quality of service.

Chief Rick Hoyt stated, in 1993 when this tax first was passed, they began the job of building up the police department and adding police officers. They were not in as bad of shape as the Fire Department because they had been able to take advantage of Federal Grants that they have not had. He has been involved with the budget process since 1986, this years budget was the roughest one that he has ever been involved in. They had come to the end of the money. They could not afford to let this tax go by without getting it passed. The police department uses approximately twenty-eight percent of the General Fund. They were a big user. If they did not have the money from the sales tax next year to operate, it would mean jobs and public safety would suffer. He had taken a call last week from a man who wanted to know why it had taken the police twenty-five minutes to get to the day care center where there was a custody dispute going on. When he checked on the call, he found that it had not been twenty-five minutes; it had been fifty minutes. They only had seven officers on the street and every one of the officers were busy. They were all on high priority calls. They track what they call Code Zero. That meant every time a citizen called and needed a police officer and they did not have any because they were all busy. For a one-year period, they would have approximately one thousand Code Zeros. They tracked them by priority. Two or three hundred of those will be high priority calls. They did not add any personnel this year, but the citizens still needed the police. The needed this tax because they had to keep moving forward.

Alderman Davis stated, currently the sales tax was distributed 25% General Fund and 75% CIP. What was this administration's view on this?

Mayor Coody stated, he knew they needed to restructure. What worked in 1993 does not work for 2002. They had plenty of money in capitol and not enough money in operations. They could build a couple of fire stations, but they could not afford to staff them.

Mr. Steve Davis stated, he had not updated the projections from the November briefing. In November they had produced a briefing for City Council which indicated that they would use approximately 1.9 million dollars in reserves to fund 2002 operations. Our adopted budget uses 1.879 million. Based on where their spending totals were and based on where their revenue projects are for the 2002 budget, the essential elements for the briefing in November indicated that a minimum split of 50/50 would fund General Fund ongoing operation through 2006. In 2006 they would use approximately $400,000 of reserves to fund the ongoing operations.

Mayor Coody stated, they did not have a formal position yet, but they had been discussing approving a 50/50 split with the option to review after five years to see if it was still a valid approach or not. In 1993, they did not project what the world would look like in 2003 and they did not allow any flexibility to be able to maintain a good relationship between operations and the capital expenditures. They would like to have some flexibility down the road.

Mr. Davis stated, from 1990 through 2000, they had experienced a greater than twenty-five percent increase in population. With that kind of growth it was hard to set hard and fast number early in the game. It was his recommendation that the Council give themselves some flexibly, especially in the last five years of this tax.

Alderman Young asked how they would restructure this. All this ordinance called for was the reallocation of the tax.

Mr. Williams stated, the resolution was passed by the City Council in 1993. Those sorts of resolutions were not enforceable from a constitutional point of view or legal point of view. It was a moral commitment by the City Council. It was the guarantee that City Council and mayor gave to the voters. He suggested another resolution similar to the one passed back then. It did not have firm legal affect, but he thought it could be enforced just like this one had been.

Alderman Young asked why the resolution had not been prepared for tonight.

Mr. Williams did not believe they should pass the ordinance tonight. He did not believe it was his place to start pulling out percentages or length of time. This was a Council decision for them.

Alderman Davis stated, a lot of people had approached him on this and they would like to know the split between the operational and capital. A lot of people looked at this as being brick and mortar. They needed to let the population and let them know what their split was going to be.

Alderman Young stated, the proportion should be up to the mayor. It was his proposal.

Mayor Coody stated, what he would propose would be a 50/50. They have not come up with a stance because they were wanting input from the Council.

Alderman Young stated, the public needed to know exactly what they were voting on.

Alderman Thiel stated they needed to draft a resolution with the percentage on there, then they could debate this and take public comment.

Mr. Williams asked if they supported a 50/50 split for the first five years of this tax, 2008; and/or if there is to be any modification. What did they want him to put into the resolution?

Alderman Thiel stated, she agreed they should review it after five years.

*ORDINANCE WAS LEFT ON THE FIRST READING.*

**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.

*Mr. Williams read the ordinance for the first time.*

Alderman Thiel stated, they needed to have the election in July in order to give them enough time to do their budget for next year.

*ORDINANCE WAS LEFT ON THE FIRST READING.*

**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.

Mr. Conklin stated, the Archers have offered a bill of assurance limiting the use of the property to the uses allowed in A-1 zoning district and limits certain uses within that district. Use Unit 8 will be limited to single-family homes, no manufactured homes. Use Unit 7 was also limited. Use Unit 6 was eliminated. Basically, the Archers would like to reestablish a barn on the property and bring in horse and other type of live stock for their own personal use.

Alderman Santos stated, the Archers use to have a horse, but it died and they were wanting to get another horse and to build a barn for it. This would help preserve the mountain top.

Alderman Davis asked if this ran with the owner or the land.

Mr. Conklin stated it ran with the land.

**Alderman Davis 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.*

*ORDINANCE WAS LEFT ON THE SECOND READING.*

**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.

*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.*

*ORDINANCE WAS LEFT ON THE SECOND READING.*

**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.

*Mr. Williams read the ordinance.*

Alderman Thiel stated half of this right-of-way had been vacated.

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

*Mr. Williams read the ordinance.*

**Alderman Jordan moved to suspend the rules and move to the third and final reading. Alderman Reynolds 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.**

*ORDINANCE 4390 AS RECORDED IN THE OFFICE OF THE CITY CLERK.*

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

**Alderman Santos moved to table the item until the second meeting in June. Alderman Jordan seconded. Upon roll call the motion carried unanimously.**

*APPEAL WAS TABLED UNTIL THE JUNE 18, 2002 MEETING.*

**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.

Mr. Boettcher stated, they had been using water system revenues to cash flow their wastewater improvement costs. Recently they had obtained a reimbursement of those expenditures totally about 1.5 million dollars from the bonds that they had passed. In looking at their water system, they had approximately 525 miles of water main and about seventy-five thousand customers, carrying thirteen million gallons per day. They were finding their losses were running a little high. They were losing about twenty percent of water on an annual basis of the water that they purchase. They should be down in the fifteen percent range. They were not keeping up with the maintenance of the system. They were not replacing the lines at the same rate that they were aging. The current in-house program, they targeted 8,000 feet of water main to replace in 2002. At that rate it would be three hundred and forty years before they replaced it again. They felt it was important to reinvest this 1.5 million back into the system. They had about fifty water main projects that have been identified where they need replacements. They would be outsourcing the design to an engineer, but they would be defining what they wanted designed and minimize the administrative costs. Most of the money they were asking for here would go into actual construction to replace water lines.

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

*RESOLUTION 78-02 AS RECORDED IN THE OFFICE OF THE CITY CLERK.*

**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.

Mayor Coody stated, they did not have the staff to do this in-house. This has been through the selection process. They wanted to put everything regarding this project on the web. All the information will be on the web and accessible. They would be the central clearinghouse for this entire project. All communications will be electronic and public.

Mr. James Foil and Mr. Jerry Sonderegger

Mr. Foil gave an overview of their company and the scope of services that they provide.

Mr. Sonderegger stated they provide professional liability insurances and other insurances. They understood the scope and the cost of this project as set out in the contract. There would not be a change in the scope or the cost without prior written approval of the City Council. The overall scope of this project was to provide coordination between all of the various consultants. There were four to five major consultants and major projects within this one. It will be their task to ensure the coordination among those and to make sure that they were all working toward a common goal. It was very important to note that what they were hiring them to do was to act as an extension of their owner's staff. The owner did not have the staff to coordinate or manage a project of this size. They will be identifying the status of existing contracts. There were a number of contracts in place. They will then develop a program schedule and budget for the overall program. They will develop a steering document with a phasing plan. They would be able to coordinate the four to five designs and indicate what needs to be done first, etc. They would also control the cost of the overall project.

Alderman Young asks if the city would get a copy of the CAD standards.

Mr. Sonderegger replied yes.

Alderman Young then asked if there would be another contract for construction, or would they amend this contract for construction.

Mr. Sonderegger stated it would be up to the City Council. The way the contract was written at this point, it was a stand alone project. The contract was written for pre-design services only. If the Council wished, the design services would follow that, followed by the construction phases.

Mr. Boettcher stated they would develop standards so all the construction and design contracts will be the same. They were trying to get the project started off with uniformity and togetherness. It would allow the city to have one set of standard contract forms, plan layouts, sheet drawings. To put the whole thing together. They did not include any subsequent phases. For the Council's information, there were subsequent services that they will have to negotiate with some firm, which included value engineering, construction phase services, and design phase services were not included. He had felt it was appropriate to negotiate this phase of the work to get them off to a good start. If they have a successful relationship, they can negotiate another contract or an amendment, what ever was fitting.

**Alderman Davis moved to approve the resolution. Alderman Young seconded.**

Mr. Erf stated he thought it was a good idea to hire them. He asked if they would provide a web site ready with information from their presentations.

Mr. Foil stated the active project software that they used allowed them a variety of levels of security. Parts of it could be opened to the public, some could be reserved by access to the engineering firms. They could put a lot of documents on the web site and have it available to the public in whatever format would be appropriate.

**Upon roll call the motion carried unanimously.**

*RESOLUTION 79-02 AS RECORDED IN THE OFFICE OF THE CITY CLERK.*

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

Mayor Coody stated this was a public hearing on the raze and removal.

Ms. Cora Langford, owner, stated she had lived there for thirty-four years. The house was run down, but she was in the process of selling it. The residence was not currently livable.

Alderman Reynolds asked if the buyers were going to tear the house down.

Ms. Langford stated it was her understanding that they were going to tear the house down.

Mr. Ernest stated the city had been contacted by loan officers with Arvest Bank; and Mr. and Mrs. Ray Allred. Their recommendation was that the Council pass the resolution which required a raze and removal of the house. It was a house that needed to be removed for public health and safety. They have moved very slowly on this in order to make sure that they notified every one.

Alderman Young stated he would be in favor of tabling this until the second meeting in June to give them time to close on the house.

Alderman Reynolds stated even though she was selling this property, they would like to have a time limit for the house to be torn down in. He did not want the buyer to think he had time to fix this up. He wanted to make it clear to the buyer that he was buying a lot. This house needed to be removed and they should make sure the house was torn down.

Alderman Davis stated he did not want them to do this and give her a bill for something that was not included in the sale price. He did not want to take any money out of her pocket.

**Alderman Young moved to table the item until June 18. Alderman Davis seconded. Upon roll call the motion carried unanimously.**

*RESOLUTION WAS TABLED UNTIL THE JUNE 18, 2002 MEETING.*

**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.

*Mr. Williams read the ordinance.*

Chief Bosh stated they had offer service by contract. They had an individual contract and an association contract. On an individual contract they were losing about $87.00. On an association membership they were losing $300 per response. This ordinance and fee increase will simplify the process. One fee fits all. There would be no associations. This would help them recover some of the costs that they did incurred when they responded outside the city. This was a voluntary agreement. No one was forced to sign a contract with the city.

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

*Mr. Williams read the ordinance*

**Alderman Santos moved to suspend the rules and move to the third reading. Alderman Jordan 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 4391 AS RECORDED IN THE OFFICE OF THE CITY CLERK.*

*MEETING ADJOURNED AT 8:45p.m.*

A.4

# STAFF REVIEW FORM

XX AGENDA REQUEST

CONTRACT REVIEW

GRANT REVIEW

For the Fayetteville City Council meeting of 6/4/02

FROM:

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

ACTION REQUIRED:

Review and approve Change Order #2 to APAC-Arkansas Inc., McClinton Anchor Division. Signature of the Mayor required.

COST TO CITY:

| Cost of this Request | Category/Project Budget | Category/Project Name |
|---|---|---|
| $ (102,202) - Reduction to Contract | $ 2,719,234 | Airfield Pavement Rehab / Taxiway |

| Account Number | Funds Used to Date | Program Name |
|---|---|---|
| 5550.3960.7820.29 | 699,311 | Capital |

| Project Number | Remaining Balance | Fund |
|---|---|---|
| 00029 | 2,019,923 | Airport |

BUDGET REVIEW: XX Budgeted Item X Budget Adjustment Attached

Budget Manager

Administrative Services Director

CONTRACT/GRANT/LEASE REVIEW:

GRANTING AGENCY:

Marsha Farthing — Accounting Manager — Date 5/24/02

Internal Auditor — Date 5/21/02

City Attorney — Date 5/21/02

ADA Coordinator — Date

Purchasing Officer — Date 5/22/02

STAFF RECOMMENDATION: Approval of Change Order #2

Division Head — Date

Department Director — Date 5/17/02

Administrative Services Director — Date

Mayor — Date 5/23/02

Cross Reference

New Item: Yes No

Prev Ord/Res #: 123-01

Orig Contract Date: 09/04/2001

Orig Contract Number: # 814

# STAFF REVIEW FORM



Description: Change Order #2 - Airfield Pavement Rehab / Taxiway Widening

Comments:

**Budget Coordinator:**

Reference Comments:

**Accounting Manager:**

Changes as noted by Internal Auditor.

**City Attorney:**

**Purchasing Officer:**

**ADA Coordinator:**

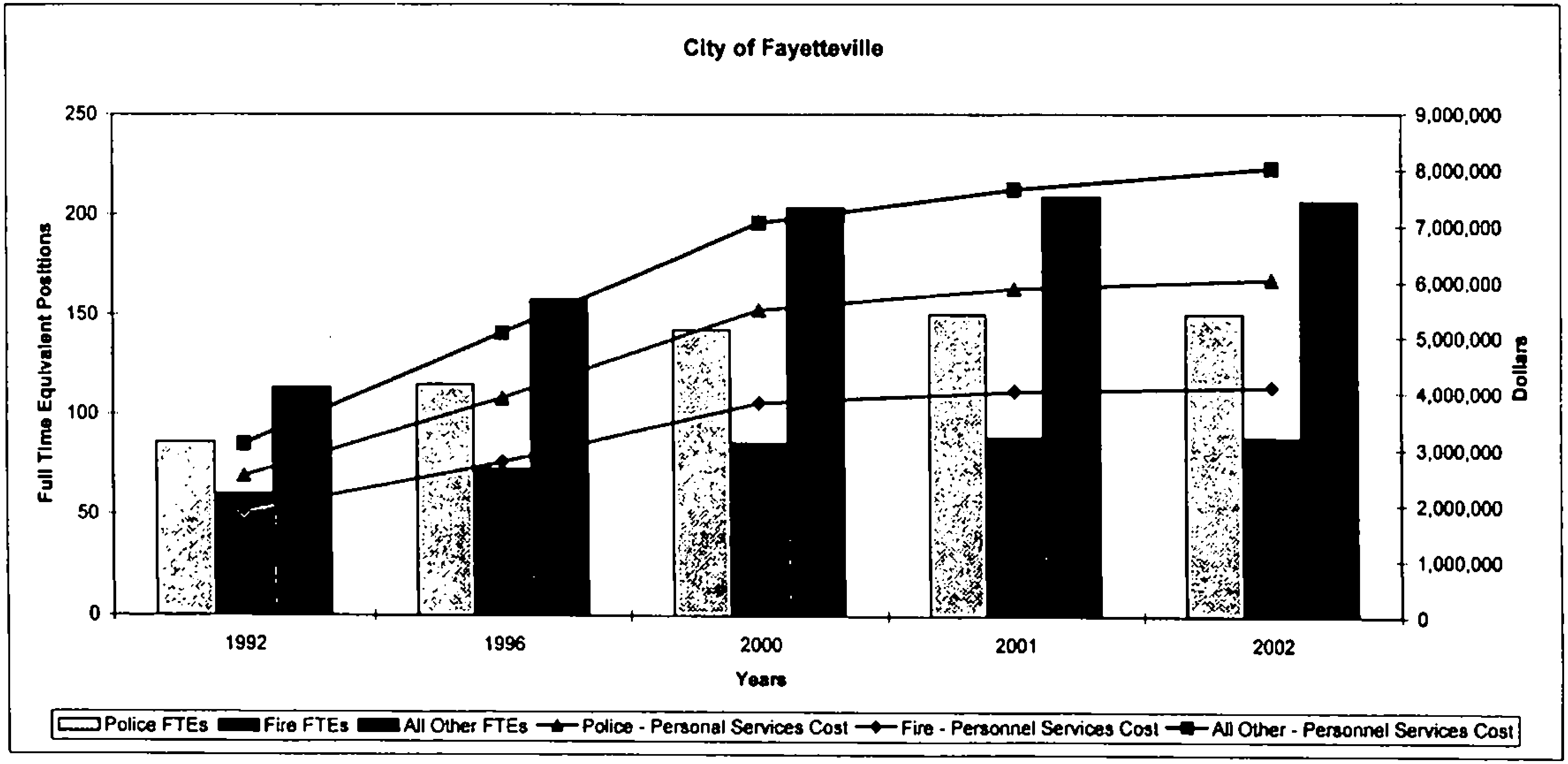
**Internal Auditor:**

Change order amt. on page 2 (of change order) is $102,205 ; change order amt. in letter from Ray B. is $102,202.
(pg. 2 of chg. order - [green sticky note] - does not tie to original contract)

B-1

# City of Fayetteville
## Full Time Equivalent Positions and Dollar Amount for General Fund Personnel Services

| | 1992 | | 1996 | | 2000 | | 2001 | | Budgeted 2002 | |
|---|---|---|---|---|---|---|---|---|---|---|
| | FTEs | Dollars | FTEs | Dollars | FTEs | Dollars | FTEs | Dollars | FTEs | Dollars |
| Police Department | 86.00 | 2,491,262 | 114.73 | 3,888,510 | 142.33 | 5,491,998 | 150.33 | 5,892,690 | 150.33 | 6,049,164 |
| Fire Department | 60.00 | 1,834,162 | 73.00 | 2,745,834 | 86.00 | 3,807,294 | 89.00 | 4,020,987 | 89.00 | 4,096,195 |
| All Other General Fund Personnel | 113.05 | 3,063,134 | 157.83 | 5,068,901 | 203.65 | 7,062,835 | 208.95 | 7,660,826 | 206.40 | 8,026,684 |
| Salary Contingency will be allocated to each department as needed | | | | | | | | | | 1,645,658 |
| Totals | 259.05 | 7,388,558 | 345.56 | 11,703,245 | 431.98 | 16,362,127 | 448.28 | 17,574,503 | 445.73 | 19,817,701 |




H:\BUDGET\Issuebud\budbrief\FTE and Personnel Cost for GF

May 28, 2002

AGENDA SESSION
CITY COUNCIL
JUNE 4, 2002

**ADDITIONAL INFORMATION:**

1. **SALES AND USE TAX:** Additional information for Item B.1.

2. **SALEM ROAD:** Additional information for Item C.4.

3. **CAT:** Additional information for Item C.5.

4. **COX FRANCHISE:** Addition information for Cox Cable Franchise/Community Access Television Item D.3.

City of Fayetteville, Arkansas

**General Fund Revenue and Expenditures**
**Comparison of Results 1993 and 2002**

| Service Cost Impact Change | 1993 | 2002 | Increase/ Decrease | Percent |
|---|---|---|---|---|
| Consumer Price Index Change | 144.00 | 179.80 | 35.80 | 24.86% |
| Population Growth | 46,406 | 60,887 | 14,481 | 31.21% |
| Total Change | | | | 56.07% |

The costs of City services would have to have increased by 56% to keep up with inflation and population growth from 1993 to 2002.

| | | | | |
|---|---|---|---|---|
| **Revenue:** | | | | |
| City Sales Tax | $5,059 | $2,841,000 | $2,835,941 | |
| Property Taxes | 1,109,410 | 0 | -1,109,410 | |
| Total City Sales Tax and Property Taxes | $1,114,469 | $2,841,000 | $1,726,531 | 154.92% |
| All Other General Fund Revenue | $10,179,728 | $13,305,000 | $3,125,272 | 30.70% |
| Total | $11,294,197 | $16,146,000 | $4,851,803 | 42.96% |

Revenue lagged population growth and inflation by 13%.

| Department Net Program Cost: | 1993 | 2002 | Increase | Percent |
|---|---|---|---|---|
| Parks & Recreation | $727,055 | $1,119,149 | $392,094 | 53.93% |
| Library | 278,416 | 713,720 | 435,304 | 156.35% |
| Salary Contingency - All General Fund | | 1,392,353 | 1,392,353 | |
| **Public Safety Total** | **4,744,197** | **10,445,964** | **5,701,767** | **120.18%** |
| Police | 2,508,526 | 5,435,457 | 2,926,931 | 116.68% |
| Fire | 2,067,101 | 4,466,513 | 2,399,412 | 116.08% |
| Animal Services | 168,570 | 543,994 | 375,424 | 222.71% |
| **All Other Departments** (see listing below) | **4,708,356** | **5,501,631** | **793,275** | **16.85%** |
| Total Net Program Cost | $10,458,024 | $19,172,817 | $8,714,793 | 83.33% |
| Net Program Cost Compared to Undefined Revenue (Increase Reserves)/Decrease Reserves | ($836,173) | $3,026,817 | | |

Population growth and inflation increased 40% more than basic City administration costs for 1993 - 2002. However, because our two largest departments, police and fire, each grew 116%, the total General Fund cost increased by 83% while revenue increased by only 43%.

* Parks & Recreation amounts do not include any HMR tax monies.

**Listing of All Other Departments:**

**General Government**
- Mayor's Administration
- City Council
- City Attorney
- City Prosecutor
- Hot Check
- District Judge
- District Court
- Economic Development
- City Clerk
- Miscellaneous

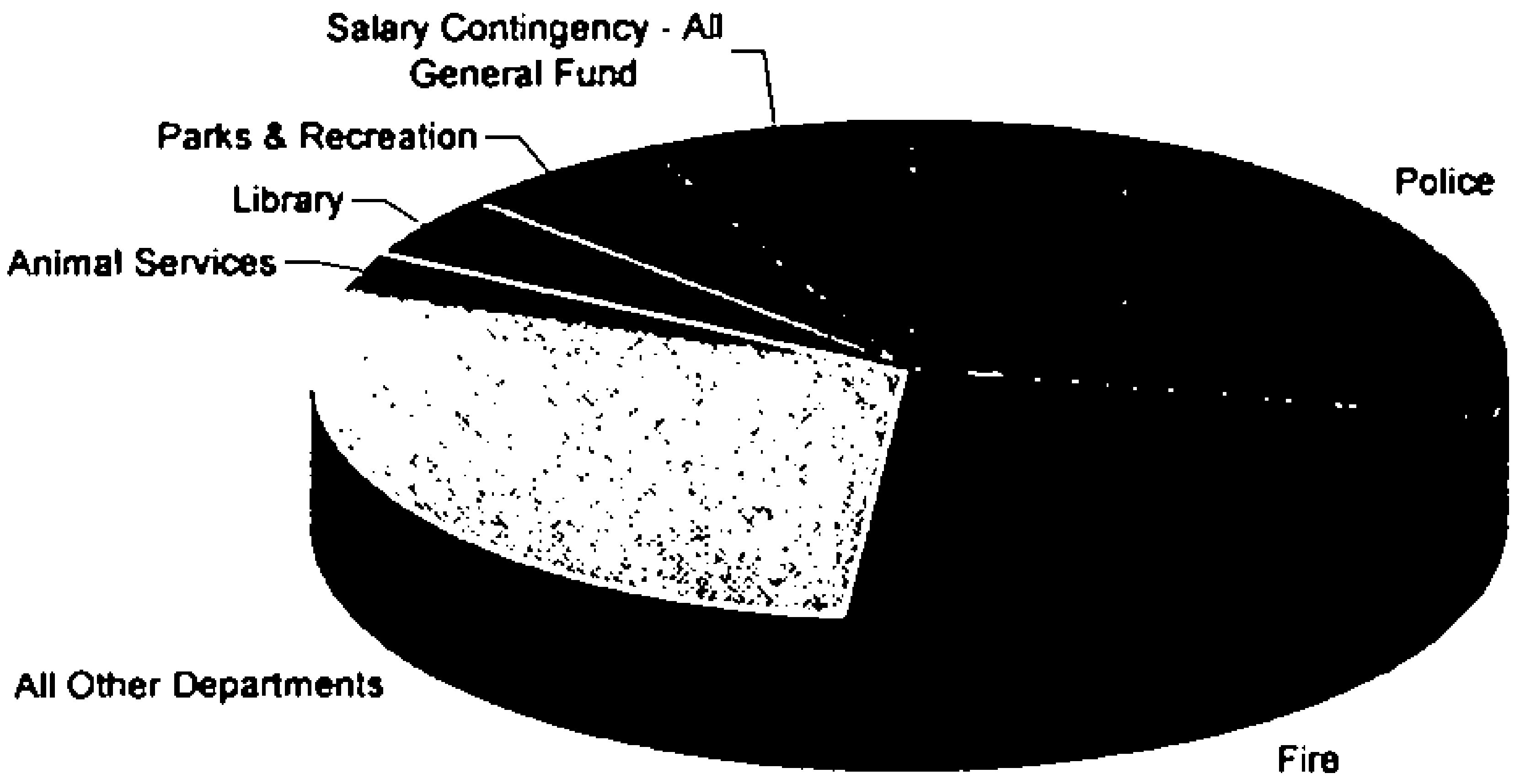
**Urban Development**
- Urban Development Director
- Cable Administration
- Yvonne Richardson Community Center
- Public Lands Maintenance
- Planning
- Inspections

**General Services Department**
- General Services Director
- Utilities Management
- Parking Management

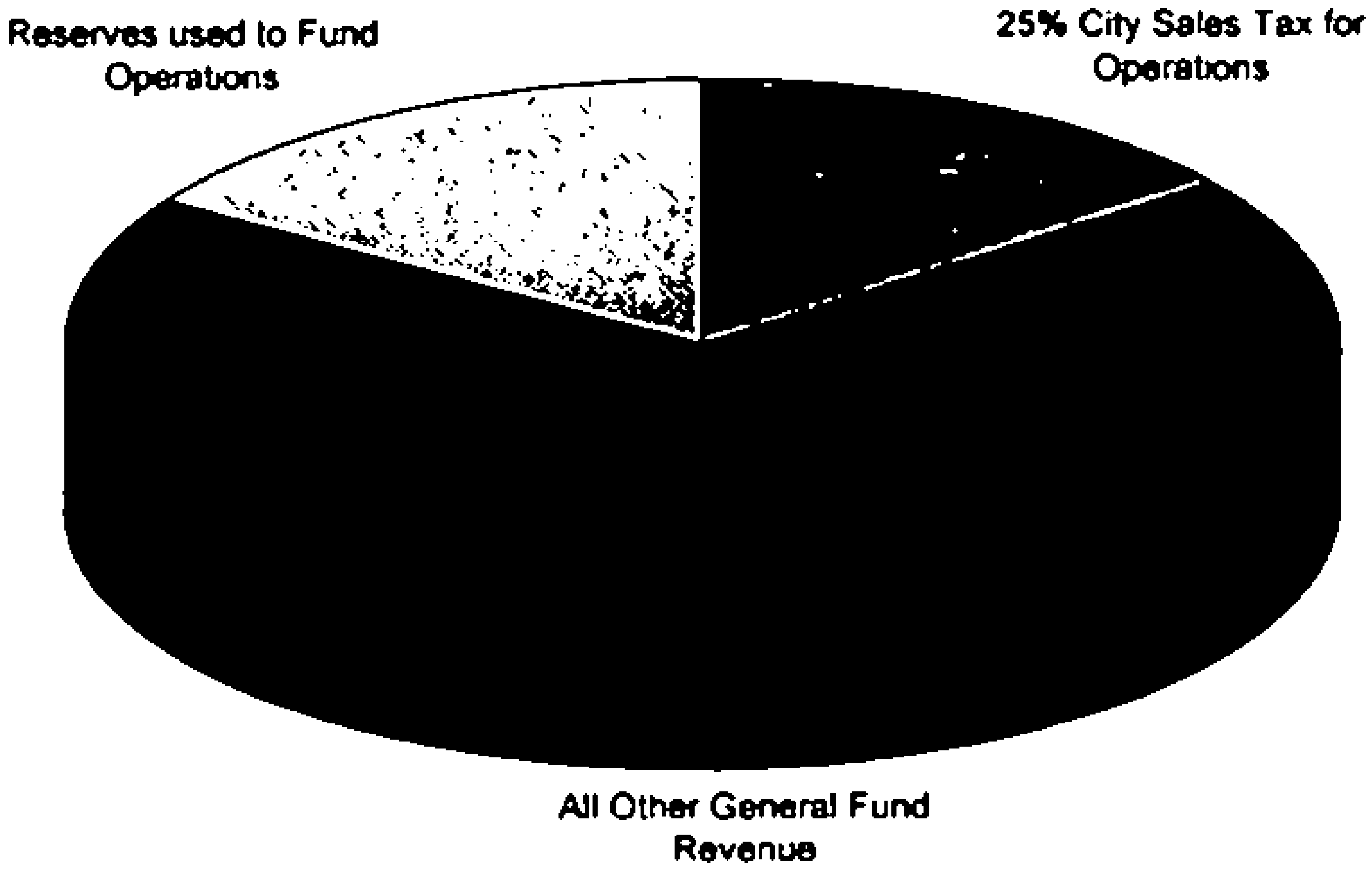
**Administrative Services Department**
- Administrative Services Director
- Human Resources
- Accounting & Audit
- Budget & Research
- Billing & Collections
- Program Integrity
- Building Maintenance
- Purchasing
- Information Technology

City of Fayetteville, Arkansas
General Fund

2002 Expenditures
$19,172,817

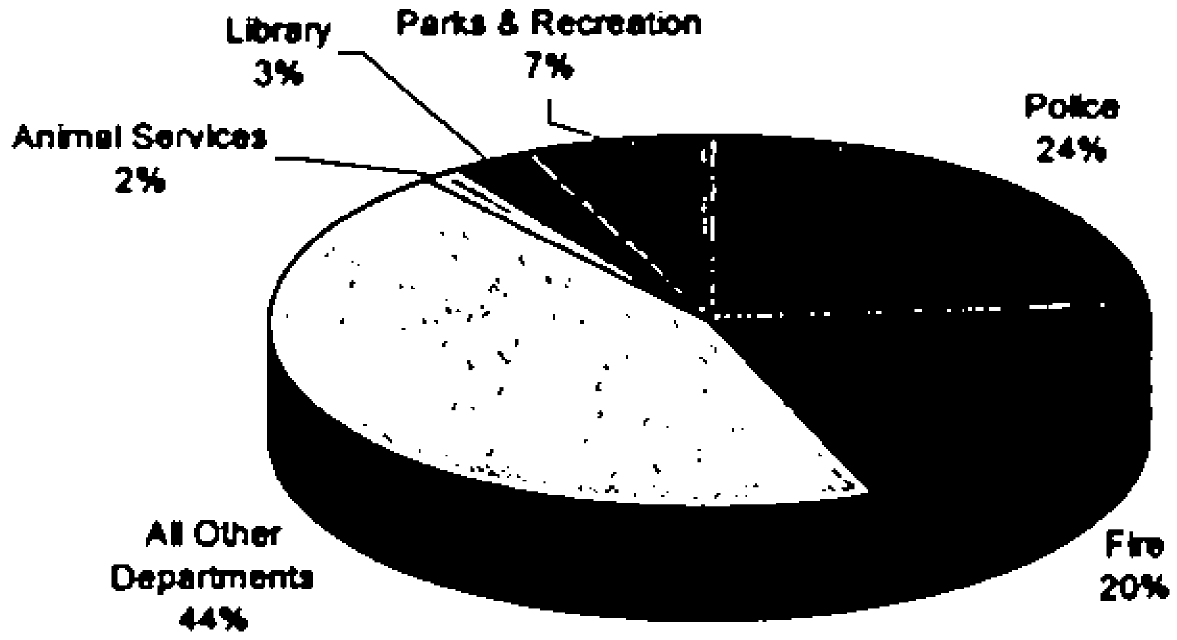



2002 Revenue and Use of Reserves
$16,146,000

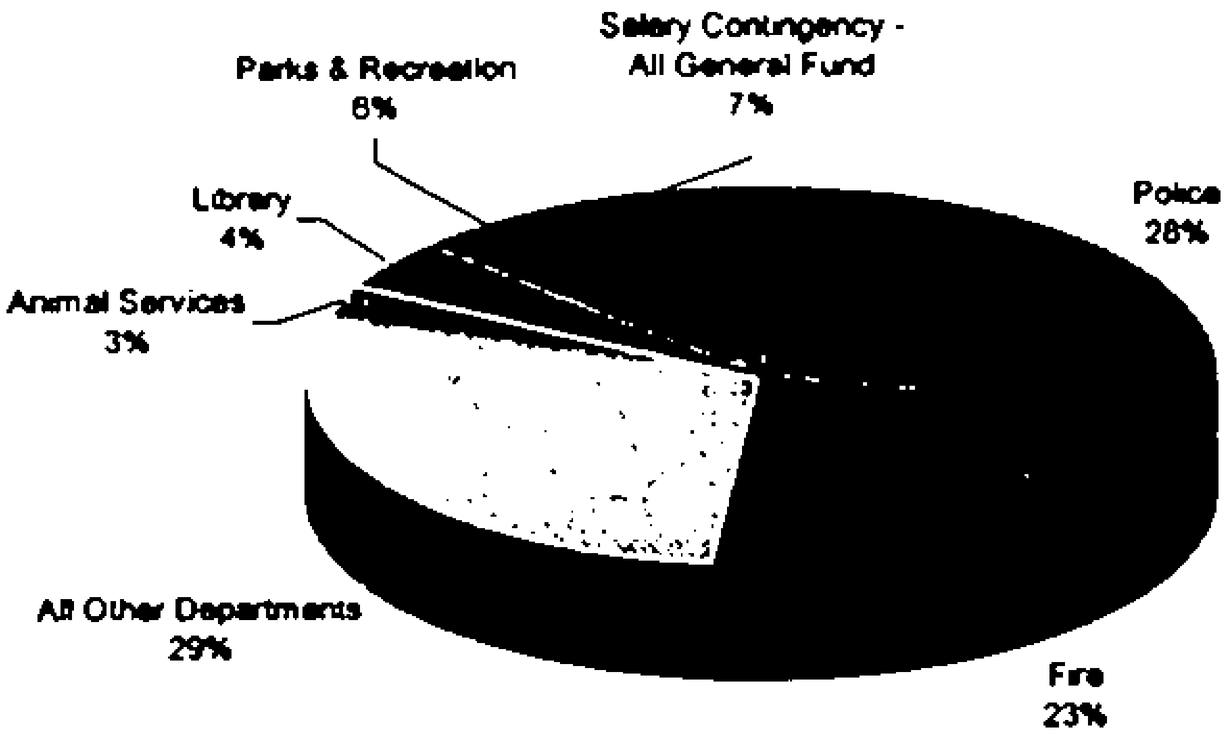


City of Fayetteville, Arkansas
General Fund

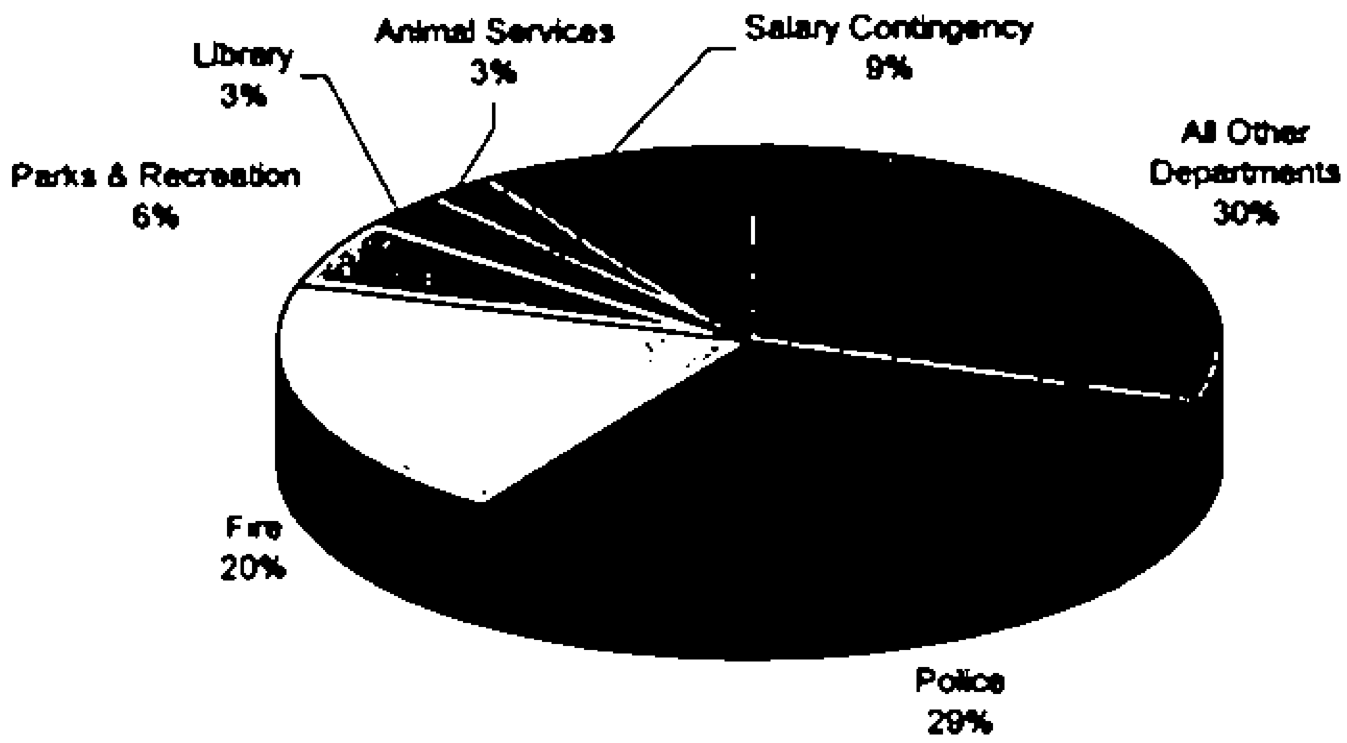
1993 Expenditures




2002 Amended Budgeted Expenditures



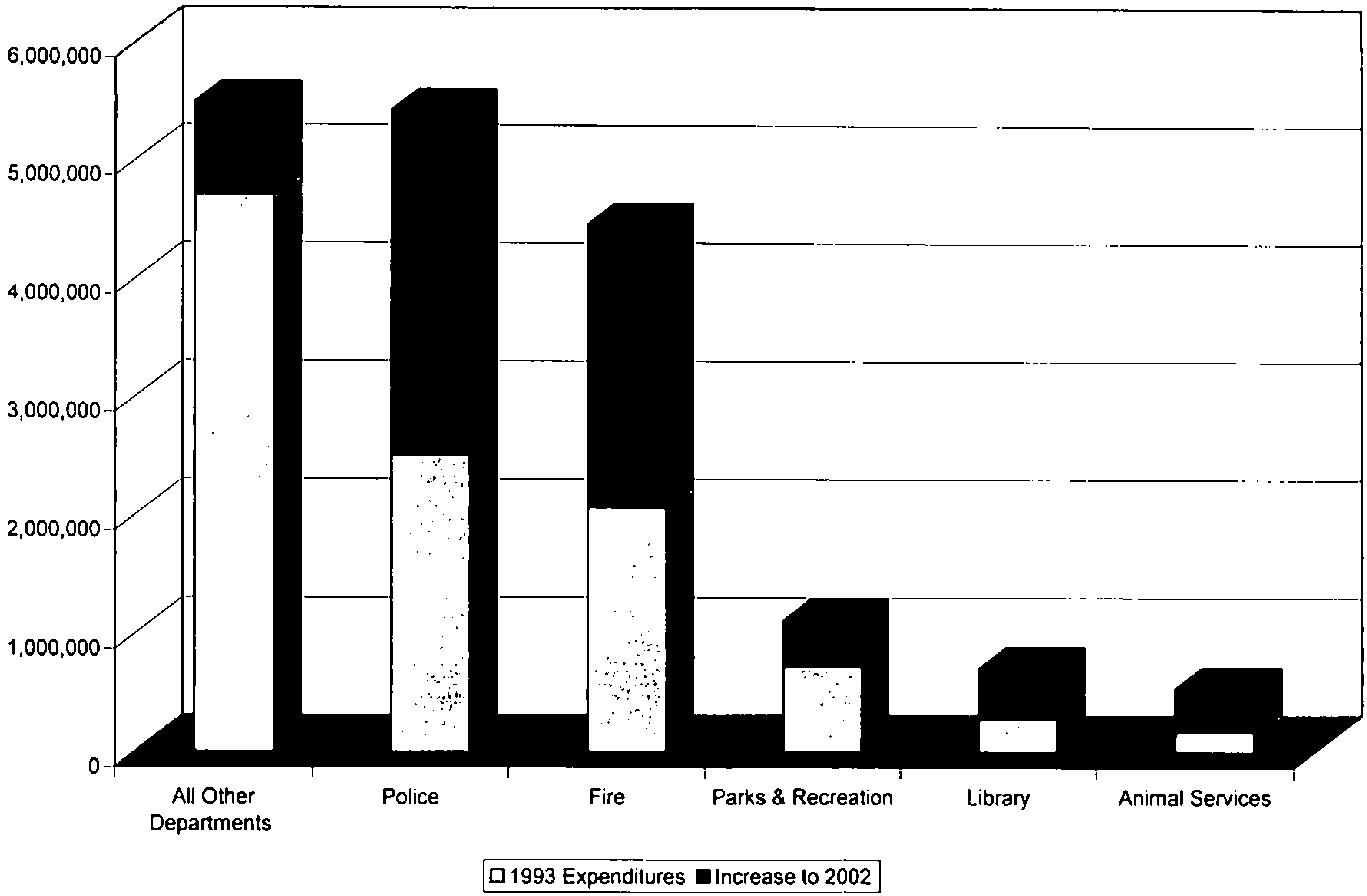

2004 Projected Expenditures




Salary contingency is used to fund salary increases and group benefit costs for all department in General Fund.

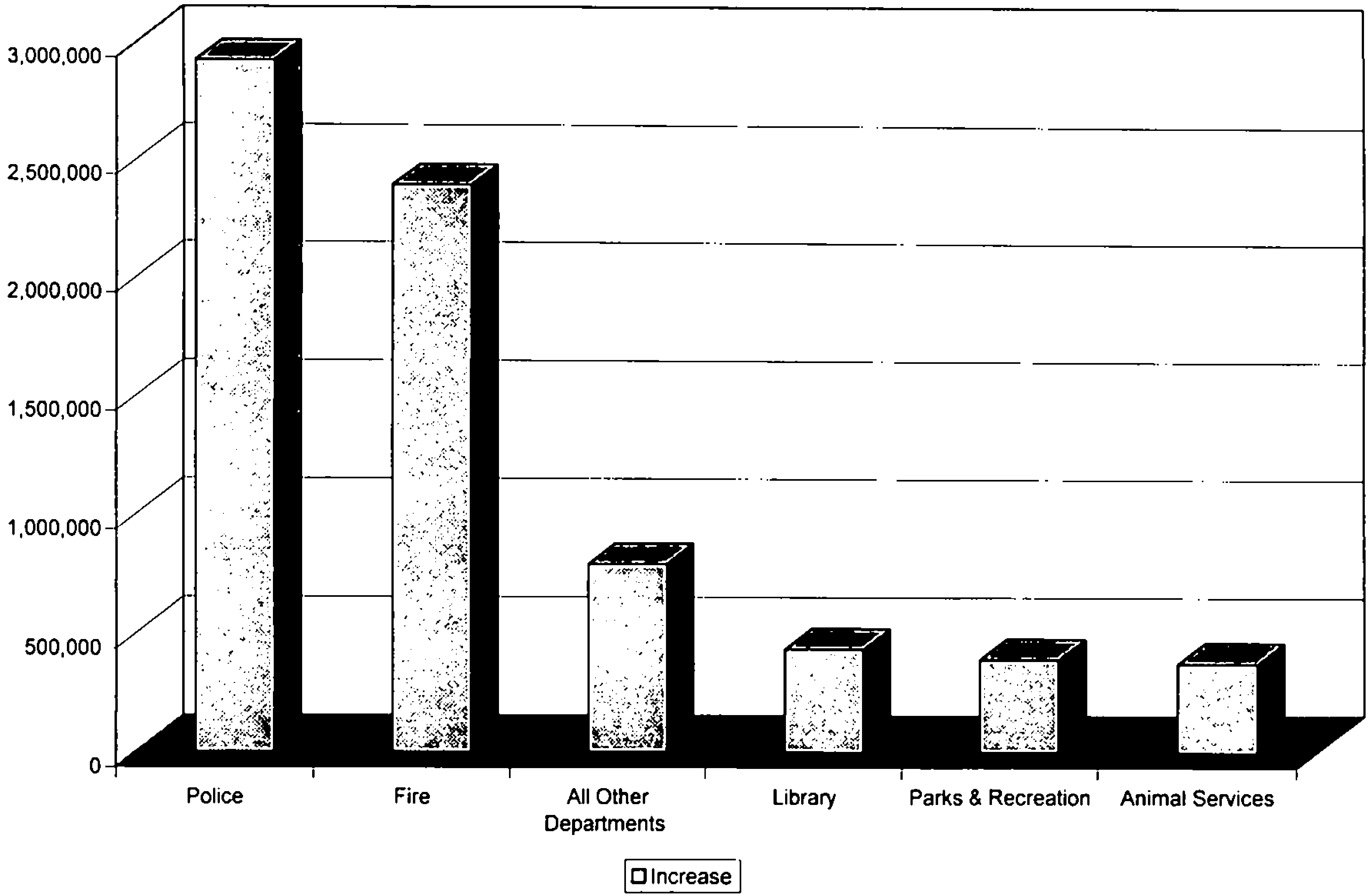
## City of Fayetteville, Arkansas
## General Fund

### 1993 Expenditures and Increase in Expenditures to 2002



City of Fayetteville, Arkansas
General Fund

Expenditure Increase from 1993 to 2002






5

RECEIVED
MAY 24 2002
ACCTG. DEPT.

# STAFF REVIEW FORM

____ Agenda Request
xx Contract Review
____ Grant Review

For the Fayetteville City Council meeting of: June 4, 2002

**FROM:**

| | | |
|---|---|---|
| **Connie Edmonston** | **Parks & Recreation** | **Urban Development** |
| Name | Division | Department |

**ACTION REQUIRED:**
**Award of bid #02-33 and approval of contract with Mobley Contractors in the amount of $108, 394, plus a project contingency of $10,000 for a total cost of $118,394, for large scale development requirements of Salem Road at the Gary Hampton Softball Complex. In addition, approval of a budget adjustment.**

**COST TO CITY:**

| | | |
|---|---|---|
| $118,394 | $123,463 | Parks Development |
| Cost of this Request | Category/Project Budget | Category/Project Name |
| 2250-9250-5809.00 | $ 15,996 | Gary Hampton Softball Complex |
| Account Number | Funds Used to Date | Program Name |
| 96093.1 | $ 107,467 | Parks Development |
| Project Number | Remaining Balance | Fund |

**BUDGET REVIEW:** x x Budgeted Item xx Budget Adjustment Attached

for SLD
Budget Manager

Administrative Services Director

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

| | | | |
|---|---|---|---|
| Marsha Hutchins | 5/24/02 | | |
| Accounting Manager | Date | ADA Coordinator | Date |
| | 5/28/02 | Nancy Smith | 5/28/02 |
| City Attorney | Date | Internal Auditor | Date |
| P Vice | 5/28/02 | | |
| Purchasing Officer | Date | | |

**STAFF RECOMMENDATION:** Award of Bid #02-33, approval of contract and budget adjustment.

| | | |
|---|---|---|
| Connie Edmonston | 5-24-02 | |
| Division Head | Date | Cross Reference |
| Hugh Earnest | 5-28-02 | |
| Department Director | Date | New Item: X Yes ___ No |
| | 5/28/02 | |
| Administrative Services Director | Date | Prev Ord/Res #: ____ |
| Dan Coody | 5/28/02 | |
| Mayor | Date | Orig Contract Date: ____ |

# STAFF REVIEW FORM

Description **Gary Hampton Softball Complex Street** Meeting Date **June 4, 2002**

Comments:

Reference Comments:

Budget Coordinator

Accounting Manager

City Attorney

Purchasing Officer

ADA Coordinator

Internal Auditor

**City of Fayetteville, Arkansas**
**Budget Adjustment Form**

| Budget Year | Department / Division / Program | Date Requested | Adjustment # |
|---|---|---|---|
| 2002 | Department: Urban Development<br>Division: Parks and Recreation<br>Program: Capital Improvements | 05/24/2002 | |

**Project or Item Requested:**

Contingency funds for the Gary Hampton Softball Complex requirements of Salem Road in the amount of $ 10,927.

**Project or Item Deleted:**

$10,927 from the Community Park capital project.

**Justification of this Increase:**

The bid was higher that anticipated. This project needs to have a project contingency of $10,000 and the budget was short $10,927. Hopefully, the contingency funds will not be needed.

**Justification of this Decrease:**

At this point in time, the site for the Community Park has not been determined.

**Increase Expense (Decrease Revenue)**

| Account Name | Amount | Account Number | | | | | Project Number | |
|---|---|---|---|---|---|---|---|---|
| Street Improvements | 10,927 | 2250 | 9250 | | 5809 | 00 | 96093 | 1 |

**Decrease Expense (Increase Revenue)**

| Account Name | Amount | Account Number | | | | | Project Number | |
|---|---|---|---|---|---|---|---|---|
| Park Improvements | 10,927 | 2250 | 9250 | | 5806 | 00 | 02002 | 1 |

**Approval Signatures**

| | Date |
|---|---|
| Requested By | 5-24-02 |
| Budget Manager | |
| Department Director | 5-28-02 |
| Services Director | 5/28/02 |
| Mayor | 5/28/02 |

**Budget Office Use Only**

Type: A B C D E

Date of Approval

Posted to General Ledger

Posted to Project Accounting

Entered in Category Log

*Blue Copy: Budget & Research / Yellow Copy: Requester*

# FAYETTEVILLE
THE CITY OF FAYETTEVILLE, ARKANSAS

| | |
|---|---|
| **TO:** | Mayor Coody and City Council |
| **THRU:** | Hugh Earnest, Urban Development Director |
| **FROM:** | Connie Edmonston, Parks & Recreation Superintendent |
| **DATE:** | May 24, 2002 |
| **SUBJECT:** | Award of Bid #02-33 and Approval of Contract for Salem Road at the Gary Hampton Softball Complex |

Q.E.

**Background**

McClelland Engineers was hired to design and supervise the Large Scale Development of Gary Hampton Softball complex in the amount of $9,990. The proposed project will widen the existing street in front of the Gary Hampton Softball Complex, over a distance of approximately 675 feet, to match the street improvements to the north. Concrete curb and gutter and a 6-feet wide sidewalk will also be provided, with four separate handicap ramps. Additionally, approximately 965 feet of storm piping will be installed to take the place of open-ditch flow parallel to the street. Storm inlets, an energy dissipater, and other erosion control features will be a part of the work. Some utility relocation is anticipated, although it is expected to be relatively minor. Construction is intended to occur this summer in order to be completed before the start of the new school year in August so that it does not interfere with Holcomb Elementary School traffic.

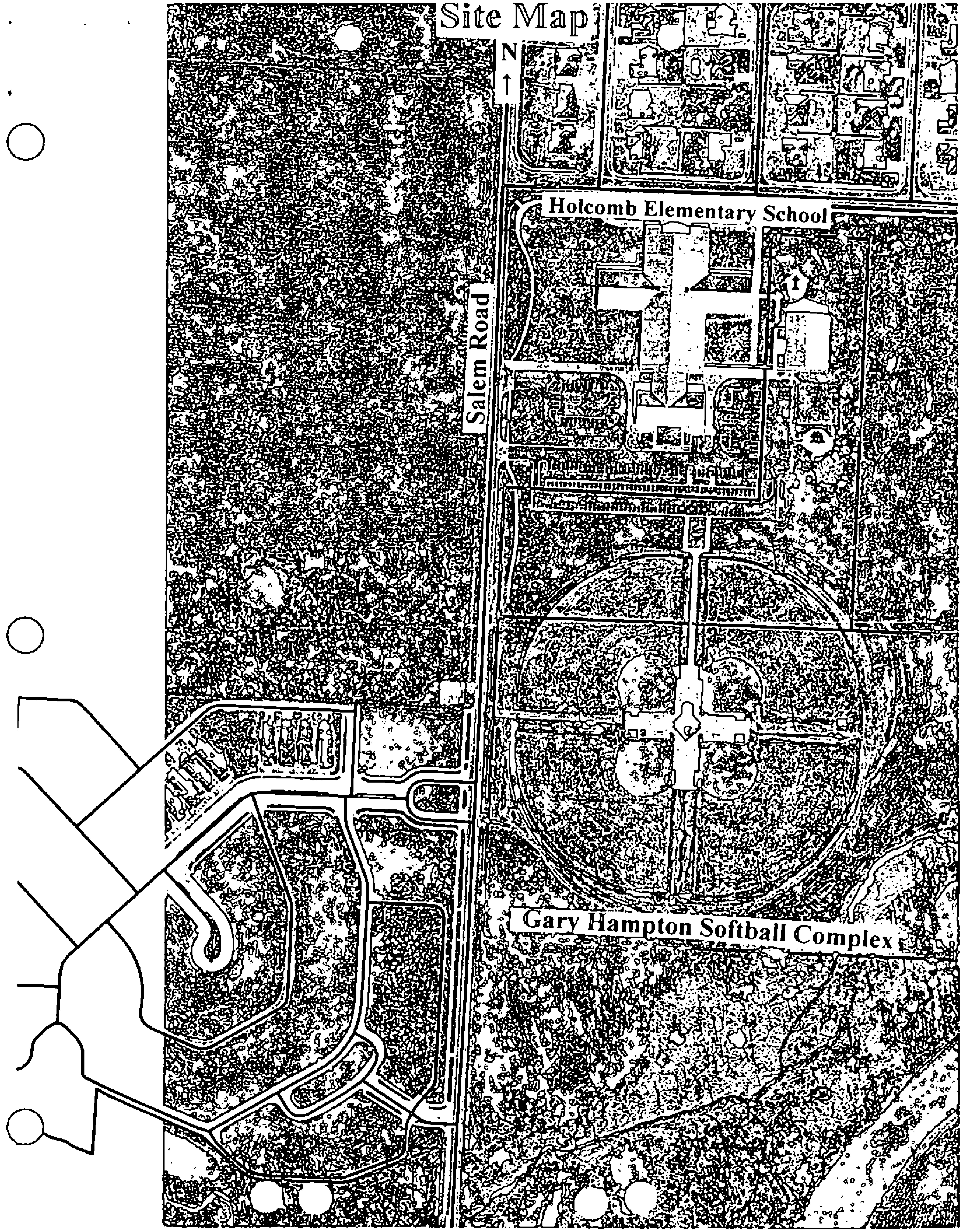
**Current Status**

Bids were opened on Thursday, May 23, 2002 at 2 p.m. Five bids were received. Mobley Contractors had the low bid.

**Recommendation**

Park and Recreation Staff and McClelland Engineers reviewed the bids and recommend the contract be awarded to Mobley Contractors in the amount of $108,394, plus a ten percent project contingency of $10,000 for a total cost of $118,394.

Attachments:
Site Map
McClelland Engineers, Inc. Recommendation
Bid Tabulation
Contract



Site Map
N
Holcomb Elementary School
Salem Road
Gary Hampton Softball Complex

MCE McCLELLAND CONSULTING ENGINEERS, INC.
DESIGNED TO SERVE

P.O. Box 1229
Fayetteville, Arkansas 72702-1229
501-443-2377
FAX 501-443-9241

May 24, 2002

Ms. Connie Edmonston, Director
Parks and Recreation Department
City of Fayetteville
113 W. Mountain St.
Fayetteville, AR 72701

RE: Recommendation for Award of Contract
Salem Road Project

Dear Ms. Edmonston:

Enclosed you will find a certified tabulation of the bids received yesterday for the referenced project. Everything multiplied and added correctly, so the apparent low bidder, Mobley Contractors, is confirmed as the "low bidder".

As you know, there were five bids submitted and opened. Four of the five bids were within 3% of each other, indicating that the scope of work was understood by the bidders and that the bids were very competitive. Even though the low bid received is higher than the Engineer's estimate, it is within the monies designated as available for the project. All things considered, I do not believe that it would be advantageous to re-bid the project.

Regarding the capabilities of Mobley Contractors, this office has worked successfully with Mobley on past occasion and we are confident that they can do a good job for the City on this project. I have verified that their Arkansas Contractor's license is current. Therefore, we recommend that the City award the contract to Mobley Contractors.

Thank you for this opportunity to work with your department on this project. We look forward to getting started with construction as soon as practical in order to complete the work prior to the start of a new school year.

Sincerely,

Johnny Quinn

Johnny Quinn, PE

CC: Peggy Vice, Director, City Purchasing

J:\2002\022116\Correspondence\Recom To Award.doc

**BID TABULATION**
**Salem Road Improvements**
**MCE Project # FY022116 - May 23, 2002 2:00 P.M.**

| BID SCHEDULE | | | | Mobley Contractors | | Tomlinson Asphalt | | Jerry D. Sweetser, Inc. | | Red Deer, Inc. | | Township Builders | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Item # | Description | Qty. | Unit | Unit Price | Extended | Unit Price | Extended | Unit Price | Extended | Unit Price | Extended | Unit Price | Extended |
| 1 | Act 291 of 1993, Trench and Excavation Safety System | 1 | LS | $606 25 | $606.25 | $250 00 | $250 00 | $2,500.00 | $2,500.00 | $2,500 00 | $2,500.00 | $400 00 | $400.00 |
| 2 | Mobilization/Demobilization | 1 | LS | $8,271.25 | $8,271 25 | $3,000.00 | $3,000.00 | $3,500.00 | $3,500 00 | $2,700 00 | $2,700.00 | $5,000.00 | $5,000.00 |
| 3 | ACHM Type III Surfacing, 3" Thickness Including Prime Coat | 225 | SY | $9 22 | $2,074.50 | $17.00 | $3,825 00 | $9.00 | $2,025.00 | $11.50 | $2,587.50 | $12.00 | $2,700 00 |
| [illegible] | Concrete Curb and Gutter | 760 | LF | $17.94 | $13,634 40 | $8.75 | $6,650 00 | $8 50 | $6,460.00 | $7.50 | $5,700.00 | $16.00 | $12,160.00 |
| [illegible] | 24" Coated CMP Storm Drain, Including Bedding | 960 | LF | $23 83 | $22,876.80 | $28.05 | $26,928 00 | $35.00 | $33,600.00 | $31.50 | $30,240.00 | $40.00 | $38,400.00 |
| [illegible] | 6' Wide x 4" Thick Concrete Sidewalk, Including Base Course | 540 | SY | $28 85 | $15,579.00 | $36 35 | $19,629.00 | $34.00 | $18,360 00 | $29 60 | $15,984.00 | $30 00 | $16,200 00 |
| 7 | Class 7 Aggregate Base Course, Compacted | 165 | TON | $25 98 | $4,286.70 | $42 50 | $7,012.50 | $24 00 | $3,960.00 | $26.00 | $4,290 00 | $20 00 | $3,300.00 |
| 8 | Maintenance of Traffic | 1 | LS | $3,312 50 | $3,312.50 | $3,750.00 | $3,750.00 | $4,500.00 | $4,500 00 | $5,000.00 | $5,000.00 | $3,111.00 | $3,111.00 |
| 9 | Excavations & Embankments for Roadway Construction | 310 | CY | $27.49 | $8,521 90 | $35.00 | $10,850.00 | $24.00 | $7,440 00 | $20 00 | $6,200 00 | $20 00 | $6,200.00 |
| 10 | Storm Drain Trench Backfill | 275 | CY | $22 45 | $6,173 75 | $19.74 | $5,428 50 | $18.00 | $4,950 00 | $15 00 | $4,125 00 | $25.00 | $6,875.00 |
| 11 | Concrete Storm Drainage Structures (Inlets and Junction Boxes) | 2 | EA | $3,928.50 | $7,857.00 | $2,600 00 | $5,200.00 | $2,800 00 | $5,600 00 | $7,500.00 | $15,000.00 | $3,000.00 | $6,000.00 |
| 12 | Concrete Headwall/Energy Dissipator | 1 | EA | $2,489.01 | $2,489 01 | $2,000 00 | $2,000.00 | $2,900 00 | $2,900.00 | $4,500.00 | $4,500.00 | $2,000.00 | $2,000.00 |
| 13 | Topsoil/Seeding/Straw/Fertilize | 1 | LS | $1,741.68 | $1,741 68 | $4,000.00 | $4,000.00 | $2,500 00 | $2,500.00 | $3,500.00 | $3,500.00 | $9,000.00 | $9,000.00 |
| 14 | Erosion and Sediment Control | 1 | LS | $1,796.56 | $1,796 56 | $750.00 | $750 00 | $1,700 00 | $1,700 00 | $500.00 | $500.00 | $4,000.00 | $4,000.00 |
| 15 | Driveway Repair | 1 | LS | $997.49 | $997.49 | $1,000 00 | $1,000.00 | $600 00 | $600.00 | $1,000.00 | $1,000.00 | $2,000 00 | $2,000.00 |
| 16 | Handicap Ramp | 4 | EA | $662.74 | $2,650 96 | $500 00 | $2,000.00 | $700 00 | $2,800.00 | $350.00 | $1,400 00 | $500 00 | $2,000 00 |
| 17 | Sidewalk End Barricade | 1 | LS | $150 00 | $150 00 | $500.00 | $500.00 | $500.00 | $500.00 | $300.00 | $300.00 | $200 00 | $200.00 |
| 18 | Allowance for Utility Relocation(s) | 1 | LS | $3,000.00 | $3,000.00 | $3,000 00 | $3,000 00 | $3,000.00 | $3,000.00 | $3,000 00 | $3,000.00 | $3,000 00 | $3,000.00 |
| 19 | Concrete Apron, 6" Thick, at Gravel Service Drive Entrance | 80 | SY | $29.68 | $2,374 40 | $42.50 | $3,400 00 | $34 00 | $2,720.00 | $35.00 | $2,800 00 | $40 00 | $3,200 00 |
| | TOTAL BASE BID | | | | $108,394.35 | | $109,173.00 | | $109,615.00 | | $111,326.50 | | $125,746.00 |
| | DEDUCTIVE ALTERNATE BIDS | | | | | | | | | | | | |
| Item # | Description | Qty. | Unit | Alternate Unit Price | Extended | Alternate Unit Price | Extended | Alternate Unit Price | Extended | Alternate Unit Price | Extended | Alternate Unit Price | Extended |
| 5 A. | Alternative for 24-inch Asphalt Coated CMP Storm Drain, Including Bedding | 960 | LF | $23 83 | $22,876 80 | $26 00 | $24,960.00 | $34 00 | $32,640.00 | $35.00 | $33,600.00 | $39 00 | $37,440.00 |
| 5 B. | Alternative for 24-inch Aluminized CMP Storm Drain, Including Bedding | 960 | LF | $20.83 | $19,996 80 | $26.00 | $24,960.00 | $35.00 | $33,600 00 | $30 00 | $28,800 00 | $39 00 | $37,440 00 |
| | TOTAL BASE BID AMOUNT | | | | $108,394 35 | | $109,173.00 | | $109,615.00 | | $111,326.50 | | $125,746.00 |
| | TOTAL BASE BID with Deductive Alt. No 1 AMOUNT | | | | $108,394.35 | | $107,205.00 | | $108,655.00 | | $114,686.50 | | $124,786.00 |
| | TOTAL BASE BID with Deductive Alt. No 2 AMOUNT | | | | $10[illegible],514.35 | | $107,205.00 | | $109,615.00 | | $109,886.50 | | $124,786.00 |

Certified
John C. Quinn, P.E. #4314

DOCUMENT 00500

CONTRACT

THIS AGREEMENT, made and entered into on the **24TH** day of **MAY, 2002,** by and between **MOBLEY CONTRACTORS, INC.** herein called the Contractor, and the City of Fayetteville, Arkansas, hereinafter called the Owner:

WITNESSETH:

That the Contractor, for the consideration hereinafter fully set out, hereby agrees with the Owner as follows:

1. That the Contractor shall furnish all the materials, and perform all of the work in manner and form as provided by the following enumerated Specifications, and Documents, which are attached hereto and made a part hereof, as if fully contained herein and are Salem Road Improvements.

   Advertisement for Bids
   Instructions to Bidders
   Bid and acceptance thereof
   Performance Bond
   Payment Bond
   General Conditions
   Supplementary Conditions
   Specifications
   Drawings

2. That the Owner hereby agrees to pay to the Contractor for the faithful performance of this Agreement, subject to additions and deductions as provided in the Specifications or Bid, in lawful money of the United States, the amount of:

   **ONE HUNDRED EIGHT THOUSAND, THREE HUNDRED NINETY FOUR AND 35/100 DOLLARS ($108,394.35).**

3. The Work will be completed and ready for final payment in accordance with the General Conditions within 60 calendar days after the date when the Contract Time commences to run, as provided in the Notice to Proceed.

4. Liquidated Damages: Owner and Contractor recognize that time is of the essence of this Agreement and the Owner will suffer financial loss if the Work is not completed within the times specified in above, plus any extensions thereof allowed in accordance with the General Conditions. They also recognize the delays, expense, and difficulties involved in proving the actual loss suffered by Owner if the Work is not completed on time. Accordingly, instead of requiring any such proof, Owner and Contractor agree that as liquidated damages for delay (but not as a penalty) Contractor shall pay Owner **Two Hundred Forty** Dollars **($240.00)** for each day that expires after the time specified in Paragraph 3 for completion and readiness for final payment.

5. That within 30 days of receipt of an approved payment request, the Owner shall make partial payments to the Contractor on the basis of a duly certified and approved estimate of work performed during the preceding calendar month by the Contractor, LESS the retainage provided in the General Conditions, which is to be withheld by the Owner until all work within a particular part has been performed strictly in accordance with this Agreement and until such work has been accepted by the Owner.

6. That upon submission by the Contractor of evidence satisfactory to the Owner that all payrolls, material bills, and other costs incurred by the Contractor in connection with the construction of the work have been paid in full, final payment on account of this Agreement shall be made within 60 days after the completion by the Contractor of all work covered by this Agreement and the acceptance of such work by the Owner.

7. It is further mutually agreed between the parties hereto that if, at any time after the execution of this Agreement and the Surety Bond hereto attached for its faithful performance and payment, the Owner shall deem the Surety or Sureties upon such bond to be unsatisfactory or if, for any reason such bond ceases to be adequate to cover the performance of the work, the Contractor shall, at his expense, within 5 days after the receipt of notice from the Owner, furnish an additional bond or bonds in such form and amount and with such Surety or Sureties as shall be satisfactory to the Owner. In such event, no further payment to the Contractor shall be deemed to be due under this Agreement until such new or additional security for the faithful performance of the work shall be furnished in manner and form satisfactory to the Owner.

8. No additional work or extras shall be done unless the same shall be duly authorized by appropriate action by the Owner in writing.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and date first above written, in two (2) counterparts, each of which shall, without proof or accounting for the other counterpart be deemed an original Contract.

SEAL:

**MOBLEY CONTRACTORS, INC.**
CONTRACTOR

WITNESSES:

By *R F Mobley Jr*

*Sharon Roller*

RON F. MOBLEY, JR. VICE PRESIDENT
Title

City of Fayetteville, Arkansas
OWNER

ATTEST:

_______________________________ By_______________________________

STAFF REVIEW FORM

X AGENDA REQUEST
___ CONTRACT REVIEW
___ GRANT REVIEW

For the Fayetteville City Council meeting of June 4, 2002

**FROM:**

| Name | Division | Department |
|---|---|---|
| Marvin Hilton | Cable Administration | Urban Development |

**ACTION REQUIRED:**

Passage of a resolution accepting a contract with "Community Access Television" for public access television services from July 1, 2002 until December 31, 2002.

**COST TO CITY:**

| | | |
|---|---|---|
| $34,500.00 | 34,500 | Public Access Contract |
| Cost of this Request | Category/Project Budget | Category/Project Name |
| 1010-0600-5713-00 | 34,500 | Cable Administration |
| Account Number | Funds Used To Date | Program Name |
| | - 0 - | General |
| Project Number | Remaining Balance | Fund |

**BUDGET REVIEW:** ___ Budgeted Item X Budget Adjustment Attached

Budget Manager

Administrative Services Director

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

| | | | |
|---|---|---|---|
| Accounting Manager | Date | Internal Auditor | Date |
| City Attorney | Date | ADA Coordinator | Date |
| Purchasing Officer | Date | Grant Coordinator | Date |

**STAFF RECOMMENDATION:**

| | |
|---|---|
| Marvin Hilton | 5-24-02 |
| Division Head | Date |
| Hugh Earnest | 5-28-02 |
| Department Director | Date |
| | 5/28/02 |
| Administrative Services Director | Date |
| Dan Coody | 5/23/02 |
| Mayor | Date |

Cross Reference

New Item: **Yes** **No**

Prev Ord/Res #:

Orig Contract Date:

Orig Contract Number:

# FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

## DEPARTMENTAL CORRESPONDENCE

**TO:** **Mayor Coody and City Council**

**THRU:** **Hugh Earnest, Urban Development Director**

**FROM:** **Marvin Hilton, Cable Administrator** MH 5-24-02

**SUBJECT:** **CAT Funding for remainder of 2002**

**DATE:** **May 24, 2002**

At the Telecommunications Board meeting of May 16, 2002, the motion was made and seconded to recommend that the City Council reinstate the second half of the funding for CAT in the amount of $34,500 which will carry it through December 31, 2002. The motion passed with six board members in favor and one abstention.

See the attached:

1. "Telecommunications Board Meeting Motions and Recommendations, May 16, 2002.
2. CAT Contract

CC: Telecommunications Board Members

**Telecommunications Board Meeting Motions And Recommendations**
**May 16, 2002**
**Room 219 City Administration Building**

1. McDonald made a motion to recommend that the Fayetteville City Council reinstate the second half of the funding for CAT in the amount of $34,500 which will carry it through December 31, 2002. The second came from Cromwell.
This motion passed with 6 board members in favor and 1 abstention.

2. A motion made by Rowland McKinney, tabled at the April 18 meeting, concerning Public Access Television being operated by The Cable Administration Division was voted down unanimously.

3. McDonald made a motion to form a subcommittee to start the process of carrying out the RFP (requests for proposals) to operate Public Access Television. It was noted that an evaluation of the current contract would be part of the RFP process. The motion passed.

**PUBLIC ACCESS ADMINISTRATION**
**AGREEMENT BETWEEN THE CITY OF FAYETTEVILLE**
**AND ACCESS 4 FAYETTEVILLE, INC.**
**A.K.A.COMMUNITY ACCESS TELEVISION**

THIS AGREEMENT is made and entered into this ___ day of June______, 2002, by and between the City of Fayetteville, a municipal corporation of the State of Arkansas (hereafter City), and Community Access Television, (hereafter Contractor) for the operation of the public access channel.

**SECTION I.**
**CONTRACT PERIOD.**

A. The contract period shall begin the 1st day of July , 2002 and shall continue until the 31th day of December, 2002.

**SECTION II.**
**SERVICES/DUTIES.**

A. The Contractor hereby agrees and shall be responsible for operating the public access channel, which shall entail the following:

1. Scheduling and teaching of video production and telecommunications workshops for the Fayetteville general public.

2. Scheduling of programs on the public access channel.

3. Cablecasting of programs on the public access channel.

4. Promoting use of the Public Access Channel.

B. The Contractor shall provide, oversee, administer, and carry out all of the activities and services set out in this Agreement with such satisfactory performance as is determined solely by the City in accordance with all the terms, provisions and requirements of the Agreement.

C. In furtherance of the above referenced services and duties, the parties hereby agree as follows:

1. Facility:

a. The City shall provide a facility to which the Contractor shall have access for the performance of their duties hereunder. Such facility shall be known as the Access Center.

b. The City shall be responsible for the payment of the Access Center utilities, routine building and grounds maintenance and maintenance of the structure.

c. Use of the Access Center conference/breakroom will be scheduled through the City.

2. Copier:

a. The Contractor may use the City's current copier at the Access Center for a charge of $.015 per copy. Additionally, the Contractor may use the copier located at the City Administration Building for the standard charge as is allocated per copy to the City Departments and Divisions. If the City upgrades the copier located in the Access Center, Contractor shall pay an adjusted charge per copy, up to, but not to exceed the standard City rate charged to City Departments and Divisions as determined annually.

b. Copy machine maintenance costs will be paid by the City.

3. Video Equipment:

a. The City and the Contractor shall each bear one-half of each separate maintenance expense incurred on the video equipment used by the Contractor. Contractor's total liability shall be limited to $1,000 cash and up to $1,000 in-kind maintenance on equipment. All in-kind maintenance shall be mutually agreed upon by City and Contractor.

b. One camera, to be designated by the City, and one tripod shall not be available for public access checkout. The reserved equipment shall be used only for government production, Contractor's contract productions, and contractor's promotional programs. Use of the reserved camera and tripod will be as scheduled by the City. Additional reservation of equipment may be required should it be determined, by the City, that the equipment was not available as needed for government channel productions.

c. The City will be responsible for scheduling use of the equipment. After hours scheduling must be confirmed by the City the next business day before it is finalized. Weekend checkout of equipment must be confirmed with the City by 5:00 Friday afternoon.

d. The Contractor is responsible for training all public access users on the equipment, certifying their ability to use the equipment, checking the equipment out to users, and checking it back into the facility. Contractor will make sure all of the City's equipment used for public access purposes is checked-out and returned in good working order. Contractor will notify the City immediately of any problems with equipment.

e. All video production equipment owned by the City and used for public, educational and/or government access productions shall be covered under the City's insurance policy.

4. Phone:

a. The City shall make one telephone line available for Contractor's business use. Contractor shall be responsible for reimbursing the City, on a quarterly basis, for this expense at a rate of $20 per month.

b. Contractor shall be responsible for their own long distance telephone calls.

c. Contractor shall be responsible for paying the costs of their listing in the telephone directory.

d. Contractor shall be responsible for answering their own phone line. Contractor will have an answering machine on their line when they are unable to answer calls.

e. Contractor shall not be required to answer the City's telephone lines at the Access Center.

5. Fees:

a. There shall be no charge to citizens of Fayetteville for the use of cable casting time on the public access channel, nor for the use of the facilities or equipment. However, Contractor's fees and charges may apply for such services as, but not limited to, instructions on video production and internet use, video tapes, video tape duplication, annual producer's fee and contracts for video productions.

6. Other/Misc.:

a. All communication between the City and the Contractor with regard to contractual matters will be directed through the Cable Administrator, or any other such representative as may be appointed by the City, and the Contractor's duly appointed representative. In the event of a disagreement over the administration of this agreement, either party may appeal to the Telecommunications board who shall make recommendations to the Mayor or City Council, as may be required.

b. The use of alcohol, tobacco products, and illegal drugs is strictly prohibited in the Access Center.

c. Contractor's and City's employees shall not park in the spaces in front of the Access Center.

d. Contractor shall have at least one paid staff person or a designated volunteer in the Access Center whenever a program is being produced in the studio. Contractor shall have a paid staff person on site during the production of live programming at the Access Center.

e. Contractor and City shall each bear one-half of the costs of supplies used by everyone in the facility's breakroom.

f. Contractor's staff shall do their part to keep the Access Center clean by keeping the breakroom clean after use by their staff and public access users.

g. Contractor shall be responsible for placing messages from non-profit groups and organizations on the public access channel.

h. Contractor will follow the City's rules for the use of the Access Center.

I. Live shows will be taped by the Contractor and held for four days. All other shows are on tape and available for review at the Access Center. The owners of the taped programs will be asked to leave them for four days if they are not in the tape library. Accurate cablecast logs will be kept by Contractor as proof of what programs were cablecast.

j. Ownership title to all capital acquisition, supplies, material or any other property purchased with funds received under this Contract, is vested with the City and possession of such property shall, upon termination of the Contract, revert to the City unless otherwise provided for by the City, in writing. Donations of goods to the Contractor remain with the Contractor.

## SECTION III.
## LEGAL AUTHORITY.

A. The Contractor assures and guarantees that it possesses the legal authority to enter into this Agreement. Further, that the person or persons signing and executing this Contract on behalf of the Contractor have been fully authorized by the Contractor to execute this Agreement on behalf of the Contractor. That such authority is evidenced pursuant to a proper, appropriate and official motion and resolution, which was passed and approved specifically to enter into this Agreement and shall legally bind the Contractor to all the terms, performances and provisions herein set forth. A copy of such resolution shall be provided upon execution of this Agreement.

B. The City may exercise its right to either temporarily suspend or permanently terminate this Agreement if there is a dispute as to the legal authority of either the Contractor or the person signing the Agreement to enter into this Agreement. The

City shall not be obligated to pay Contractor for any performance of the provisions of this Agreement after the City has suspended or terminated this Agreement as provided in this Section.

**SECTION IV.**
**COMPLIANCE WITH FEDERAL, STATE AND LOCAL LAWS.**

A. The Contractor shall comply with all applicable laws, regulations, procedures and policies of the Federal, State and local governments.

**SECTION V.**
**FUNDING/CONSIDERATION.**

A. Consideration.

1. The City hereby agrees to pay Contractor the monthly sum of $5,750 for services performed under the terms of this contract. Each monthly payment will be remitted on or before the 15th day of each month, beginning July 15th, 2002.

**SECTION VI.**
**PROGRAMMING.**

A. Public access equipment shall be provided on a first come, first served, non-discriminatory basis, subject only to any restrictions set forth herein. Public access channel time shall be made available on a non-discriminatory basis, with consideration being given to an appropriate scheduling time.

B. Contractor shall require access producers to sign an agreement warranting that the program they are submitting does not contain:

1. any violation of any state or federal law relating to obscenity;

2. any material that is libelous, slanderous, or other defamation of character, or an unlawful invasion of privacy;

3. any advertising or material which promotes any commercial product or service;

4. any use of material which violates copyright law; or,

5. any material contrary to local, state or federal laws, regulations, procedures and policy.

**SECTION VII.**
**PERSONNEL.**

A. Contractor shall adequately staff the public access operation to meet the services and duties outlined in this agreement.

B. During the contract period, the staff for the public, educational and government channels will be working together at the Access Center. The Contractor's staff will be expected to work in a cooperative manner with all groups using the facility.

## SECTION VIII.
## REPORTS AND INFORMATION.

A. At such times and in such form as the City may require, the Contractor shall furnish such statements, records, reports, data and information, as the City may request and deem pertinent to matters covered by this Agreement.

B. The City shall provide the Contractor with equipment usage forms which are to be completed by Contractor's staff as well as public access users each time equipment is used. Contractor is responsible for submitting these completed forms to the City within one working day after the equipment is used.

C. Contractor shall submit quarterly reports on the operations of the public access channel to the City.

D. Contractor shall submit an annual report which shall include a summary of all quarterly reports, review contract requirements and document compliance with contract requirements. The annual report will be due sixty (60) days following the end of the contract year.

E. In addition to the above listed reports, the Contractor shall provide the following additional information to the City:

1. Reports of stolen or damaged equipment within one working day of learning of each occurrence.

2. Requests for changes in any procedures or rules pertaining to protection or preservation of City owned equipment and facilities.

3. All corporate documents, including but not limited to the Contractor's by-laws, articles of incorporation, certification of compliance with affirmative action plan and EEO standards, and a list of Board members.

4. Amendments or changes to programming policies.

## SECTION IX.
## AUDIT/REVIEW

A. The Contractor agrees to provide the City with a monthly financial report summarizing activity during the preceding 30 day period. Said report shall include income and balance sheet statements.

B. Contractor shall have a certified public accountant complete an official review of its financial records annually. This report shall be submitted to the City by the last day of the third month after the end of Contractor's fiscal year.

## SECTION X.
## ACCESSIBILITY OF RECORDS.

A. At any reasonable time and as often as the City may deem necessary, the Contractor shall make available to the City, or any of its authorized representatives, all of Contractor's records related to all matters covered by this Agreement and shall permit the City to audit, examine, make excerpts and copies of such records, and to make audits of all contracts, invoices, materials, payrolls, records of personnel, conditions of employment and other data relating to matters covered by this Contract.

## SECTION XI.
## INSURANCE.

A. Contractor shall obtain and keep in force during the term of this agreement a policy or policies of public liability and property damage insurance. The coverage, at a minimum, shall be in the following amounts:

1. General Liability:

| | | |
|---|---|---|
| a. | General Aggregate | $1,000,000 |
| b. | Products/Completed Oper. Aggr. | $1,000,000 |
| c. | Personal & Advertising Injury | $1,000,000 |
| d. | Each Occurrence | $100,000 |
| e. | Fire Damage (any one fire) | $50,000 |
| f. | Medical Expense (any one person) | $5,000 |

2. Worker's Compensation for all employees as required by Arkansas Statutes.

B. Contractor shall furnish the City with a certificate showing that such coverage has been obtained and is currently in effect. Contractor shall not change or cancel any policy of insurance obtained for the purposes of this agreement except after thirty (30) days written notice to City and written acceptance by the City of such changes or cancellation.

## SECTION XII.
## DIRECTOR'S MEETINGS

A. During the term of this Contract, the Contractor shall cause to be delivered to the City copies of all notices of meetings of its Board of Directors, setting forth the time and place thereof. Such notice shall be delivered to the City in a timely manner to give adequate notice and shall also include an agenda.

B. Minutes of all meetings, if taken, and materials distributed in meetings of the Contractor's Board of Directors, or committees thereof, shall be submitted to the City.

C. The Contractor's Board meetings and records shall be subject to the provisions of the Arkansas Freedom of Information Act, Ark. Code Ann., §25-19-101 et. seq.

**SECTION XIII.**
**BONDING.**

A. The Contractor shall obtain a fidelity bond covering all persons handling funds received or disbursed and/or signing or co-signing checks to disburse funds under this Agreement, within ten (10) days of Contract execution. The fidelity bond shall be in an amount equal to ten percent (10%) of the City grant award or $5,000, whichever is less. The Contractor shall furnish the City proof of an adequate fidelity bond prior to the first payment of funds under this Agreement.

**SECTION XIV.**
**EQUAL OPPORTUNITY.**

A. Contractor shall comply with all applicable equal opportunity, affirmative action and ADA laws or regulations, including those of the City of Fayetteville.

B. The Contractor will furnish all information and reports requested by the City, and will permit access to its books, records, and accounts for purposes of investigation to ascertain compliance with such rules and regulations.

C. In the event of the Contractor's non-compliance with the non-discrimination requirements of this Agreement, this Agreement may be canceled, terminated, or suspended in whole or in part, and the Contractor may be debarred from further agreements with the City.

**SECTION XV.**
**PERSONNEL POLICIES.**

A. Personnel policies shall be established by the Contractor and shall be available for examination by the City. Public access operations shall be open to the public the maximum hours permitted by resources available but at least forty (40) hours per week. In planning these times, Contractor shall take into consideration the needs of the public to include evening and weekend hours.

B. Upon termination of an employee by the City Cable Administrator, and in the event that the contractor's manager wishes to hire the employee over the objections of the Cable Administrator, an appeal of the action may be brought by the Cable Administrator to the contractor's Board of Directors. Similarly, upon termination of an employee by the contractor, and in the event that the Cable Administrator wishes to hire the employee over the objections of the contractor's manager, an appeal of the action may be brought by the contractor's manager to the Telecommunications Board.

**SECTION XVI.**
**CONFLICT OF INTEREST.**

A. The Contractor covenants that neither it nor any member of its Board of Directors currently has any interest or shall acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Agreement. The Contractor further covenants that in the performance of this Agreement no person having such interest shall be employed or appointed as a member of its Board of Directors.

B. The Contractor further covenants that no member of its Board of Directors or its staff or employees shall possess any interest in or use their position for a purpose that is or gives the appearance of being motivated by desire for private gain for themselves, or others particularly, those with which they have family, business, or other ties.

C. No officer, member, or employee of the City and no member of its governing body who exercises any functions or responsibilities in the review or approval of the undertaking or carrying out of this Agreement, shall:

1. Participate in any decision relating to the Agreement which affects his or her personal interest or the interest of any corporation, partnership, or association in which he has a personal financial direct or indirect interest; or

2. have any personal financial interest, direct or indirect, in this Agreement or the proceeds thereof.

**SECTION XVII.**
**POLITICAL ACTIVITY.**

A. No portion of the funds received by the Contractor hereunder shall be used by the Contractor to directly produce any programs nor to participate in any Contractor-sponsored activities of a political nature (including, but not limited to, any activity to further the appointment, election, defeat or removal of any applicant, incumbent, or candidate for public office or any activity undertaken to influence the passage, defeat or final content of any legislation). However, Contractor will cablecast programs made by the public which express opinions on issues or candidates.

## SECTION XVIII.
## SECTARIAN ACTIVITY.

A. No portion of the funds received by the Contractor here under shall be used by the Contractor to directly produce any programs nor participate in any Contractor-sponsored activities which establish any religion or prohibit the free exercise thereof.

## SECTION XIX.
## PUBLICITY.

A. In any news release, sign, brochure, or other medium disseminating information prepared or distributed by or for the Contractor, mention shall be made of the City of Fayetteville having made the project possible, i.e. "'Community Access Television' is a project partially funded by the City of Fayetteville."

## SECTION XX.
## HOLD HARMLESS.

A. It is expressly understood and agreed by both parties hereto that the City is contracting with the Contractor as an independent contractor and that as such, the Contractor shall save and hold the City, its officers, agents and employees harmless from all liability of any nature of any kind, including costs and expenses for, or on account of, any claims, audits exceptions, demands, suits or damages of any character whatsoever resulting from injuries or damages sustained by persons or property, resulting in whole or in part from the performance or omission of any employee, agent or representative of the Contractor. This Agreement shall not be construed in any manner or form as a waiver of that Tort Immunity as set out under Arkansas Law.

## SECTION XXI.
## USE OF CITY PROPERTY.

A. Contractor hereby recognizes that it is performing services for the City on City-owned property and that while on such property, Contractor shall not engage in any activity that is not directly related to services provided pursuant to this Agreement.

## SECTION XXII.
## OPERATIONAL POLICIES AND PROCEDURES.

A. Contractor's policies relating to the use of City owned equipment and facilities shall be submitted to the Telecommunications Board for approval and may be reviewed periodically as needed.

## SECTION XXIII.
## CONTRACT ENTIRE AGREEMENT.

A. This Agreement constitutes the entire agreement between the parties hereto, and any prior agreement, assertion, statement, understanding, or other commitment antecedent to this Agreement, whether written or oral, shall have no force or effect whatsoever, nor shall any agreement, assertion, statement, understanding, or other commitment occurring during the term of this Agreement, or subsequent thereto, have any legal force or effect whatsoever unless properly executed in writing and if appropriate, recorded as a addendum to, or amendment of, this Agreement.

## SECTION XXIV.
## TERMINATION OF AGREEMENT.

A. This contract may be terminated by either party with a thirty day written notice.

## SECTION XXV.
## SEVERABILITY.

A. If any section, subsection, sentence, clause, phrase or word of this agreement is held to be invalid or unconstitutional by any court of competent jurisdiction, such section, subsection, sentence, clause, phrase or word will be deemed a separate, distinct and independent provision, and such holding will not affect the validity of the remaining provisions of this agreement.

COMMUNITY ACCESS TELEVISION

By:______________________________
Title:____________________________

ATTEST:

By:______________________________
Title:____________________________

CITY OF FAYETTEVILLE, ARKANSAS

By:______________________________
Dan Coody, Mayor

ATTEST:

By:______________________________
Heather Woodruff, City Clerk

**City of Fayetteville, Arkansas**
**Budget Adjustment Form**

| Budget Year | Department: | Urban Development | Date Requested | Adjustment # |
|---|---|---|---|---|
| 2002 | Division: | Cable Administration | 06/04/2002 | |
| | Program: | | | |

**Project or Item Requested:**

$34,500 is requested in the Cable Administration Program to fund the Community Access Television contract from July 1 to December 31, 2002.

**Project or Item Deleted:**

$34,500 in additional franchise fee revenue for the remainder of 2002. The City received an additional $19,224 above projected revenue for the first quarter 2002.

**Justification of this Increase:**

The item is requested to fund the proposed contract for operating the public access television station activities for the second half of 2002.

**Justification of this Decrease:**

The cable franchise fee revenue is generating additional revenue.

**Increase Expense (Decrease Revenue)**

| Account Name | Amount | Account Number | | | | | Project Number | |
|---|---|---|---|---|---|---|---|---|
| Transfer to Community Access | 34,500 | 1010 | 0600 | | 5713 | 00 | | |
| | | | | | | | | |

**Decrease Expense (Increase Revenue)**

| Account Name | Amount | Account Number | | | | | Project Number | |
|---|---|---|---|---|---|---|---|---|
| Franchise Tax - Cable | 34,500 | 1010 | 0001 | | 4105 | 03 | | |
| | | | | | | | | |

**Approval Signatures**

| | Date |
|---|---|
| Requested By | |
| Budget Manager | 5-28-02 |
| Department Director | 5-28-02 |
| Admin. Services Director | 5/28/02 |
| Mayor | 5/28/02 |

**Budget Office Use Only**

Type: A B C D E

Date of Approval ________

Posted to General Ledger ________

Posted to Project Accounting ________

Entered in Category Log ________

*Blue Copy: Budget & Research / Yellow Copy: Requester*

*H:\BUDGET\PROJECTS\BUD_ADJ\BA_2002\BADJFORM.WK4*

# FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

DATE: May 24, 2002

TO: Mayor and City Council

FROM: Hugh Earnest
Urban Development Director

RE: Cox Cable Franchise/Community Access Television

Cable television in this country and franchises for use of the public right-of-way for installation of the necessary cable has become a part of Municipal Government. Fayetteville is certainly no exception. The first franchise for operation of a cable system was negotiated in 1957. Since that first franchise the City has had a number of agreements with several companies. The current franchise, negotiated in 1992, secured for the City three channels for use by the public. One of these channels was assigned by contract to the University of Arkansas for educational purposes. The other two channels are utilized for Public (Government) information and Public Access. The Public channel is managed by our Cable Administration Division manager, who is also responsible for providing administrative support to the Telecommunication Board. The City also contracts with a not for profit organization, Community Access Television (CAT) for operation of the Public Access Channel. The current franchise agreement expired on October 31, 2000 and City representatives have been negotiating at some level with Cox Communication since that time.

The cable industry itself has gone through wrenching changes since its entry into the American marketplace. During the franchise periods in Fayetteville, we have seen several operators as consolidation and the entry of new players into the marketplace has occurred. In addition, the industry has successfully used the national legislative process as a means to lessen the ability of local governments to exercise significant controls over their operation. National legislation passed in 1992 and 1996 has had significant impact on all aspects of the industry. Another significant factor impacting this industry and local governments is the entry into the market of satellite technology allowing the extensive use of wireless signals for television broadcasting. This technology has created in all markets a level of competition that did not exist when franchises were first negotiated.

As has been stated, Fayetteville has been successful in securing, at no direct cost to the City, the dedication of three separate channels for use. Fayetteville has also created a Telecommunications Board to manage some portions of the Public, Educational and

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Governmental channels that were secured. The Board is also by ordinance empowered to advise the City Council on policy issues relating to the franchise and certain aspects of the operation of the three channels. This Board was created by the City Council to advise the city council and make recommendations on a wide range of telecommunication issues. In addition, ordinance 4219 also assigns to the Board oversight responsibilities for administration of the access facility as well as access services administered by other entities. A private not for profit group has a contract for the operation of a channel for use by the public in whatever form or fashion they may desire. This Community Access component of the channel lineup has, over time, been a point of some public debate
The city has historically collected from Cable franchisees a fee for use of the public Right of Way which goes into the General Fund. This franchise fee has grown over the years as shown below.

| | |
|---|---|
| 1991 | $251,272 |
| 1995 | $316,260 |
| 2000 | $371,613 |
| 2002 | $402,000 (estimated) |

A significant percentage of this money has been used for of a successful PEG endeavor that is matched nowhere else in Arkansas. A copy of the budget for 2002 is attached as reference.

There is one financial issue on the table which has not been resolved. A recent federal ruling by the FCC stating that charges for cable modems are no longer subject to a franchise fee, has caused Cox to inform us that they will no longer collect a franchise fee on this service. Our City Attorneys have responded that the company remains responsible for collecting the fee under our franchise language. While all parties expect a rash of legal filings at the national level to resolve the disagreement, the fact remains that Cox is no longer collecting the fee locally.

**Current Situation**

Over the past several years, City representatives had been moving slowly through a laborious negotiating process. The City had employed in 2000 a Mr. Brian Grogan, who is an attorney, to represent the City in developing a draft franchise agreement. This process culminated in the development of a draft document that was approved by Mr. Grogan and Mr. Lutzker, an attorney in Washington D.C. representing Cox Communication. This document was furnished to the City in the fall of 2001 for approval. It was felt by several individuals connected with the process that certain references to an institutional network were lacking in scope. This lack caused various City officials to reopen the discussion surrounding what constitutes an institutional network and how it can or should be incorporated in a franchise network.

Also, at that time, the City was involved in intense discussions revolving around the preparation of the 2002 budget. One of the decisions arising out of that discussion was including funding for the CAT contract only through June 30, 2002. This decision was

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**Recommendations**

From a fact driven perspective, there is little or no direct connection between the issue of CAT funding and the seemingly interminable negotiations with Cox. However, there is a real possibility that linking the two ongoing discussions will result in better and more efficient use of the three channels that are available for public use in Fayetteville. The position being taken by Cox Communications in our ongoing conversation, namely that a strengthened public access format is of interest to both parties, perhaps offers us the chance to explore regional linkages, a closer working relationship with the University of Arkansas and more efficient management of PEG related activities. As in any contractual relationship between a small city and a large national corporation, there are no guarantees that the interest of both sides can be met. Nonetheless, it is my opinion that the benefits to the City merit the effort. The following are a series of recommendations and actions that we would ask the Council to adopt. We would then, from a staff perspective, be more effective in our discussions wit Cox and in the associated discussions over the future of public access.

The recommendations are as follows:

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2. The funding for CAT, which is due to expire on June 30th, 2002 be extended by six months through an appropriation of additional funds by the Council.

3. The Council request to secure an audit of the rate increase in the basic rate charged to a certain group of local subscribers be dropped.

Each of these recommendations demands some explanation.

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The feedback on the rate audit that has been received is that it is essentially an exercise in futility. The companies have become very skillful in meeting the demands of the required federal forms and any discrepancy found through an audit would be in the penny range. Cox has also made it clear that any claim of an overcharge would be contested. In summary, I would suggest to the Council that the probability of success in this effort is limited.

# Urban Development Department
# Cable Administration Division
# Cable Administration Program

Fund 1010 - General | Program 0600

Program Description, Objectives, and Analysis:

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| | Actual 2000 | Budgeted 2001 | Estimated 2001 | Budgeted 2002 |
|---|---|---|---|---|
| **Program Staff** | | | | |
| Full-Time Equivalent Positions | 5.25 | 5.25 | 5.25 | 5.25 |
| **Program Expenditures** | | | | |
| Personnel Services | $ 136,136 | $ 141,367 | $ 141,367 | $ 147,818 |
| Materials and Supplies | 5,175 | 5,498 | 5,498 | 4,298 |
| Services and Charges | 75,975 | 81,465 | 81,393 | 46,565 |
| Maintenance | 6,463 | 8,103 | 8,103 | 7,215 |
| Capital | 709 | 401 | 401 | 0 |
| | $ 224,458 | $ 236,834 | $ 236,762 | $ 205,896 |

Performance Measures

| | Actual 2000 | Budgeted 2001 | Estimated 2001 | Budgeted 2002 |
|---|---|---|---|---|
| **Demand/Workload** | | | | |
| 1. Hours Video Equipment Used by Public & Staff | 15,818 | 15,000 | 13,000 | 16,000 |
| 2. CAT Video Workshops | 141 | 250 | 176 | 180 |
| 3. City Video Tapes Duplicated | 329 | 350 | 320 | 330 |
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| **Results** | | | | |
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| 4. CAT Workshop Participants | 96 | 200 | 516 | 500 |
| 5. CAT First Time Producers | N/A | 24 | 52 | 50 |
| 6. CAT New Program Hrs. - Local | N/A | 404 | 343 | 350 |
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Urban Development Director

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## Urban Development Department
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## Cable Administration Program

Fund 1010 - General

Program 0600

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The recommendations are as follows:

1. The deadline for franchise discussions with Cox be extended to December 31, 2002.

2. The funding for CAT, which is due to expire on June 30th, 2002 be extended by six months through an appropriation of additional funds by the Council.

3. The Council request to secure an audit of the rate increase in the basic rate charged to a certain group of local subscribers be dropped.

Each of these recommendations demands some explanation.

1. Franchise Deadline

The Cox negotiator, Mr. Cantrell, has furnished us with a much simpler document for consideration. As might be expected, there are certain issues that have been removed, such as any additional funding for public access. However, he has expressed a willingness to limit the time to five years, which is a significant change from the 15 years that had been plugged into the earlier draft. In addition, the City is suffering no harm from a revenue perspective in continuing to operate under the old franchise. Finally, the willingness of the company to explore with us changes in public access is an issue that demands more discussion.

2. CAT Funding

The City Telecommunication Board is currently looking at the possibility of having the PEG City staff assume the operational control of this operation. There is some merit to this idea, given some recent operational problems with the system. However, I remain convinced that all parties will be best served by utilizing the remainder of this year to thoroughly evaluate all options. In addition, the Telecommunications Board did, at their May 16th meeting, pass a motion to recommend to the City Council that the funding for the second half of 2002 be appropriated.

3. Rate Audit

The City council passed a resolution on February 19, 2002, requesting that an audit of the recent rate change on basic service be done. We have secured some contacts from Mr. Grogan and have opened a conversation on this issue. In addition, we have discussed this with Cox representatives in the hope that the company would offer what some in the field call a reduced lifeline tier rate that would offer fewer channels than the 23 now available under the base rate. Their position on this issue is that competitive pressures make such an operation very difficult at this time.

The feedback on the rate audit that has been received is that it is essentially an exercise in futility. The companies have become very skillful in meeting the demands of the required federal forms and any discrepancy found through an audit would be in the penny range. Cox has also made it clear that any claim of an overcharge would be contested. In summary, I would suggest to the Council that the probability of success in this effort is limited.

# Urban Development Department
# Cable Administration Division
# Cable Administration Program

Fund 1010 - General

Program 0600

Program Description, Objectives, and Analysis:

This division oversees the operations of the Public, Educational, and Government Access Television Center. The division operates the City's Government Access Channel 3; monitors and enforces the City's franchise agreement with Cox Communications; works with the Telecommunications Board and the City Council to enforce federal cable television regulations; and supervises the performance of the public access provider and the educational access channel's operation. The main goals are: 1) ensure that the P.E.G. television center is equipped, maintained, open, and accessible to Fayetteville citizens as a channel of public expression; 2) use the government channel to keep citizens informed on local government issues and services; 3) assist City staff with production of audio/video presentations; and 4) study cable rate and franchise regulation issues and make recommendations to the Telecommunications Board, Mayor, and City Council.

This program has a budgeted increase in Utility Expense and Insurance-Vehicles/Buildings of $1,644 over actual 2000 expenses. The reduction in the Services & Charges Category is due to the Community Access Television transfer being reduced by 50% ($34,500).

| | Actual 2000 | Budgeted 2001 | Estimated 2001 | Budgeted 2002 |
|---|---|---|---|---|
| **Program Staff** | | | | |
| Full-Time Equivalent Positions | 5.25 | 5.25 | 5.25 | 5.25 |
| **Program Expenditures** | | | | |
| Personnel Services | $ 136,136 | $ 141,367 | $ 141,367 | $ 147,818 |
| Materials and Supplies | 5,175 | 5,498 | 5,498 | 4,298 |
| Services and Charges | 75,975 | 81,465 | 81,393 | 46,565 |
| Maintenance | 6,463 | 8,103 | 8,103 | 7,215 |
| Capital | 709 | 401 | 401 | 0 |
| | $ 224,458 | $ 236,834 | $ 236,762 | $ 205,896 |

Performance Measures

| | Actual 2000 | Budgeted 2001 | Estimated 2001 | Budgeted 2002 |
|---|---|---|---|---|
| **Demand/Workload** | | | | |
| 1. Hours Video Equipment Used by Public & Staff | 15,818 | 15,000 | 13,000 | 16,000 |
| 2. CAT Video Workshops | 141 | 250 | 176 | 180 |
| 3. City Video Tapes Duplicated | 329 | 350 | 320 | 330 |
| 4. CAT Channel Total Cablecast Hrs. | 5,876 | 6,500 | 6,454 | 6,500 |
| 5. Gov't Channel Total Cablecast Hrs. | 2,262 | 2,392 | 2,490 | 2,500 |
| **Results** | | | | |
| 1. Administer PEG Center Hrs./Month | 75 | 75 | 75 | 75 |
| 2. Gov't Channel Meetings Taped | 240 | 200 | 310 | 300 |
| 3. Gov't Channel Info Videos Produced | 215 | 210 | 215 | 215 |
| 4. CAT Workshop Participants | 96 | 200 | 516 | 500 |
| 5. CAT First Time Producers | N/A | 24 | 52 | 50 |
| 6. CAT New Program Hrs. - Local | N/A | 404 | 343 | 350 |
| 7. Gov't New Prog. Hrs. - Meetings/Info | 342 / 123 | 280 / 105 | 468 / 112 | 428 / 112 |
| 8. Gov't/CAT Bulletin Board Messages | 688 / N/A | 750 / 420 | 720 / 802 | 750 / 850 |

# STAFF REVIEW FORM

X · AGENDA REQUEST
X CONTRACT REVIEW
GRANT REVIEW

For the Fayetteville City Council meeting of June 4, 2002

FROM:

| Name | Division | Department |
|---|---|---|
| Connie Edmonston | Parks & Recreation | Urban Development |

ACTION REQUIRED:
Resolution to approve the Offer and Acceptance Contract with Hollybrooke Estates Phase III for lots 6 and 7 in the amount of $36,000 plus closing costs.

COST TO CITY:

$36,000 plus closing costs

$40,000
Category/Project Budget

Park Acquisition
Category/Project Name

2250-9250-5805.00
Account Number

$0
Funds Used To Date

**Park Development**
Program Name

02016-1
Project Number

$40,000
Remaining Balance

**Parks Development**
Fund

BUDGET REVIEW: _x_ Budgeted Item ___ Budget Adjustment Attached

5-20-02
Budget Manager

Administrative Services Director

CONTRACT/GRANT/LEASE REVIEW: GRANTING AGENCY: ______

Marla Farthing 5/24/02 * See Comments.
Accounting Manager Date

Nancy Smith 5/20/02
Internal Auditor Date

5/22/2002
City Attorney Date

ADA Coordinator Date

5/22/2002
Purchasing Officer Date

STAFF RECOMMENDATION:

Approval of Resolution

Connie Edmonston 5-14-02
Division Head Date

Hugh Earnest 5-17-02
Department Director Date

Administrative Services Director Date

Mayor Dan Coody 5/23/02
Date

Cross Reference

New Item: Yes No

Prev Ord/Res #: [Prev Ord/Res #]

Orig Contract Date: [Orig Contract Date]

Orig Contract Number: [Contract #]

STAFF REVIEW FORM

Description Hollybrook Estates, Phase III Meeting Date June 4, 2002

Comments: Reference Comments:
Budget Coordinator

Accounting Manager

City Attorney a new set of Bills of Assurance are being filed to exempt our lots from the single-family housing covenants. [illegible] See Attached.

Purchasing Officer

ADA Coordinator

Internal Auditor "ORIGINAL"

OFFER AND ACCEPTANCE CONTRACT

I only see a copy in file.

THIS WAS REMOVED FROM THE AGENDA.

# FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

**TO:** Mayor Coody and City Council

**THRU:** Hugh Earnest, Urban Development Director

**FROM:** Connie Edmonston, Parks & Recreation Superintendent C.E.

**DATE:** May 14, 2002

**SUBJECT:** Purchase of Land adjoining Lake Sequoyah Park

**Background**

Lake Sequoyah Park contains 1,779 acres, of which 495 acres is water. This park is a wonderful resource for the City of Fayetteville. It is currently used for fishing and provides several trails leading to the Lake and White River. Future trails to and around Lake Sequoyah has been discussed at the Trails Master Plan Public Meetings.

**Current Status**

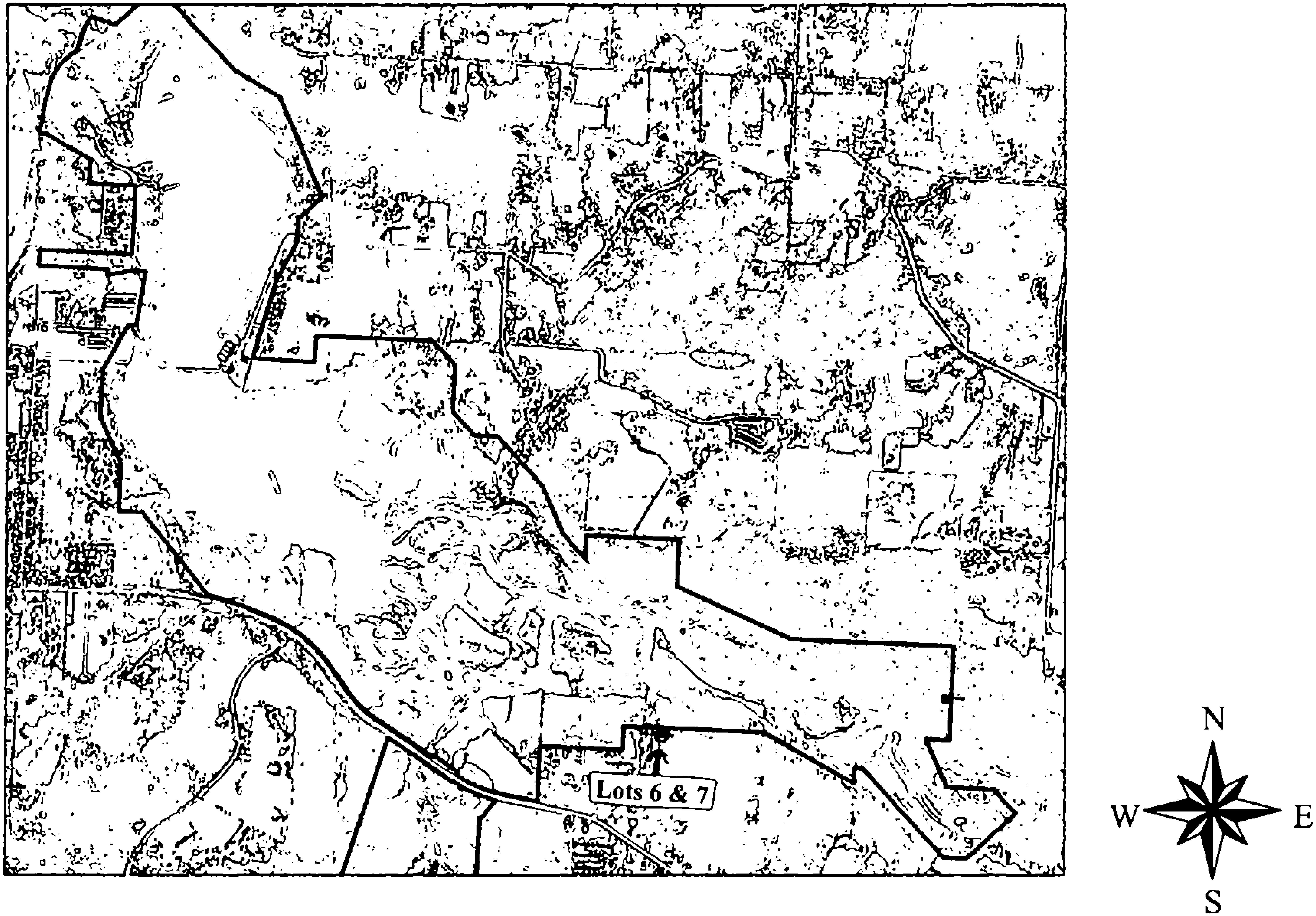
Park land is very difficult to access on the northeast and southeastern sides of the lake along the White River without going on private property or through marsh lands. Hollybrooke Estates Phase III, a new subdivision in Elkins, is currently selling lots bordering the southeastern side of the park. Lots 6 and 7 contain approximately one half acre at the end of a cul-de-sac. Lots are selling for $18,000 each.

**Recommendation**

Parks and Recreation Advisory Board toured the site on May 1, 2002 and recommended to purchase the land at their May 6, 2002 meeting. Parks and Recreation staff recommends to purchase this land for future access before the park becomes landlocked on the southeast side. The two end lots of 6 and 7 provide a cul-de-sac entryway opening to the recreational opportunities for trails, fishing, and wildlife and nature enjoyment along the White River. This southern portion of the park provides a very scenic area with open meadows and trees leading to the river. An Offer and Acceptance Contract to purchase the two lots for a total of $36,000 plus closing costs from Hollybrooke Estates, Phase III is attached for your consideration.

Attachments:
Lake Sequoyah Map
Hollybrooke Estates, Phase III Plat
Parks & Recreation Advisory Board Meeting Minutes May 6, 2002
Offer and Acceptance Contract

# Lake Sequoyah Park



# HOLLYBROOKE ESTATES
PHASE III

1. CERTIFICATE OF ACCURACY OF SURVEY

[illegible]

2. CERTIFICATE OF OWNERSHIP AND DEDICATION

[illegible]

3. UTILITY EASEMENTS

[illegible]

4. PLANNING BOARD APPROVAL

[illegible]

5. CERTIFICATE OF APPROVAL FOR RECORDING

[illegible]

TOTAL ACREAGE

ZONING

LAND USAGE

SINGLE FAMILY RESIDENTIAL

SETBACKS

FRONT

SIDE

REAR

SOIL TYPE

[illegible]

ELEVATION NOTE:

[illegible]

GRAPHIC SCALE

LEGEND

BASIS OF BEARINGS

[illegible]

FLOOD CERTIFICATION

[illegible]

ENGINEER / SURVEYOR

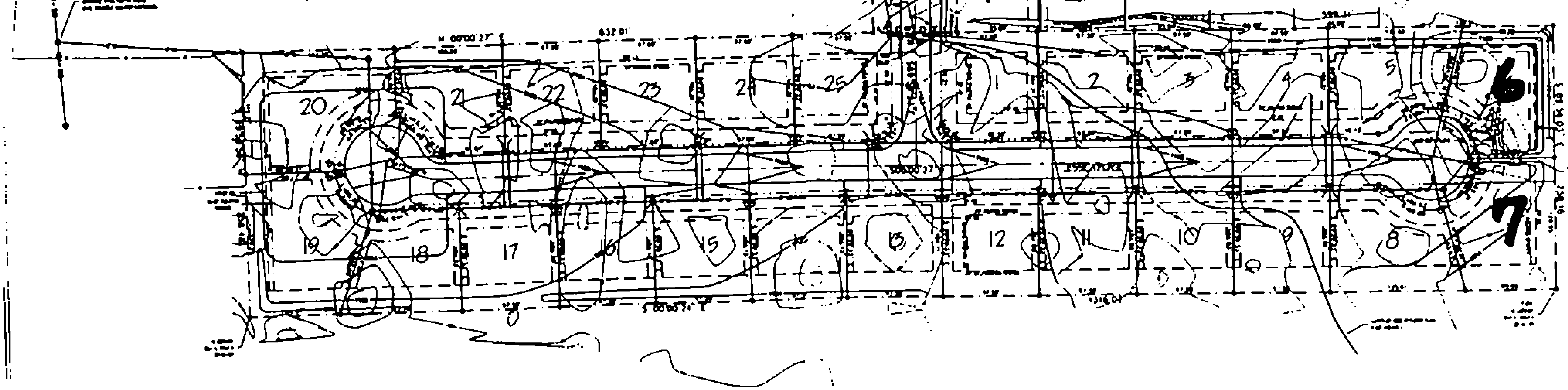
[illegible]

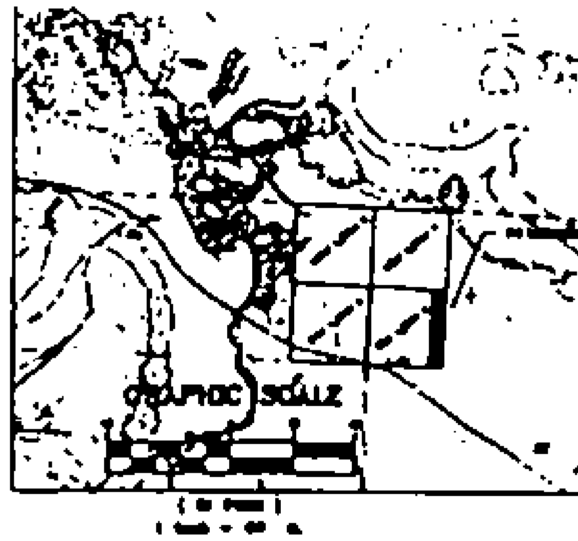
OWNER / DEVELOPER

[illegible]

## SURVEY DESCRIPTION

[illegible]



and trips to the ABA Grandnationals of BMX.[1]

Future lighting needs and rider helmet and other safety concerns were discussed.

**MOTION:**

**Mr. Mauritson moved to expend up to Nine Thousand Six Hundred Dollars ($9,600) from the Southeast Park District to furnish 750-feet of electrical line, circuits and plugs for the Walker Park north pavilion, BMX track and future skate park area.**

**Mr. Marley seconded the motion.**

**Upon roll call, the motion was approved 5-0-0 with Cook, Mauritson, Hill, Colwell and Marley voting 'yes' and Pawlik-Holmes absent for the vote.**

**IV. Lake Fayetteville Trail Grant Application: Steve Hatfield**

Parks and Recreation Staff requests permission from City Council on May 7, 2002 to apply for $100,000 from Arkansas Recreational Trails Fund to enhance the Lake Fayetteville Trail. This is an 80/20 matching grant. Mr. Hatfield said the project was located on the north side of Lake Fayetteville and will include a loop trail system as well as a short section of boardwalk which will allow accessibility close to the lake.

**V. Lake Sequoyah Land Purchase Discussion**

Mr. Colwell said two lots were visited during the May 1, 2002 park tour which would give access on the southeast side of Lake Sequoyah. Ms. Edmonston said both lots combined are about one-half an acre and the current asking price is $18,000 each. An appraisal will be obtained before seeking City Council approval for the purchase. Mr. Colwell recommended fencing the area immediately to prevent dumping. Capital funds from Park Land Acquisitions would be used for the purchase.

**MOTION:**

**Mr. Colwell moved to recommend Park Staff pursue the purchase of two lots to improve access to Lake Sequoyah.**

**Mr. Mauritson seconded the motion.**

**Upon roll call, the motion was approved 6-0-0.**

**VI. Lake Fayetteville Race Information**

| | |
|---|---|
| May 18 | Lewis & Clark's Frontier Challenge<br>Run and Duathlon around Lake Fayetteville |
| June 8 | Lewis & Clark and Big Brothers Big Sisters Sports for Kids Sake<br>Canoe and bicycle race at Lake Fayetteville |

1 http://www.ababmx.com/race_for_life.html

# OFFER AND ACCEPTANCE CONTRACT

1. The City of Fayetteville, Arkansas, a municipal corporation, hereinafter referred to as the Buyer, offers to buy, subject to the terms and conditions set forth herein, the following described property:

PROPERTY DESCRIPTION

Lot No. 6 and Lot No. 7 of Hollybrooke Estates Phase III to the City of Elkins as per plat filed with the Circuit Clerk in the County of Washington, State of Arkansas.

2. **Purchase Price**: Subject to the following conditions, the Buyer shall pay for the property at closing, the total and cash payment of **$ 36,000.00**.

3. **Contingent Earnest Money Deposit**: The Buyer herewith tenders a check for **$2,000.00** to **Hollybrooke Estates, Phase III**, hereinafter referred to as the Seller, as earnest money, which shall apply on the purchase price. This offer to purchase is contingent upon approval of the City Council of the City of Fayetteville, Arkansas, and, if they do not so approve, the earnest money deposit will be returned to the Buyer by the Seller. If title requirements are not fulfilled or the Seller fails to fulfill any obligations under this contract, the earnest money shall be promptly refunded to the Buyer. If the Buyer fails to fulfill his obligations under this contract or after all conditions have been met, the Buyer fails to close this transaction, the earnest money may become liquidated damages to the Seller.

4. Conveyance will be made to the Buyer by general Warranty Deed, except it shall be subject to recorded plats, Protective Covenants, instruments and easements, if any, which do not materially affect the value of the property. Such conveyance shall include mineral rights owned by the Seller.

5. The Seller shall furnish a policy of title insurance in the amount of the purchase price from a title insurance company as selected by the Buyer. The cost of such title insurance shall be that of the Seller.

6. Seller agrees to allow Buyer, if Buyer so desires, at Buyer's expense, to survey the property. Seller agrees to cure any title problems which may result from any differences between the recorded legal descriptions of the property and the survey description. Said title problems, if any, must be solved prior to closing to the satisfaction of the Buyer.

7. Taxes and special assessments due on or before closing shall be paid by the Seller. Insurance, general taxes, ad valorem taxes, special assessments and rental payments shall be prorated as of closing.

8. The closing date is designated to be within **Thirty (30) days** after approval of this Contract by the Fayetteville City Council. This Contract will be submitted to the Fayetteville City Council for approval within four weeks of the date of Seller signature.

9 Closing costs, except for those items heretofore mentioned, shall be shared equally between Buyer and Seller.

10. Possession of the property shall be delivered to the Buyer on the date of closing.

11. Seller hereby grants permission for the Buyer or its employees or designates to enter the above described property and improvements for the purpose of inspec-tion and/or surveying.

12. All fixtures, improvements and attached equipment are included in the purchase price.

13. Risk of loss or damage to the property by fire or other casualty occurring up to the time of closing is assumed by the Seller.

14. Seller shall disclose to Buyer any and all environmental hazards of which Seller has actual knowledge. Upon acceptance of all conditions and terms of this Offer and Acceptance, Buyer and Seller shall share equally the costs of any and all testing for the existence of environmental hazards. Should the existence of environmental hazards be known or determined, Seller shall cure such, at Seller's expense, or in the alternative, at Buyer's discretion, Buyer may cure such environmental hazard, and Seller shall indemnify Buyer for all costs associated with said cure.

15. This agreement shall be governed by the laws of the State of Arkansas.

16. This agreement, when executed by both the Buyer and the Seller shall contain the entire understanding and agreement of the parties with respect to the matters referred to herein and shall supersede all price or contemporaneous agreements, representations and understanding with respect to such matters, and no oral representations or statements shall be considered a part hereof.

17. This contract expires, if not accepted by the Seller on or before the **22nd** day of **May**, 2002.

18. **NOTICE: BUYER ASSERTS AND SELLER HEREBY ACKNOWLEDGES THAT THIS OFFER IS EXPRESSLY CONTINGENT UPON THE APPROVAL OF THIS OFFER OF PURCHASE BY THE CITY COUNCIL OF FAYETTEVILLE AND THAT THE FAILURE OF THE COUNCIL TO SO APPROVE WILL MAKE ALL PORTIONS OF THIS OFFER NULL AND VOID, EXCEPT, THE $ 2,000.00 EARNEST MONEY DEPOSIT WILL BE RETURNED TO BUYER BY THE SELLER.**

**SELLER**:
**Hollybrooke Estates, Phase III**

Donald C. Dingledine

Donald C. Dingledine

Date: 5/20/02

Linda C. Dingledine

Linda C. Dingledine

Date 5/20/02

**AGENT OR WITNESS**:

______________________________ Date: ______________

**BUYER**:

**City of Fayetteville, Arkansas,**
a municipal corporation

Dan Coody

Dan Coody, Mayor

Date: 5/20/02

Heather Woodruff

Heather Woodruff, City Clerk

Date 5/20/02

SEAL)

## ACKNOWLEDGMENT

STATE OF ARKANSAS )
) SS.
COUNTY OF WASHINGTON )

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

WITTNESS my hand and seal on this 20th day of May, 2002

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

Notary Public

MY COMMISSION EXPIRES:

## ACKNOWLEDGMENT

STATE OF ARKANSAS )
) ss.
COUNTY OF WASHINGTON )

BE IT REMEMBERED, that on this date, before the undersigned, a duly commissioned and acting Notary Public within and for said County and State, personally appeared **Donald C. Dingledine** and **Linda C. Dingledine**, husband and wife, to me well known as the person who executed the foregoing document, and who stated and acknowledged that they are managers and partial owners of **Hollybrooke Eatates Phase III**, and are duly authorized to execute the foregoing instrument for and in the name and behalf of said enterprise, and further stated and acknowledged that **they** had so signed, executed and delivered said instrument for the consideration, uses and purposes therein mentioned and set forth.

WITNESS my hand and seal on this 20th day of May, 1997.

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

Notary Public

MY COMMISSION EXPIRES:

05-01-~~03~~ 2010

BILL OF ASSURANCES AND PROTECTIVE COVENANTS
FOR
HOLLYBROOKE ESTATES PHASE III

'01 AUG 16 AM 11 29
WASHINGTON CO.
B. STAMPS

Know ALL MEN BY THESE PRESENTS;

These covenants of assurance are entered into by and between the parties hreto on this 16 day of August 2001.

WITNESSETH:

WHEREAS. Donald C. Dingledine and Jeff Cannon are the developers of the described real property situated in Washington County, Arkansas to-wit:

Hollybrooke Estates Phase III, the plat of which is filed for record in the office of the Circuit Clerk and Ex-Officio Recorder of Washington County, Arkansas

and,

WHEREAS, said developer desires to establish a Bill of Assurances and Protective Covenants to assure the orderly development of the above-described real property and to further assure the protection of the investment made in such property by the developers and all others who
shall purchase herein. THEREFORE, the following Bill of Assurances and Protective Covenants
are deemed in full force and effect the same to run with and apply to all of the above-described INSERT,
real property, from this date forward until the same shall terminate or be modified according to the provisions herein, to-wit:

(1) All lots in said planned development shall be one family dwellings not to exceed two stories in height with two or three car garage.

(2) Utility easements are reserved over the lots in those widths as shown on the recorded plat, and such easements are for the utility use only, the ownership of the same remaining in the lot owner. All utilities must be underground.

(3) No noxious or offensive trade shall be carried on upon any lot, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood, It being the express understanding that the planned development is for residential purposes only.

(4) No building shall be erected on any lot nearer than 25 feet to the front lot line, nor nearer than 8 feet to any sideline nor nearer than 20 feet to the rear lot line. On corner lots, no structure shall be permitted nearer than 25 feet to the side lot line abutting a side



2001099107

After "above described real property ....." INSERT

"except for Lots 6 & 7, so long as said lots are owned and used by the City of Fayetteville for ingress and egress to and from Lake Sequoyah Park" from this date forward......

street.

(5) No residential lot sh[illegible] re-subdivided into a smalle[illegible]

(6) No trailer, basement, tent, shack, garage, barn or other building shall be erected in the subdivision to be used as a temporary dwelling, nor shall any residence of any temporai character be permitted. Basements and garages may be built only as a part of a permaner residence, except that with approval garages may be detached from the main structure. N prefabricated modular houses shall be built on any lot. This shall not preclude or prevent the erection of temporary construction facilities on said lots, by the subdividers during construction phases.

(7) No structure shall be moved onto any lot to be utilized as a residence. No building shall be erected, or altered, on any lot until the design, plans, elevations and location thereof have been approved in writing by a committee appointed by the subdivisioners, or b the subdividers acting in the the capicity of such committee until and unless such committee is or is not appointed. If no such committee has been appointed by the subdivider at the time a majority of the lots in said subdivision have been sold, then such committee shall be elected by a majority of the owners of the lots in the subdivision. However, in the event such committee is not in existence, or fails to approve or disapprove a design, size and location on the lot conforms to these regulations and is in harmony with the existing structure, already in the planned development. The floor area of any building must meet the following minimum requirement, to-wit: A minimum square footage of 1250 square feet. The foregoing minimum is exclusive of storage, garages, porches, patios and decks. Exceptions to the foregoing minimum square feet of living area may be specifically granted by the committee previously set forth herein, or by the subdividers for specially designed or unusually expensive homes to be built, provided that the design and quality of the structure would be in harmony with the general contractor or other homes in the planned development, or not be detrimental to the future development of said development.

(8) No signs, with the exception of the development signs, shall be displayed to the public view on any lot. However, one professional sign of not more than one square foot, or one sign of not more than five square feet advertising the property for sale or rent, or any sigr used by the subdividers or a builder to advertise the property during the construction and sales period, will be permitted.

(9) No vehicles may be parked overnight in the streets of this subdivision. Lot owners shall provide sufficient off-street parking to accommodate the vehicles used by their famil and guests. No semi-trailer trucks shall be allowed to park in this subdivision.

(10) All vehicles must be parked on a concrete drive. If any RV's, boats, etc. are to be stored on a lot they shall be on concrete pads.

(11) All storage buildings, workshops and other outbuildings shall be constructed of the same material as the dwelling, or of a material compatible with all other structures in the subdivision.

(12) All homes must have a two car garage.

(13) No animals, livestock or poultry of any kind shall be raised, bred or kept on any lot, except that dogs, cats or other household pets may be kept provided that they are not kept, bred or maintained for any commercial purposes. Dogs must be kept in fenced yards.

(14) No lot shall be used or maintained as a dumping ground for rubbish. Trash, garbage,

(14) No lot shall be used or maintained as a dumping ground for rubbish. Trash, garbage, or otherwise shall not be k[illegible] xcept in sanitary containers[illegible] incinerators or other equipment for the sotrage or disposal of such materials shall be kept in a clean and sanitary condition.

(15) Nothing in these covenants shall be deemed to resrict the rights of the subdividers or the property owners or established horizontal property regimes within said development to establish and enforce rules, regulations and maintenance of said development located therein. However, in no event shall said rules and regulations so promulgated have any force and effect if the same shall conflict with these covenants of assurance, the same shall be null, void and of no effect whatsoever.

(16) These covenants and restrictions are to run with the land, and shall be binding upon the subdividers, its successors and assigns for a period of twenty-five (25) years from the date hereof. At any time within six (6) months from the expiration period, a majority of the lot owners may express their intention in writing, drafted so as to be recorded with the registrar of deeds, that they no longer wish for said covenants of assurance to remain in full force and effect, then the same shall therefore be terminated as of the expiration date. In the event that no such action is taken, then these covenants shall continue for an additional period of five years, and may then be terminated in accordance with the terms set forth for the original termination. It is further provided that should a three-fourths majority of lot owners at any time wish to amend these covenants of assurance, whether by adding to or taking from the present form, the same shall be incorporated as a written instrument capable of being recorded as above referred to and under the same terms and conditions thereof.

(17) If any of the parties hereto, or their successors in title, or their heirs or assigns shall violate or attempt to violate any of these covenants or restrictions as hereinabove set forth, prior to the expiration or termination of these covenants or assurance, both in the original term and continuations thereof, then it shall be law and authorized for any other person or persons, either as a class or sinularly, who own any lot in this development, or any portion thereof, to prosecute any proceedings at law or in equity against the person or persons so violating or attempting to violate, any such covenant or restriction, and thereby either prevent said violation, or recover damages, or other penalties for such violation and further, to utilize any and all other remedies at law or equity which may now exist or which may hereinafter apply.

(18) Any home built in the known flood area shall comply with F.E.M.A. regulations. More specifically, the floor shall be at least two feet above established F.E.M.A. floor levels.

(19) All fences in this subdivision shall be kept in good repair. All fences shall be no more than six (6) feet in height. No barbed wire or welded wire fences shall be permitted. No fence shall be built closer than the side garage door. No front yard fence will be permitted.

(20) In keeping with this bill of assurances and protective covenants, no lot purchased for construction shall remain empty for more than 3 years. It is the desire of the subdividers to have a fully developed subdivision. Any lot purchased that is not immediately built on shall be kept mowed and maintained so as not to prevent other property owners from fully enjoying their property.



2001099109

EXECUTED THIS 16 day of August 2001.

Jeffrey L. Cannon

Donald C Dingledine

Acknowledgement

State of Arkansas
County of Washington

BE IT REMEMBERED, that on this date, before me, a Notary Public within and for said County and State, duly commissioned and acting, persoanlly appeared Donald C. Dingledine JEFFREY L. CANNON, ______, ______ to me well known as the person (s) who executed the foregoing Bill of Assurances and Protective Covenants, and that they had executed the same for the consideration and purpose therein mentioned and set forth.

WITNESS my hand and seal on this 16th day of August, 2001.

Amy M. Brink
Notary Public

My Commission expires: 2/12/2009

Amy M. Brink, Notary Public
Washington County, Arkansas
My Commission Exp. 2-12-2009
Notary Public



2001099110

STAFF REVIEW FORM

HOLD per Hugh. 5/6/02.

X AGENDA REQUEST
____ CONTRACT REVIEW
____ GRANT REVIEW

For the Fayetteville City Council meeting of MAY 7, 2002

FROM:

MINOR WALLACE — Name
INSPECTIONS — Division
URBAN DEVELOPMENT — Department

ACTION REQUIRED:

COST TO CITY:

| | | |
|---|---|---|
| $33,664.00<br>Cost of this Request | $<br>Category/Project Budget | Category/Project Name |
| Account Number | $<br>Funds Used To Date | Program Name |
| Project Number | $<br>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 | ADA Coordinator | Date |
| Purchasing Officer | Date | | |

STAFF RECOMMENDATION:

MINOR WALLACE — Division Head — 4/11/02 Date

Department Director — Date

Administrative Services Director — Date

Mayor — Date

Cross Reference

New Item: Yes No

Prev Ord/Res #:

Orig Contract Date:

Orig Contract Number:

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## Staff Review Form

Description - Fayetteville Senior Center at Waxhaws Project - Meeting Date ______________
Project Name - Change Order No. 2

Comments: Reference Comments:

Budget Director

Accounting Manager

City Attorney

Purchasing Officer

ADA Coordinator

Internal Auditor

# FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

## DEPARTMENTAL CORRESPONDENCE

TO: Mayor Dan Coody

THRU: Hugh Earnest
Urban Development Director

FROM: Minor Wallace MW
Building Construction Manager

RE: Change Order No. 2
Fayetteville Senior Center at Waxhaws

This Change Order was necessitated primarily to extend utilities for future facilities, upgrade the floor surface of the kitchen area, add security doors at the kitchen and add additional time for project delays due to no fault of the General Contractor.

Approval of this Change Order is recommended.

DARYL S. RANTIS
ARCHITECTS, P.A.
380 West Rock Street
Fayetteville, AR 72701
(501) 443-9112

**Change order: #2**
**Date: 3/18/2002**
Request made by:
Owner: xxx
Architect:xxx
Contractor: xxx
Field:
Other:

**Project:** Fayetteville Community / Senior Center
901 South College Ave.
Fayetteville, Arkansas 72701

**Owner:**
Contract for: Fayetteville Community/ Senior Center
City of Fayetteville
Contract Dated: 1/04/2001
To Contractor: Harrison Davis Construction CO. Inc.

You are directed to make the following Changes to the original contract:

See attached list of items to include additional time per item changed.
Specific material and scope of work for each item detailed in General Contractor's proposal requsets.

This change order not valid until signed by the owner, The architect and the Signature of the Contractor indicates agreement herewith, including any adjustments in the contract sum or contract time.

DARYL S. RANTIS
ARCHITECTS, P.A.
380 West Rock Street
Fayetteville, AR 72701
(501) 443-9112

**Change order: #2 cont.**
**Date: 3/12/2002**

The original Contract Price was........................................................$1,982,600.00
Net change by previous authorized change orders.................................$ 100,192.00
The Contracted Price prior to this Change Order was.........................$2,082,792.00
The Contracted Price will increase by this Change order...........................................................................................$ 33,664.00
**The new Contracted Price including this Change Order will be...........$2,116,456.00**
The contract time will be changed by.......................................104 calendar days
The date of substantial completion as of the date of this change order therefore is:
**June 12, 2002**

Approved:
Daryl S. Rantis
ARCHITECT
380 West Rock ST.
Fayetteville, AR 72701
ADDRESS

4.1.02

BY DATE

Agreed To:
Harrison Davis
CONTRACTOR
1931-A West Dean Street
Fayetteville, Arkansas 72703
ADDRESS

Harrison Davis 4-1-02

BY DATE

Authorized:
Mayor Dan Coody
OWNER
City of Fayetteville
113 West Mountain
Fayetteville, Arkansas 72701
ADDRESS

BY DATE

DARYL S. RANTIS
ARCHITECTS, P.A.
380 West Rock Street
Fayetteville, AR 72701
(501) 443-9112

**Change order: #2 cont.**
**Date: 3/12/2002**

| | | | Additional Time |
|---|---|---|---|
| Item #1 | Make offical start date March 14, 2001 Building permit process extension | $ 0.00 | 27 Days |
| Item #2 | Delete all colored concrete | ($ 8,067.00) | 0 Days |
| Item #3 | Delete 27 steel columns, Add rebar column | ($ 1,050.00) | 14 Days |
| Item #4 | Delete 5/8" sheetrock above accoustic ceiling | ($ 1,885.00) | 0 Days |
| Item #5 | Addition of horn strobes in restrooms | $ 288.00 | 0 Days |
| Item #6 | Addition for silt fence relocate & tree removal | $ 1,135.00 | 0 Days |
| Item #7 | Addition for extension of utilities for future facilities | $14,919.00 | 7 Days |
| Item #8 | Addition for extra site work | $ 7,524.00 | 4 Days |
| Item #9 | Addtion for slab edge turndown, delete grade beam | $ 2,714.00 | 6 Days |
| Item #10 | Addition for roof hatch to penthouse | $ 1,476.00 | 3 Days |
| Item # 11 | Additon for fiber mesh reinforcing to rat slab | $ 191.00 | 0 Days |
| Item #12 | Addition for epoxy floor in kitchen & bathroom | $ 11,066.00 | 7 Days |
| Item #13 | Delete wall mount water closets, add floor mount water closets | ($ 1,038.00) | 0 Days |
| Item #14 | Delete built-in cabinets in pick-up room | ($ 2,750.00) | 0 Days |
| Item #15 | Addition of roll-up security doors in kitchen and motor for large door | $ 8,088.00 | 5 Days |
| Item #16 | Addition of vents for crawl space | $ 1,053.00 | 5 Days |
| Item #17 | Document clarification & revisions | $ 0.00 | 26 Days |
| | TOTAL | **$ 33,664.00** | **104 Days** |

# FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

DATE: May 24, 2002

TO: Mayor and City Council

FROM: Hugh Earnest
Urban Development Director

RE: Cox Cable Franchise/Community Access Television

Cable television in this country and franchises for use of the public right-of-way for installation of the necessary cable has become a part of Municipal Government. Fayetteville is certainly no exception. The first franchise for operation of a cable system was negotiated in 1957. Since that first franchise the City has had a number of agreements with several companies. The current franchise, negotiated in 1992, secured for the City three channels for use by the public. One of these channels was assigned by contract to the University of Arkansas for educational purposes. The other two channels are utilized for Public (Government) information and Public Access. The Public channel is managed by our Cable Administration Division manager, who is also responsible for providing administrative support to the Telecommunication Board. The City also contracts with a not for profit organization, Community Access Television (CAT) for operation of the Public Access Channel. The current franchise agreement expired on October 31, 2000 and City representatives have been negotiating at some level with Cox Communication since that time.

The cable industry itself has gone through wrenching changes since its entry into the American marketplace. During the franchise periods in Fayetteville, we have seen several operators as consolidation and the entry of new players into the marketplace has occurred. In addition, the industry has successfully used the national legislative process as a means to lessen the ability of local governments to exercise significant controls over their operation. National legislation passed in 1992 and 1996 has had significant impact on all aspects of the industry. Another significant factor impacting this industry and local governments is the entry into the market of satellite technology allowing the extensive use of wireless signals for television broadcasting. This technology has created in all markets a level of competition that did not exist when franchises were first negotiated.

As has been stated, Fayetteville has been successful in securing, at no direct cost to the City, the dedication of three separate channels for use. Fayetteville has also created a Telecommunications Board to manage some portions of the Public, Educational and

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

Governmental channels that were secured. The Board is also by ordinance empowered to advise the City Council on policy issues relating to the franchise and certain aspects of the operation of the three channels. This Board was created by the City Council to advise the city council and make recommendations on a wide range of telecommunication issues. In addition, ordinance 4219 also assigns to the Board oversight responsibilities for administration of the access facility as well as access services administered by other entities. A private not for profit group has a contract for the operation of a channel for use by the public in whatever form or fashion they may desire. This Community Access component of the channel lineup has, over time, been a point of some public debate
The city has historically collected from Cable franchisees a fee for use of the public Right of Way which goes into the General Fund. This franchise fee has grown over the years as shown below.

1991 $251,272
1995 $316,260
2000 $371,613
2002 $402,000 (estimated)

A significant percentage of this money has been used for of a successful PEG endeavor that is matched nowhere else in Arkansas. A copy of the budget for 2002 is attached as reference.

There is one financial issue on the table which has not been resolved. A recent federal ruling by the FCC stating that charges for cable modems are no longer subject to a franchise fee, has caused Cox to inform us that they will no longer collect a franchise fee on this service. Our City Attorneys have responded that the company remains responsible for collecting the fee under our franchise language. While all parties expect a rash of legal filings at the national level to resolve the disagreement, the fact remains that Cox is no longer collecting the fee locally.

**Current Situation**

Over the past several years, City representatives had been moving slowly through a laborious negotiating process. The City had employed in 2000 a Mr. Brian Grogan, who is an attorney, to represent the City in developing a draft franchise agreement. This process culminated in the development of a draft document that was approved by Mr. Grogan and Mr. Lutzker, an attorney in Washington D.C. representing Cox Communication. This document was furnished to the City in the fall of 2001 for approval. It was felt by several individuals connected with the process that certain references to an institutional network were lacking in scope. This lack caused various City officials to reopen the discussion surrounding what constitutes an institutional network and how it can or should be incorporated in a franchise network.

Also, at that time, the City was involved in intense discussions revolving around the preparation of the 2002 budget. One of the decisions arising out of that discussion was including funding for the CAT contract only through June 30, 2002. This decision was

coupled with an instruction to the staff to investigate other options for securing the monies necessary for CAT funding. The draft franchise agreement received by the City did contain an allocation for capital equipment for use to support the PEG activities and it was hoped that the money could be switched in some form or fashion to cover operational costs associated with public access. However, sometime early this year, the negotiating posture of Cox has changed. The company has employed as its principal negotiator a Mr. Tom Cantrell. It has been Mr. Cantrell's clearly articulated position that the earlier draft was unacceptable to the company and that both sides needed to revisit the basic principles underlying a franchise agreement. One of the early casualties of this process was any mention of additional financial support. Mr. Cantrell has also expressed a willingness to explore the entire existing relationship between the City and his company relative to how the three channels are utilized. In effect, he is challenging us as a public body to analyze how we are using these three channels and to look at alternatives which may be preferable from a public policy perspective.

**Recommendations**

From a fact driven perspective, there is little or no direct connection between the issue of CAT funding and the seemingly interminable negotiations with Cox. However, there is a real possibility that linking the two ongoing discussions will result in better and more efficient use of the three channels that are available for public use in Fayetteville. The position being taken by Cox Communications in our ongoing conversation, namely that a strengthened public access format is of interest to both parties, perhaps offers us the chance to explore regional linkages, a closer working relationship with the University of Arkansas and more efficient management of PEG related activities. As in any contractual relationship between a small city and a large national corporation, there are no guarantees that the interest of both sides can be met. Nonetheless, it is my opinion that the benefits to the City merit the effort. The following are a series of recommendations and actions that we would ask the Council to adopt. We would then, from a staff perspective, be more effective in our discussions wit Cox and in the associated discussions over the future of public access.

The recommendations are as follows:

1. The deadline for franchise discussions with Cox be extended to December 31, 2002.

2. The funding for CAT, which is due to expire on June 30th, 2002 be extended by six months through an appropriation of additional funds by the Council.

3. The Council request to secure an audit of the rate increase in the basic rate charged to a certain group of local subscribers be dropped.

Each of these recommendations demands some explanation.

1. Franchise Deadline

The Cox negotiator, Mr. Cantrell, has furnished us with a much simpler document for consideration. As might be expected, there are certain issues that have been removed, such as any additional funding for public access. However, he has expressed a willingness to limit the time to five years, which is a significant change from the 15 years that had been plugged into the earlier draft. In addition, the City is suffering no harm from a revenue perspective in continuing to operate under the old franchise. Finally, the willingness of the company to explore with us changes in public access is an issue that demands more discussion.

2. CAT Funding

The City Telecommunication Board is currently looking at the possibility of having the PEG City staff assume the operational control of this operation. There is some merit to this idea, given some recent operational problems with the system. However, I remain convinced that all parties will be best served by utilizing the remainder of this year to thoroughly evaluate all options. In addition, the Telecommunications Board did, at their May 16th meeting, pass a motion to recommend to the City Council that the funding for the second half of 2002 be appropriated.

3. Rate Audit

The City council passed a resolution on February 19, 2002, requesting that an audit of the recent rate change on basic service be done. We have secured some contacts from Mr. Grogan and have opened a conversation on this issue. In addition, we have discussed this with Cox representatives in the hope that the company would offer what some in the field call a reduced lifeline tier rate that would offer fewer channels than the 23 now available under the base rate. Their position on this issue is that competitive pressures make such an operation very difficult at this time.

The feedback on the rate audit that has been received is that it is essentially an exercise in futility. The companies have become very skillful in meeting the demands of the required federal forms and any discrepancy found through an audit would be in the penny range. Cox has also made it clear that any claim of an overcharge would be contested. In summary, I would suggest to the Council that the probability of success in this effort is limited.

# Urban Development Department
# Cable Administration Division
# Cable Administration Program

Fund 1010 - General Program 0600

Program Description, Objectives, and Analysis:

This division oversees the operations of the Public, Educational, and Government Access Television Center. The division operates the City's Government Access Channel 3; monitors and enforces the City's franchise agreement with Cox Communications; works with the Telecommunications Board and the City Council to enforce federal cable television regulations; and supervises the performance of the public access provider and the educational access channel's operation. The main goals are: 1) ensure that the P.E.G. television center is equipped, maintained, open, and accessible to Fayetteville citizens as a channel of public expression; 2) use the government channel to keep citizens informed on local government issues and services; 3) assist City staff with production of audio/video presentations; and 4) study cable rate and franchise regulation issues and make recommendations to the Telecommunications Board, Mayor, and City Council.

This program has a budgeted increase in Utility Expense and Insurance-Vehicles/Buildings of $1,644 over actual 2000 expenses. The reduction in the Services & Charges Category is due to the Community Access Television transfer being reduced by 50% ($34,500).

| | Actual 2000 | Budgeted 2001 | Estimated 2001 | Budgeted 2002 |
|---|---|---|---|---|
| **Program Staff** | | | | |
| Full-Time Equivalent Positions | 5.25 | 5.25 | 5.25 | 5.25 |
| **Program Expenditures** | | | | |
| Personnel Services | $ 136,136 | $ 141,367 | $ 141,367 | $ 147,818 |
| Materials and Supplies | 5,175 | 5,498 | 5,498 | 4,298 |
| Services and Charges | 75,975 | 81,465 | 81,393 | 46,565 |
| Maintenance | 6,463 | 8,103 | 8,103 | 7,215 |
| Capital | 709 | 401 | 401 | 0 |
| | $ 224,458 | $ 236,834 | $ 236,762 | $ 205,896 |

Performance Measures

| | Actual 2000 | Budgeted 2001 | Estimated 2001 | Budgeted 2002 |
|---|---|---|---|---|
| **Demand/Workload** | | | | |
| 1. Hours Video Equipment Used by Public & Staff | 15,818 | 15,000 | 13,000 | 16,000 |
| 2. CAT Video Workshops | 141 | 250 | 176 | 180 |
| 3. City Video Tapes Duplicated | 329 | 350 | 320 | 330 |
| 4. CAT Channel Total Cablecast Hrs. | 5,876 | 6,500 | 6,454 | 6,500 |
| 5. Gov't Channel Total Cablecast Hrs. | 2,262 | 2,392 | 2,490 | 2,500 |
| **Results** | | | | |
| 1. Administer PEG Center Hrs./Month | 75 | 75 | 75 | 75 |
| 2. Gov't Channel Meetings Taped | 240 | 200 | 310 | 300 |
| 3. Gov't Channel Info Videos Produced | 215 | 210 | 215 | 215 |
| 4. CAT Workshop Participants | 96 | 200 | 516 | 500 |
| 5. CAT First Time Producers | N/A | 24 | 52 | 50 |
| 6. CAT New Program Hrs. - Local | N/A | 404 | 343 | 350 |
| 7. Gov't New Prog. Hrs. - Meetings/Info | 342 / 123 | 280 / 105 | 468 / 112 | 428 / 112 |
| 8. Gov't/CAT Bulletin Board Messages | 688 / N/A | 750 / 420 | 720 / 802 | 750 / 850 |

RESOLUTION NO. ______

A RESOLUTION TO APPROVE A CONTRACT WITH FEDERAL AVIATION ADMINISTRATION FOR A CONTRACT TOWER PROGRAM COST SHARING AGREEMENT AND FOR ROBINSON AVIATION, INC. FOR AN OPERATIONAL CONTRACT FOR THE FAYETTEVILLE MUNICIPAL AIRPORT TOWER

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

Section 1. That the City Council of the City of Fayetteville, Arkansas hereby approves the Contract Tower Cost Sharing Agreement (attached at Exhibit A) with the Federal Aviation Administration in which the City pays 70% and the FAA pays 30% of the $190,536.00 annual cost to operate the Fayetteville Municipal airport Tower and authorizes the Mayor to sign said contract.

Section 2. That the City Council of the City of Fayetteville, Arkansas hereby approves the year long contract with Robinson Aviation, Inc. in the amount of $190,536.00 for operating the Fayetteville Municipal Airport Tower pursuant to the contract which is attached as Exhibit B and authorizes the Mayor to sign said contract.

**PASSED** and **APPROVED** this the 4th day of June, 2002.

APPROVED:

By: DRAFT
DAN COODY, Mayor

ATTEST:

By: ______________________
Heather Woodruff, City Clerk

RESOLUTION NO. ______

A RESOLUTION TO APPROVE A CHANGE ORDER IN A DECREASED AMOUNT OF $102,205.00 WITH APAC-ARKANSAS, INC. FOR THE TAXIWAY STRENGTHENING AND WIDENING PROJECT

**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 Change Order for the taxiway strengthening and widening project including parking ramp expansion performed by APAC-Arkansas, Inc. which will result in a cost reduction of $102,205.00. The Mayor is authorized to sign said Change Order (attached as Exhibit A).

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

APPROVED:

By: DRAFT
**DAN COODY**, Mayor

ATTEST:

By: ______________________
Heather Woodruff, City Clerk

RESOLUTION NO. ______

A RESOLUTION TO APPROVE A SIX-MONTH CONTRACT WITH COMMUNITY ACCESS TELEVISION TO PROVIDE PUBLIC ACCESS TELEVISION SERVICES TO FAYETTEVILLE RESIDENTS UNTIL DECEMBER 31, 2002 FOR $34,500.00 AND TO APPROVE A BUDGET ADJUSTMENT OF $34,500.00

**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 accepts and approves the Contract with Community Access Television (attached as Exhibit A) in which the City will pay Community Access Television $34,500.00 to provide public access television services to Fayetteville citizens from July 1, 2002 through December 31, 2002. The City Council also approves the attached budget adjustment in the amount of $34,500.00.

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

APPROVED:

DRAFT

By: ______________________
**DAN COODY**, Mayor

ATTEST:

By: ______________________
Heather Woodruff, City Clerk

**RESOLUTION NO. ______**

A RESOLUTION TO ACCEPT THE RECOMMENDATION OF THE FAYETTEVILLE PARKS AND RECREATION ADVISORY BOARD TO ACCEPT A CASH CONTRIBUTION OF $102,000.00 FOR THE PARK LAND DEDICATION REQUIREMENT FOR BRISTOL PARK

**WHEREAS**, the developer Bristol Park is planning to include landscaped courtyards with grills and picnic tables, a village green with fountain, clubhouse, swimming pool, gazebo, volley ball court and fishing ponds for its residents. Therefore, the Parks and Recreation Advisory Board has recommended the City accept $102,000.00 from Bristol Park in lieu of the park land dedication requirement.

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

Section 1. That the City Council of the City of Fayetteville, Arkansas hereby accepts the recommendation of the Fayetteville Parks and Recreation Advisory Board to accept a cash contribution of $102,000.00 to satisfy the required park land dedication for Bristol Park pursuant to the Unified Development Ordinance §166.03 K.

**PASSED** and **APPROVED** this the 4th day of June, 2002.

APPROVED:

By: DRAFT ______________________
**DAN COODY**, Mayor

ATTEST:

By: ______________________
Heather Woodruff, City Clerk

**RESOLUTION NO. ______**

A RESOLUTION TO APPROVE A CONTRACT IN THE AMOUNT OF $108,394.00 PLUS A PROJECT CONTINGENCY OF $10,000.00 WITH MOBLEY CONTRACTORS FOR WIDENING, CURBING AND PROVIDING DRAINAGE IMPROVEMENTS TO SALEM ROAD ADJOINING THE GARY HAMPTON SOFTBALL COMPLEX AND TO APPROVE A BUDGET ADJUSTMENT OF $10,927.00

**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 low bid from Mobley Contractors, Inc. for the Salem Road improvements in the amount of $108,394.00 and agrees to and authorizes the Mayor to sign the Contract with Mobley Contractors, Inc. (attached as Exhibit A) in that amount plus a project contingency of $10,000.00.

Section 2. That the City Council of the City of Fayetteville, Arkansas approves and agrees to the Budget Adjustment (attached as Exhibit B) in the amount of $10,927.00 to be applied to this project.

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

APPROVED:

DRAFT

By: ______________________________
DAN COODY, Mayor

ATTEST:

By: ______________________________
Heather Woodruff, City Clerk

212 W. Emma
P.O Box 348
Springdale, AR 72765
Phone 479-770-6700
Fax 479-770-6702

WACO TITLE
SERVING ALL OF NORTHWEST ARKANSAS

Own Original copy

## SPECIAL CERTIFICATE

STATE OF ARKANSAS )
COUNTY OF WASHINGTON )

We the undersigned, duly and lawfully bonded abstractors within and for said County and State, do hereby certify that we have made due and diligent search of the Records in the Assessors Office within and for Washington County, Arkansas, and find the following adjacent owners and addresses, to-wit:

Fayetteville School District #1
P. O. Box 849
Fayetteville, Ar. 72702

IN-SO-FAR as the same affects the following legal description:
Block One (1) Read Subdivision and Lots 1,2,3,4,5 Block two (2) Read Subdivision

DATED this 23rd day of May,2002

WACO Title Company

BY:

Arkansas License # 248

Handed out By Kit at agenda Session

Item B.#4

RESOLUTION NO. _____

A RESOLUTION APPROVING AN AGREEMENT WITH TOTER, INC. AT AN ESTIMATED COST OF EIGHT HUNDRED EIGHTY THOUSAND TWO HUNDRED FIFTY DOLLARS ($880,250.00) FOR THE PURCHASE OF RESIDENTIAL REFUSE CARTS TO BE USED IN THE AUTOMATED RESIDENTIAL WASTE COLLECTION PROGRAM.

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

Section 1. That the City Council hereby approves an agreement with Toter, Inc. at an estimated cost of Eight Hundred Eighty Thousand Two Hundred Fifty Dollars ($880,250.00) for the purchase of residential refuse carts to be used in the Automated Residential Waste Collection Program.

Section 2. That the City Council hereby authorizes the Mayor or his duly authorized representative to sign any documents required to complete said purchase.

**PASSED** and **APPROVED** this 4th day of June, 2002.

APPROVED:

By: ____________________

**DAN COODY**, Mayor

ATTEST:

By: ____________________

**HEATHER WOODRUFF**, City Clerk

DRAFT

Handed out By Kit at Agenda Session

Item B-#5

**RESOLUTION NO. ______**

A RESOLUTION APPROVING THE PURCHASE OF SEVEN (7) 2003 MACK LE613 SANITATION TRUCKS WITH LABRIE AUTOMATED SOLID WASTE BODIES FROM ARKANSAS POWER STEERING AND HYDRAULICS, INC. IN THE AMOUNT OF ONE MILLION THREE HUNDRED SEVENTY-FIVE THOUSAND FOUR HUNDRED SIXTEEN DOLLARS ($1,375,416.00).

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

Section 1. That the City Council hereby approves the purchase of seven (7) 2003 Mack LE613 sanitation trucks with Labrie automated solid waste bodies from Arkansas Power Steering And Hydraulics, Inc. in the amount of One Million Three Hundred Seventy-Five Thousand Four Hundred Sixteen Dollars ($1,375,416.00).

Section 2. That the City Council hereby authorizes the Mayor or his duly authorized representative to sign any document[illegible]d to complete said purchases.

**PASSED** and **APPROVED** this 4th day of June 2002.

APPROVED:

By: ______________________

**DAN COODY**, Mayor

ATTEST:

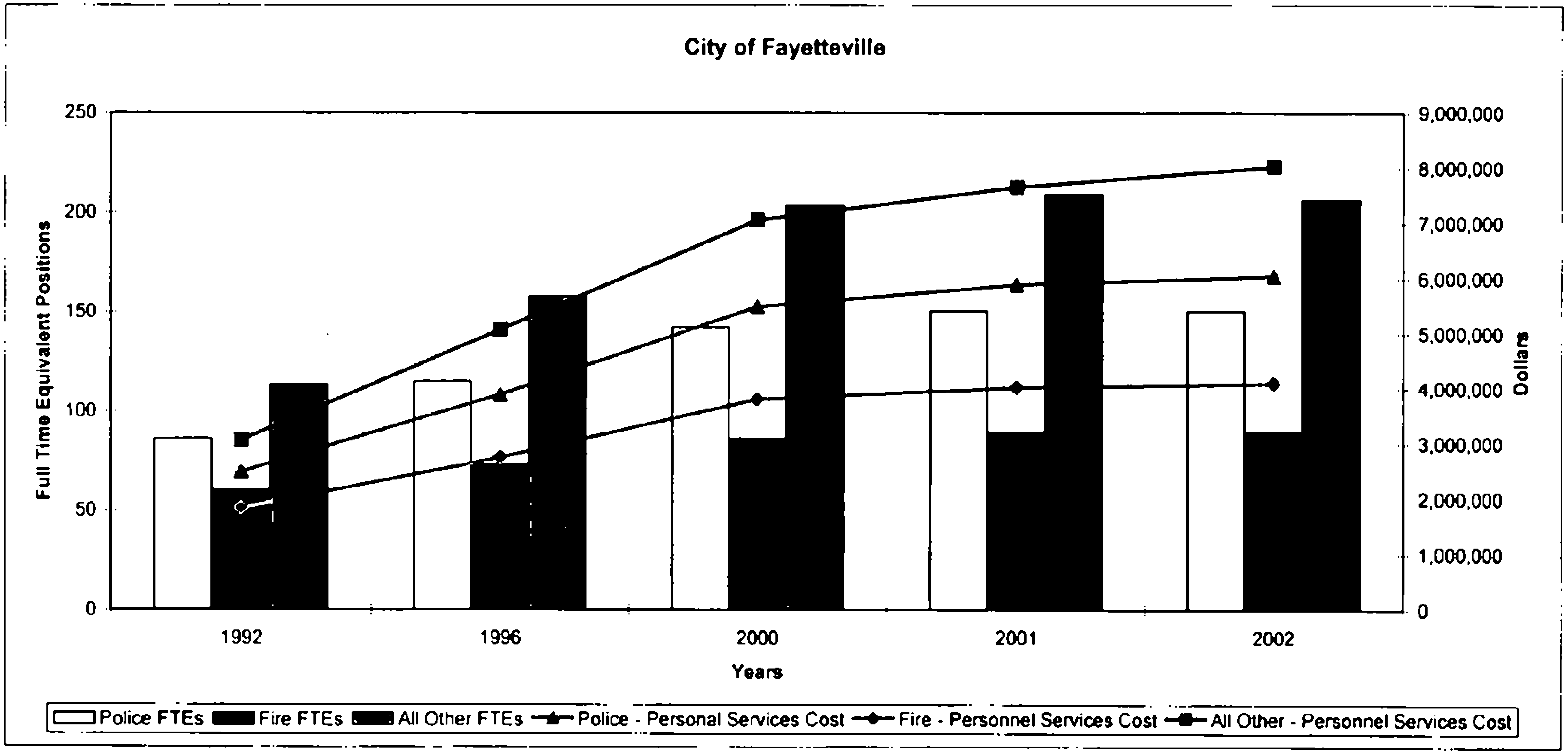
By: ______________________

**HEATHER WOODRUFF**, City Clerk

Additional Info for

# City of Fayetteville
## Time Equivalent Positions and Dollar Amount for General Fund Personnel Services

| | 1992 | | 1996 | | 2000 | | 2001 | | Budgeted 2002 | |
|---|---|---|---|---|---|---|---|---|---|---|
| | FTEs | Dollars | FTEs | Dollars | FTEs | Dollars | FTEs | Dollars | FTEs | Dollars |
| | 86.00 | 2,491,262 | 114.73 | 3,888,510 | 142.33 | 5,491,998 | 150.33 | 5,892,690 | 150.33 | 6,049,164 |
| Fire Dep | 60.00 | 1,834,162 | 73.00 | 2,745,834 | 86.00 | 3,807,294 | 89.00 | 4,020,987 | 89.00 | 4,096,195 |
| All Other General Fund Personnel | 113.05 | 3,063,134 | 157.83 | 5,068,901 | 203.65 | 7,062,835 | 208.95 | 7,660,826 | 206.40 | 8,026,684 |
| Salary Contingency will be allocated to each department as needed | | | | | | | | | | 1,645,658 |
| Totals | 259.05 | 7,388,558 | 345.56 | 11,703,245 | 431.98 | 16,362,127 | 448.28 | 17,574,503 | 445.73 | 19,817,701 |

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May 28, 2002

**AGENDA SESSION**
**CITY COUNCIL**
**JUNE 4, 2002**

**ADDITIONAL INFORMATION:**

1. **SALES AND USE TAX:** Additional information for Item B.1.

2. **SALEM ROAD:** Additional information for Item C.4.

3. **CAT:** Additional information for Item C.5.

4. **COX FRANCHISE:** Addition information for Cox Cable Franchise/Community Access Television Item D.3.

Final - Informational - Discussion of Cox Cable Fran

## City of Fayetteville, Arkansas

**General Fund Revenue and Expenditures**
**Comparison of Results 1993 and 2002**

| Service Cost Impact Change | 1993 | 2002 | Increase/ Decrease | Percent |
|---|---|---|---|---|
| Consumer Price Index Change | 144.00 | 179.80 | 35.80 | 24.86% |
| Population Growth | 46,406 | 60,887 | 14,481 | 31.21% |
| Total Change | | | | 56.07% |

The costs of City services would have to have increased by 56% to keep up with inflation and population growth from 1993 to 2002.

| Revenue: | | | | |
|---|---|---|---|---|
| City Sales Tax | $5,059 | $2,841,000 | $2,835,941 | |
| Property Taxes | 1,109,410 | 0 | -1,109,410 | |
| Total City Sales Tax and Property Taxes | $1,114,469 | $2,841,000 | $1,726,531 | 154.92% |
| All Other General Fund Revenue | $10,179,728 | $13,305,000 | $3,125,272 | 30.70% |
| Total | $11,294,197 | $16,146,000 | $4,851,803 | 42.96% |

Revenue lagged population growth and inflation by 13%.

| Department Net Program Cost: | 1993 | 2002 | Increase | Percent |
|---|---|---|---|---|
| Parks & Recreation | $727,055 | $1,119,149 | $392,094 | 53.93% |
| Library | 278,416 | 713,720 | 435,304 | 156.35% |
| Salary Contingency - All General Fund | | 1,392,353 | 1,392,353 | |
| **Public Safety Total** | **4,744,197** | **10,445,964** | **5,701,767** | **120.18%** |
| Police | 2,508,526 | 5,435,457 | 2,926,931 | 116.68% |
| Fire | 2,067,101 | 4,466,513 | 2,399,412 | 116.08% |
| Animal Services | 168,570 | 543,994 | 375,424 | 222.71% |
| **All Other Departments** (see listing below) | **4,708,356** | **5,501,631** | **793,275** | **16.85%** |
| Total Net Program Cost | $10,458,024 | $19,172,817 | $8,714,793 | 83.33% |
| Net Program Cost Compared to Undefined Revenue (Increase Reserves)/Decrease Reserves | ($836,173) | $3,026,817 | | |

Population growth and inflation increased 40% more than basic City administration costs for 1993 - 2002. However, because our two largest departments, police and fire, each grew 116%, the total General Fund cost increased by 83% while revenue increased by only 43%.

* Parks & Recreation amounts do <u>not</u> include any HMR tax monies.

**Listing of All Other Departments:**

**General Government**
- Mayor's Administration
- City Council
- City Attorney
- City Prosecutor
- Hot Check
- District Judge
- District Court
- Economic Development
- City Clerk
- Miscellaneous

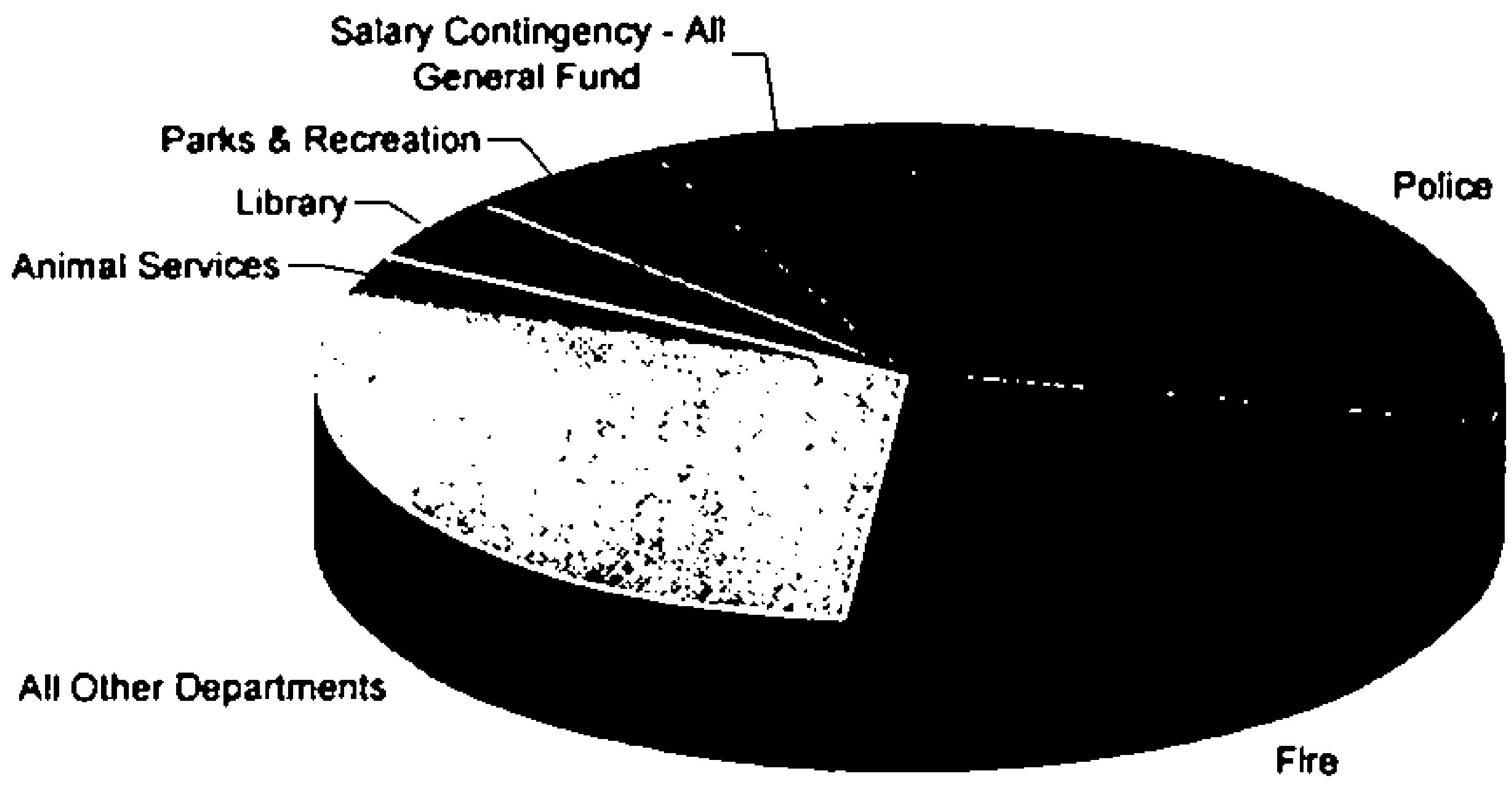
**Urban Development**
- Urban Development Director
- Cable Administration
- Yvonne Richardson Community Center
- Public Lands Maintenance
- Planning
- Inspections

**General Services Department**
- General Services Director
- Utilities Management
- Parking Management

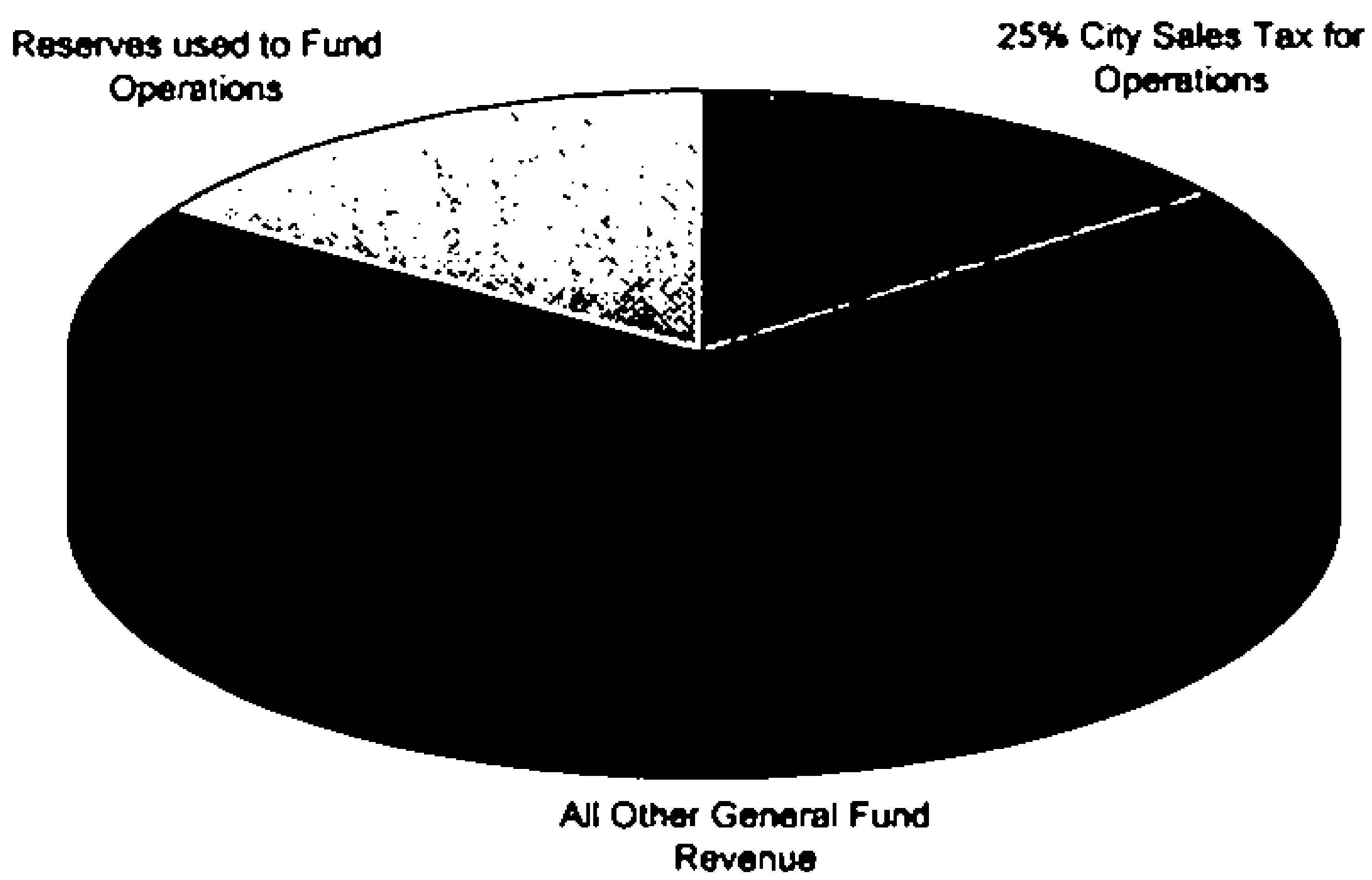
**Administrative Services Department**
- Administrative Services Director
- Human Resources
- Accounting & Audit
- Budget & Research
- Billing & Collections
- Program Integrity
- Building Maintenance
- Purchasing
- Information Technology

City of Fayetteville, Arkansas
General Fund

2002 Expenditures
$19,172,817

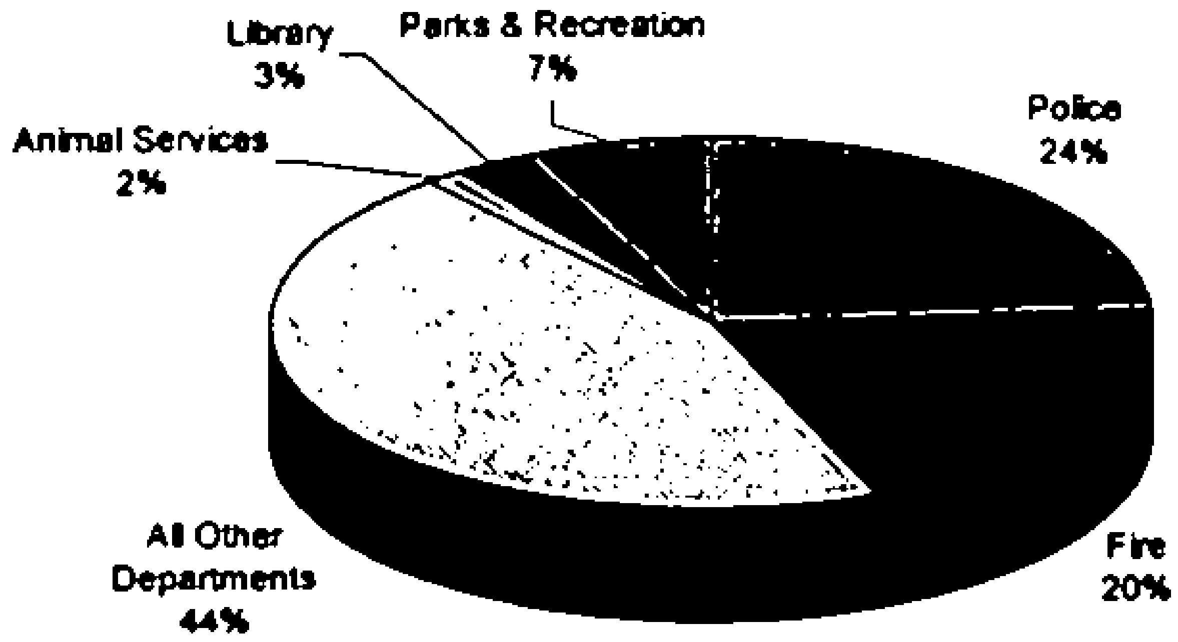



2002 Revenue and Use of Reserves
$16,146,000

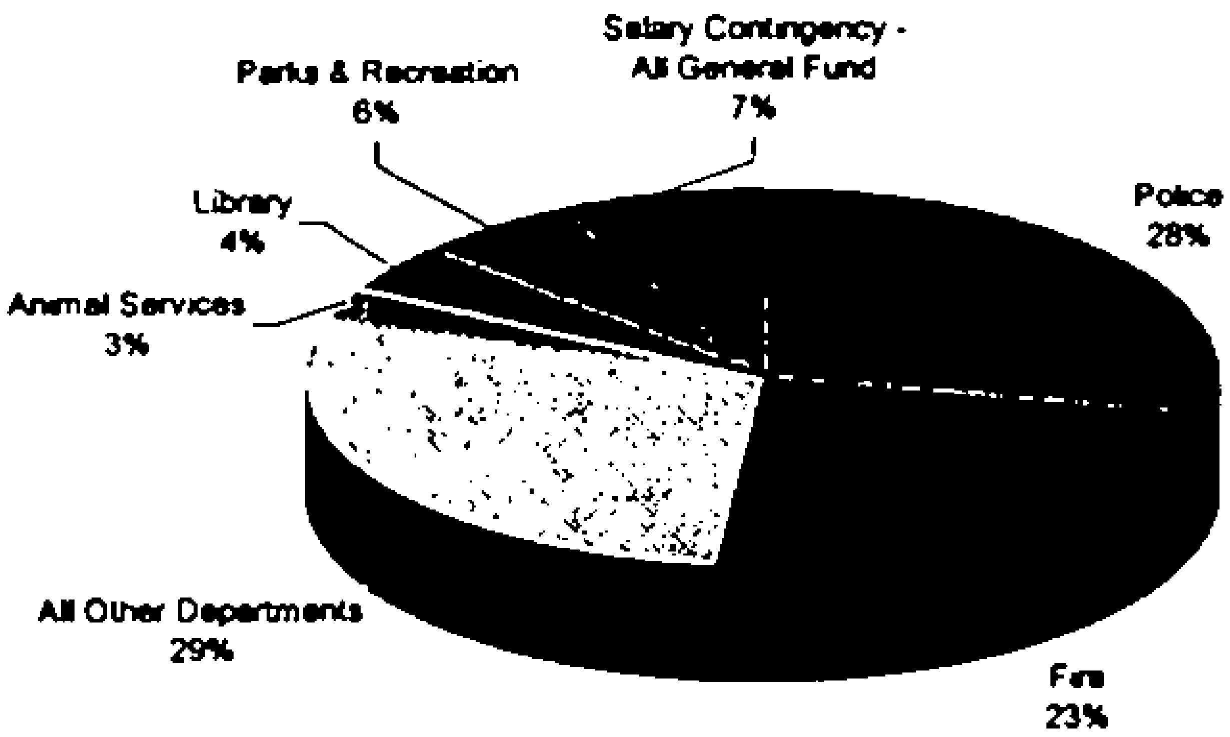


City of Fayetteville, Arkansas
General Fund

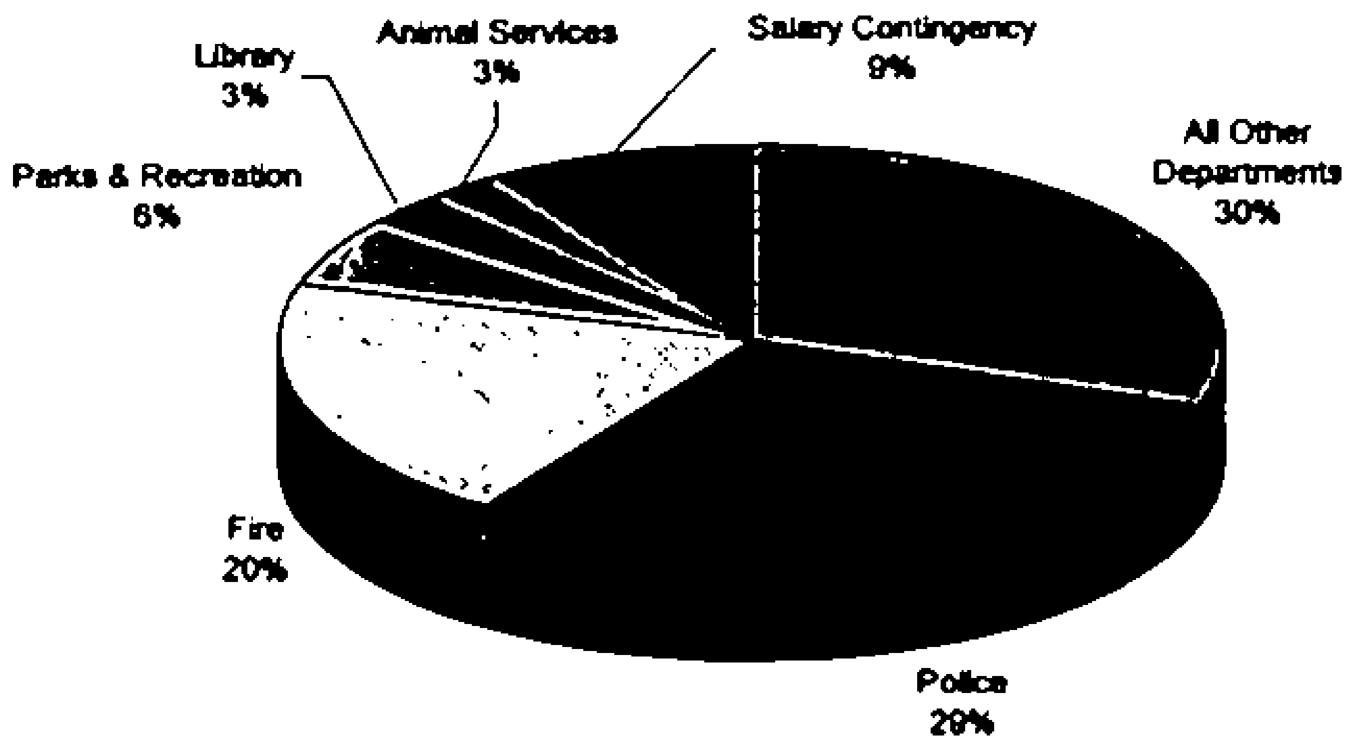
1993 Expenditures




2002 Amended Budgeted Expenditures



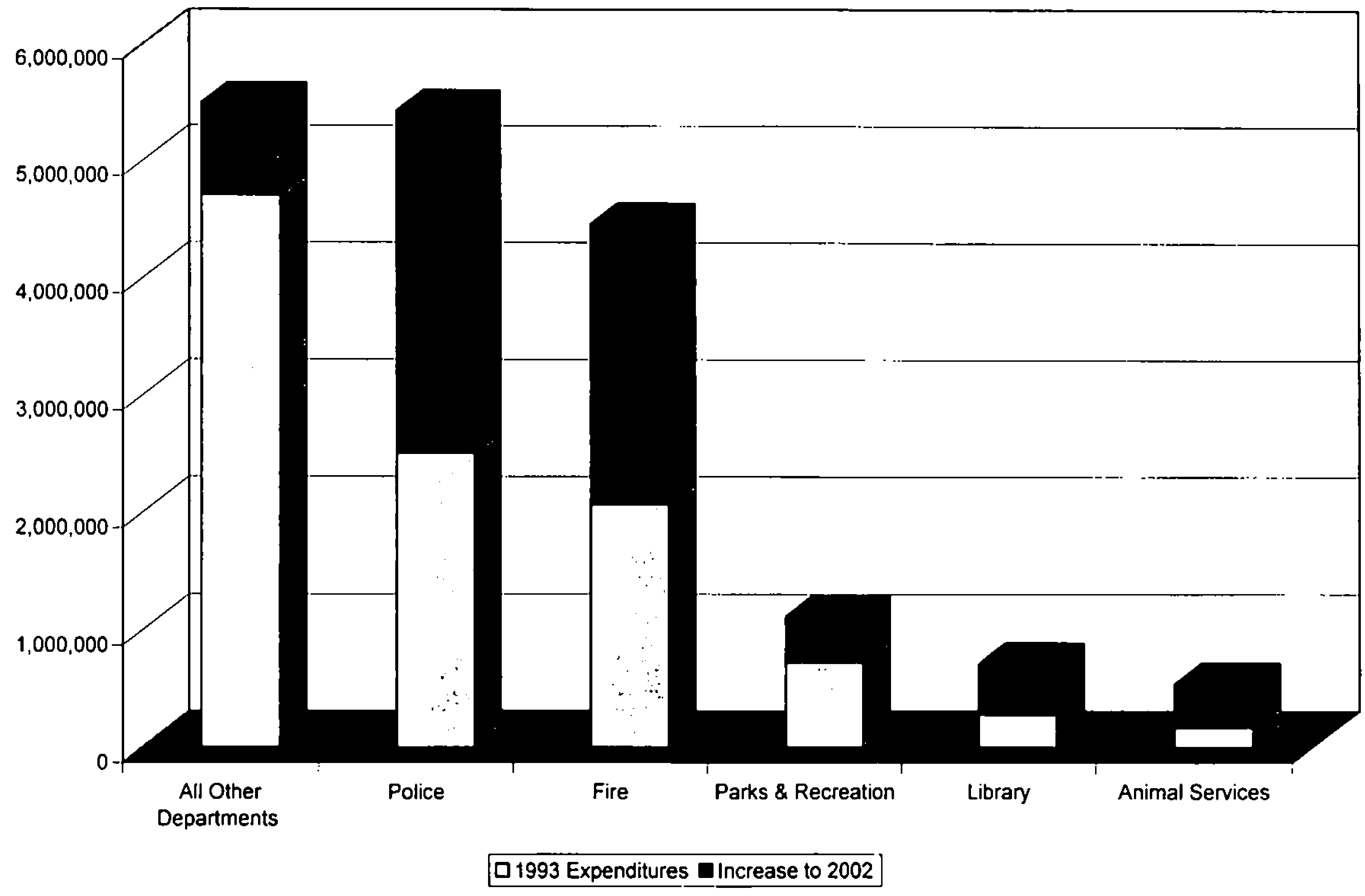

2004 Projected Expenditures




Salary contingency is used to fund salary increases and group benefit costs for all department in General Fund.

## City of Fayetteville, Arkansas
## General Fund

### 1993 Expenditures and Increase in Expenditures to 2002

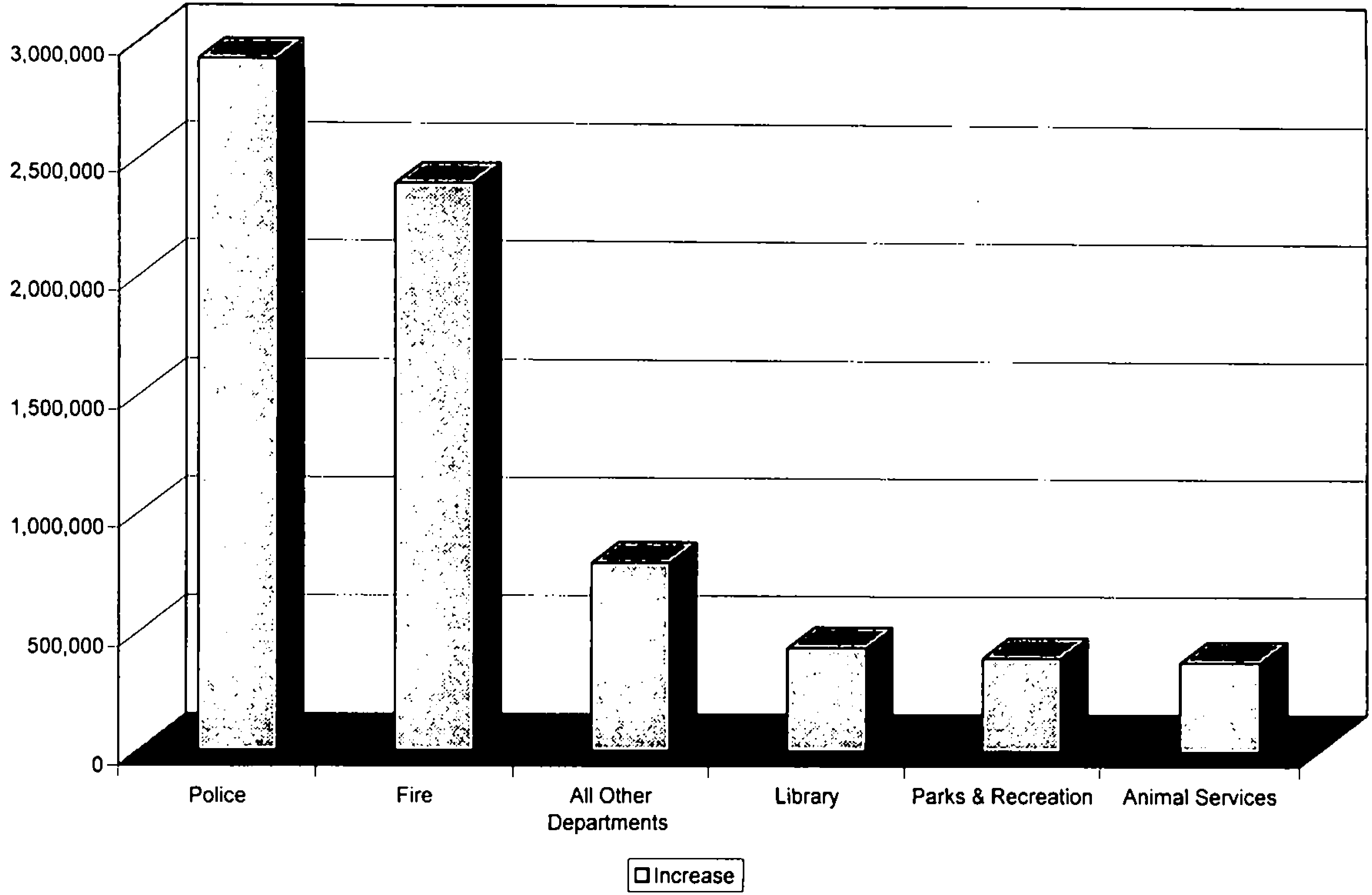





4

## City of Fayetteville, Arkansas
## General Fund

### Expenditure Increase from 1993 to 2002



RECEIVED
MAY 24 2002
ACCTG. DEPT.

# STAFF REVIEW FORM

___ Agenda Request
xx Contract Review
___ Grant Review

For the Fayetteville City Council meeting of: June 4, 2002

**FROM:**

| | | |
|---|---|---|
| **Connie Edmonston** | **Parks & Recreation** | **Urban Development** |
| Name | Division | Department |

**ACTION REQUIRED:**
**Award of bid #02-33 and approval of contract with Mobley Contractors in the amount of $108, 394, plus a project contingency of $10,000 for a total cost of $118,394, for large scale development requirements of Salem Road at the Gary Hampton Softball Complex. In addition, approval of a budget adjustment.**

**COST TO CITY:**

| | | |
|---|---|---|
| **$118,394** | **$123,463** | **Parks Development** |
| Cost of this Request | Category/Project Budget | Category/Project Name |
| **2250-9250-5809.00** | **$ 15,996** | **Gary Hampton Softball Complex** |
| Account Number | Funds Used to Date | Program Name |
| **96093.1** | **$ 107,467** | **Parks Development** |
| Project Number | Remaining Balance | Fund |

**BUDGET REVIEW:** xx Budgeted Item xx Budget Adjustment Attached

for SID

Budget Manager

Administrative Services Director

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

Marsha Farthing 5/24/02
Accounting Manager Date

ADA Coordinator Date

5/28/02
City Attorney Date

Nancy Smith 5/28/02
Internal Auditor Date

5/28/02
Purchasing Officer Date

**STAFF RECOMMENDATION:** Award of Bid #02-33, approval of contract and budget adjustment.

Connie Edmonston 5-24-02
Division Head Date

Hugh Earnest 5-28-02
Department Director Date

5/28/02
Administrative Services Director Date

Dan Coody 5/28/02
Mayor Date

Cross Reference

New Item: X Yes ___ No

Prev Ord/Res #: ___________

Orig Contract Date: ___________

# STAFF REVIEW FORM

Description **Gary Hampton Softball Complex Street** Meeting Date **June 4, 2002**

Comments: Reference Comments:

Budget Coordinator

Accounting Manager

City Attorney

Purchasing Officer

ADA Coordinator

Internal Auditor

**City of Fayetteville, Arkansas**
**Budget Adjustment Form**

| Budget Year | Department: Urban Development<br>Division: Parks and Recreation<br>Program: Capital Improvements | Date Requested | Adjustment # |
|---|---|---|---|
| 2002 | | 05/24/2002 | |

| Project or Item Requested: | Project or Item Deleted: |
|---|---|
| Contingency funds for the Gary Hampton Softball Complex requirements of Salem Road in the amount of $ 10,927. | $10,927 from the Community Park capital project. |

| Justification of this Increase: | Justification of this Decrease: |
|---|---|
| The bid was higher that anticipated. This project needs to have a project contingency of $10,000 and the budget was short $10,927. Hopefully, the contingency funds will not be needed. | At this point in time, the site for the Community Park has not been determined. |

**Increase Expense (Decrease Revenue)**

| Account Name | Amount | Account Number | | | | | Project Number | |
|---|---|---|---|---|---|---|---|---|
| Street Improvements | 10,927 | 2250 | 9250 | | 5809 | 00 | 96093 | 1 |

**Decrease Expense (Increase Revenue)**

| Account Name | Amount | Account Number | | | | | Project Number | |
|---|---|---|---|---|---|---|---|---|
| Park Improvements | 10,927 | 2250 | 9250 | | 5806 | 00 | 02002 | 1 |

**Approval Signatures**

| | Date |
|---|---|
| Requested By | 5-24-02 |
| Budget Manager | |
| Department Director | 5-28-02 |
| Admin. Services Director | 5/28/02 |
| Mayor | 5/28/02 |

**Budget Office Use Only**

Type: A B C D E

Date of Approval

Posted to General Ledger

Posted to Project Accounting

Entered in Category Log

*Blue Copy: Budget & Research / Yellow Copy: Requester*

# FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

| | |
|---|---|
| **TO:** | Mayor Coody and City Council |
| **THRU:** | Hugh Earnest, Urban Development Director |
| **FROM:** | Connie Edmonston, Parks & Recreation Superintendent |
| **DATE:** | May 24, 2002 |
| **SUBJECT:** | Award of Bid #02-33 and Approval of Contract for Salem Road at the Gary Hampton Softball Complex |

**Background**

McClelland Engineers was hired to design and supervise the Large Scale Development of Gary Hampton Softball complex in the amount of $9,990. The proposed project will widen the existing street in front of the Gary Hampton Softball Complex, over a distance of approximately 675 feet, to match the street improvements to the north. Concrete curb and gutter and a 6-feet wide sidewalk will also be provided, with four separate handicap ramps. Additionally, approximately 965 feet of storm piping will be installed to take the place of open-ditch flow parallel to the street. Storm inlets, an energy dissipater, and other erosion control features will be a part of the work. Some utility relocation is anticipated, although it is expected to be relatively minor. Construction is intended to occur this summer in order to be completed before the start of the new school year in August so that it does not interfere with Holcomb Elementary School traffic.

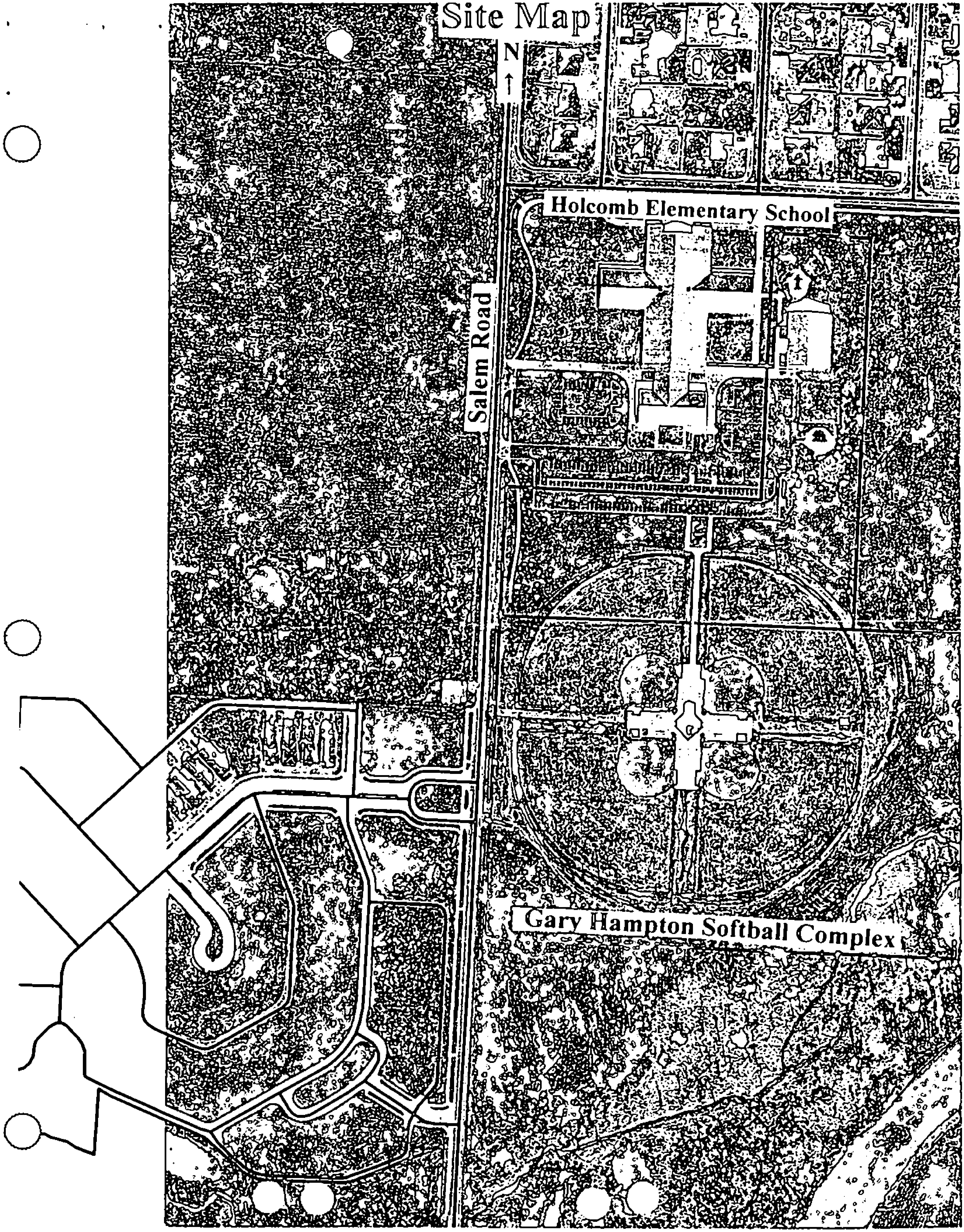
**Current Status**

Bids were opened on Thursday, May 23, 2002 at 2 p.m. Five bids were received. Mobley Contractors had the low bid.

**Recommendation**

Park and Recreation Staff and McClelland Engineers reviewed the bids and recommend the contract be awarded to Mobley Contractors in the amount of $108,394, plus a ten percent project contingency of $10,000 for a total cost of $118,394.

Attachments:
Site Map
McClelland Engineers, Inc. Recommendation
Bid Tabulation
Contract


Site Map
N
Holcomb Elementary School
Salem Road
Gary Hampton Softball Complex

MCE McCLELLAND CONSULTING ENGINEERS, INC.
DESIGNED TO SERVE

P.O. Box 1229
Fayetteville, Arkansas 72702-1229
501-443-2377
FAX 501-443-9241

May 24, 2002

Ms. Connie Edmonston, Director
Parks and Recreation Department
City of Fayetteville
113 W. Mountain St.
Fayetteville, AR 72701

RE: Recommendation for Award of Contract
Salem Road Project

Dear Ms. Edmonston:

Enclosed you will find a certified tabulation of the bids received yesterday for the referenced project. Everything multiplied and added correctly, so the apparent low bidder, Mobley Contractors, is confirmed as the "low bidder".

As you know, there were five bids submitted and opened. Four of the five bids were within 3% of each other, indicating that the scope of work was understood by the bidders and that the bids were very competitive. Even though the low bid received is higher than the Engineer's estimate, it is within the monies designated as available for the project. All things considered, I do not believe that it would be advantageous to re-bid the project.

Regarding the capabilities of Mobley Contractors, this office has worked successfully with Mobley on past occasion and we are confident that they can do a good job for the City on this project. I have verified that their Arkansas Contractor's license is current. Therefore, we recommend that the City award the contract to Mobley Contractors.

Thank you for this opportunity to work with your department on this project. We look forward to getting started with construction as soon as practical in order to complete the work prior to the start of a new school year.

Sincerely,

Johnny Quinn

Johnny Quinn, PE

CC: Peggy Vice, Director, City Purchasing

J:\2002\022116\Correspondence\Recom To Award.doc

**BID TABULATION**
**Salem Road Improvements**
**MCE Project # FY022116 - May 23, 2002 2:00 P.M.**

| BID SCHEDULE | | | | Mobley Contractors | | Tomlinson Asphalt | | Jerry D. Sw[illegible]er, Inc. | | Red Deer, Inc. | | Township Builders | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Item # | Description | Qty. | Unit | Unit Price | Extended | Unit Price | Extended | Unit Price | Extended | Unit Price | Extended | Unit Price | Extended |
| 1 | Act 291 of 1993, Trench and Excavation Safety System | 1 | LS | $606.25 | $606.25 | $250.00 | $250.00 | $2,500.00 | $2,500.00 | $2,500.00 | $2,500.00 | $400.00 | $400.00 |
| 2 | Mobilization/Demobilization | 1 | LS | $8,271.25 | $8,271.25 | $3,000.00 | $3,000.00 | $3,500.00 | $3,500.00 | $2,700.00 | $2,700.00 | $5,000.00 | $5,000.00 |
| 3 | ACHM Type III Surfacing, 3" Thickness Including Prime Coat | 225 | SY | $9.22 | $2,074.50 | $17.00 | $3,825.00 | $9.00 | $2,025.00 | $11.50 | $2,587.50 | $12.00 | $2,700.00 |
| [illegible] | Concrete Curb and Gutter | 780 | LF | $17.94 | $13,634.40 | $8.75 | $6,650.00 | $8.50 | $6,480.00 | $7.50 | $5,700.00 | $16.00 | $12,160.00 |
| [illegible] | 24" Coated CMP Storm Drain, Including Bedding | 960 | LF | $23.83 | $22,876.80 | $28.05 | $26,928.00 | $35.00 | $33,600.00 | $31.50 | $30,240.00 | $40.00 | $38,400.00 |
| [illegible] | 6' Wide x 4" Thick Concrete Sidewalk, Including Base Course | 540 | SY | $28.85 | $15,579.00 | $36.35 | $19,629.00 | $34.00 | $18,360.00 | $29.60 | $15,984.00 | $30.00 | $16,200.00 |
| 7 | Class 7 Aggregate Base Course, Compacted | 165 | TON | $25.98 | $4,286.70 | $42.50 | $7,012.50 | $24.00 | $3,960.00 | $26.00 | $4,290.00 | $20.00 | $3,300.00 |
| 8 | Maintenance of Traffic | 1 | LS | $3,312.50 | $3,312.50 | $3,750.00 | $3,750.00 | $4,500.00 | $4,500.00 | $5,000.00 | $5,000.00 | $3,111.00 | $3,111.00 |
| 9 | Excavations & Embankments for Roadway Construction | 310 | CY | $27.49 | $8,521.90 | $35.00 | $10,850.00 | $24.00 | $7,440.00 | $20.00 | $6,200.00 | $20.00 | $6,200.00 |
| 10 | Storm Drain Trench Backfill | 275 | CY | $22.45 | $6,173.75 | $19.74 | $5,428.50 | $18.00 | $4,950.00 | $15.00 | $4,125.00 | $25.00 | $6,875.00 |
| 11 | Concrete Storm Drainage Structures (Inlets and Junction Boxes) | 2 | EA | $3,928.50 | $7,857.00 | $2,600.00 | $5,200.00 | $2,800.00 | $5,600.00 | $7,500.00 | $15,000.00 | $3,000.00 | $6,000.00 |
| 12 | Concrete Headwall/Energy Dissipator | 1 | EA | $2,489.01 | $2,489.01 | $2,000.00 | $2,000.00 | $2,900.00 | $2,900.00 | $4,500.00 | $4,500.00 | $2,000.00 | $2,000.00 |
| 13 | Topsoil/Seeding/Straw/Fertilize | 1 | LS | $1,741.88 | $1,741.88 | $4,000.00 | $4,000.00 | $2,500.00 | $2,500.00 | $3,500.00 | $3,500.00 | $9,000.00 | $9,000.00 |
| 14 | Erosion and Sediment Control | 1 | LS | $1,798.56 | $1,798.56 | $750.00 | $750.00 | $1,700.00 | $1,700.00 | $500.00 | $500.00 | $4,000.00 | $4,000.00 |
| 15 | Driveway Repair | 1 | LS | $997.49 | $997.49 | $1,000.00 | $1,000.00 | $800.00 | $800.00 | $1,000.00 | $1,000.00 | $2,000.00 | $2,000.00 |
| 16 | Handicap Ramp | 4 | EA | $662.74 | $2,650.96 | $500.00 | $2,000.00 | $700.00 | $2,800.00 | $350.00 | $1,400.00 | $500.00 | $2,000.00 |
| 17 | Sidewalk End Barricade | 1 | LS | $150.00 | $150.00 | $500.00 | $500.00 | $500.00 | $500.00 | $300.00 | $300.00 | $200.00 | $200.00 |
| 18 | Allowance for Utility Relocation(s) | 1 | LS | $3,000.00 | $3,000.00 | $3,000.00 | $3,000.00 | $3,000.00 | $3,000.00 | $3,000.00 | $3,000.00 | $3,000.00 | $3,000.00 |
| 19 | Concrete Apron, 6" Thick, at Gravel Service Drive Entrance | 80 | SY | $29.68 | $2,374.40 | $42.50 | $3,400.00 | $34.00 | $2,720.00 | $35.00 | $2,800.00 | $40.00 | $3,200.00 |
| | TOTAL BASE BID | | | | $108,394.35 | | $109,173.00 | | $109,615.00 | | $111,326.50 | | $125,746.00 |
| | DEDUCTIVE ALTERNATE BIDS | | | | | | | | | | | | |
| Item # | Description | Qty. | Unit | Alternate Unit Price | Extended | Alternate Unit Price | Extended | Alternate Unit Price | Extended | Alternate Unit Price | Extended | Alternate Unit Price | Extended |
| 5 A. | Alternative for 24-inch Asphalt Coated CMP Storm Drain, Including Bedding | 960 | LF | $23.83 | $22,876.80 | $26.00 | $24,960.00 | $34.00 | $32,640.00 | $35.00 | $33,600.00 | $39.00 | $37,440.00 |
| 5 B. | Alternative for 24-inch Aluminized CMP Storm Drain, Including Bedding | 960 | LF | $20.83 | $19,996.80 | $26.00 | $24,960.00 | $35.00 | $33,600.00 | $30.00 | $28,800.00 | $39.00 | $37,440.00 |
| | TOTAL BASE BID AMOUNT | | | | $108,394.35 | | $109,173.00 | | $109,615.00 | | $111,326.50 | | $125,746.00 |
| | TOTAL BASE BID with Deductive Alt. No 1 AMOUNT | | | | $108,394.35 | | $107,205.00 | | $108,655.00 | | $114,686.50 | | $124,786.00 |
| | TOTAL BASE BID with Deductive Alt. No 2 AMOUNT | | | | $105,514.35 | | $107,205.00 | | $109,615.00 | | $109,886.50 | | $124,786.00 |

Certified [signature]
John C. Quinn, P.E. #4314

[illegible]

DOCUMENT 00500

CONTRACT

THIS AGREEMENT, made and entered into on the **24TH** day of **MAY, 2002,** by and between **MOBLEY CONTRACTORS, INC.** herein called the Contractor, and the City of Fayetteville, Arkansas, hereinafter called the Owner:

WITNESSETH:

That the Contractor, for the consideration hereinafter fully set out, hereby agrees with the Owner as follows:

1. That the Contractor shall furnish all the materials, and perform all of the work in manner and form as provided by the following enumerated Specifications, and Documents, which are attached hereto and made a part hereof, as if fully contained herein and are Salem Road Improvements.

   Advertisement for Bids
   Instructions to Bidders
   Bid and acceptance thereof
   Performance Bond
   Payment Bond
   General Conditions
   Supplementary Conditions
   Specifications
   Drawings

2. That the Owner hereby agrees to pay to the Contractor for the faithful performance of this Agreement, subject to additions and deductions as provided in the Specifications or Bid, in lawful money of the United States, the amount of:

   **ONE HUNDRED EIGHT THOUSAND, THREE HUNDRED NINETY FOUR AND 35/100 DOLLARS ($108,394.35).**

3. The Work will be completed and ready for final payment in accordance with the General Conditions within 60 calendar days after the date when the Contract Time commences to run, as provided in the Notice to Proceed.

4. Liquidated Damages: Owner and Contractor recognize that time is of the essence of this Agreement and the Owner will suffer financial loss if the Work is not completed within the times specified in above, plus any extensions thereof allowed in accordance with the General Conditions. They also recognize the delays, expense, and difficulties involved in proving the actual loss suffered by Owner if the Work is not completed on time. Accordingly, instead of requiring any such proof, Owner and Contractor agree that as liquidated damages for delay (but not as a penalty) Contractor shall pay Owner **Two Hundred Forty** Dollars **($240.00)** for each day that expires after the time specified in Paragraph 3 for completion and readiness for final payment.

5. That within 30 days of receipt of an approved payment request, the Owner shall make partial payments to the Contractor on the basis of a duly certified and approved estimate of work performed during the preceding calendar month by the Contractor, LESS the retainage provided in the General Conditions, which is to be withheld by the Owner until all work within a particular part has been performed strictly in accordance with this Agreement and until such work has been accepted by the Owner.

6. That upon submission by the Contractor of evidence satisfactory to the Owner that all payrolls, material bills, and other costs incurred by the Contractor in connection with the construction of the work have been paid in full, final payment on account of this Agreement shall be made within 60 days after the completion by the Contractor of all work covered by this Agreement and the acceptance of such work by the Owner.

7. It is further mutually agreed between the parties hereto that if, at any time after the execution of this Agreement and the Surety Bond hereto attached for its faithful performance and payment, the Owner shall deem the Surety or Sureties upon such bond to be unsatisfactory or if, for any reason such bond ceases to be adequate to cover the performance of the work, the Contractor shall, at his expense, within 5 days after the receipt of notice from the Owner, furnish an additional bond or bonds in such form and amount and with such Surety or Sureties as shall be satisfactory to the Owner. In such event, no further payment to the Contractor shall be deemed to be due under this Agreement until such new or additional security for the faithful performance of the work shall be furnished in manner and form satisfactory to the Owner.

8. No additional work or extras shall be done unless the same shall be duly authorized by appropriate action by the Owner in writing.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and date first above written, in two (2) counterparts, each of which shall, without proof or accounting for the other counterpart be deemed an original Contract.

SEAL:

WITNESSES:

Sharon Roller

**MOBLEY CONTRACTORS, INC.**
CONTRACTOR

By R F Mobley Jr

RON F. MOBLEY, JR. VICE PRESIDENT
Title

ATTEST:

______________________

City of Fayetteville, Arkansas
OWNER

By______________________

STAFF REVIEW FORM

X AGENDA REQUEST
CONTRACT REVIEW
GRANT REVIEW

For the Fayetteville City Council meeting of June 4,2002

**FROM:**

| Marvin Hilton | Cable Administration | Urban Development |
|---|---|---|
| Name | Division | Department |

**ACTION REQUIRED:**

Passage of a resolution accepting a contract with "Community Access Television" for public access television services from July 1, 2002 until December 31, 2002.

**COST TO CITY:**

| | | |
|---|---|---|
| $34,500.00 | 34,500 | Public Access Contract |
| Cost of this Request | Category/Project Budget | Category/Project Name |
| 1010-0600-5713-00 | 34,500 | Cable Administration |
| Account Number | Funds Used To Date | Program Name |
| | - 0 - | General |
| Project Number | Remaining Balance | Fund |

**BUDGET REVIEW:** ____ Budgeted Item X Budget Adjustment Attached

[signature] Budget Manager

Administrative Services Director

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

| | | | |
|---|---|---|---|
| Accounting Manager | Date | Internal Auditor | Date |
| City Attorney | Date | ADA Coordinator | Date |
| Purchasing Officer | Date | Grant Coordinator | Date |

**STAFF RECOMMENDATION:**

| | |
|---|---|
| Marvin Hilton — Division Head | 5-24-02 Date |
| Hugh Earnest — Department Director | 5-28-02 Date |
| [signature] — Administrative Services Director | 5/28/02 Date |
| Dan Coody — Mayor | 5/28/02 Date |

Cross Reference

New Item: **Yes** **No**

Prev Ord/Res #:

Orig Contract Date:

Orig Contract Number:

# FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

## DEPARTMENTAL CORRESPONDENCE

**TO:** **Mayor Coody and City Council**

**THRU:** **Hugh Earnest, Urban Development Director**

**FROM:** **Marvin Hilton, Cable Administrator** MH 5-24-02

**SUBJECT:** **CAT Funding for remainder of 2002**

**DATE:** **May 24, 2002**

At the Telecommunications Board meeting of May 16, 2002, the motion was made and seconded to recommend that the City Council reinstate the second half of the funding for CAT in the amount of $34,500 which will carry it through December 31, 2002. The motion passed with six board members in favor and one abstention.

See the attached:

1. "Telecommunications Board Meeting Motions and Recommendations, May 16, 2002.
2. CAT Contract

CC: Telecommunications Board Members

**Telecommunications Board Meeting Motions And Recommendations**
**May 16, 2002**
**Room 219 City Administration Building**

1. McDonald made a motion to recommend that the Fayetteville City Council reinstate the second half of the funding for CAT in the amount of $34,500 which will carry it through December 31, 2002. The second came from Cromwell.
This motion passed with 6 board members in favor and 1 abstention.

2. A motion made by Rowland McKinney, tabled at the April 18 meeting, concerning Public Access Television being operated by The Cable Administration Division was voted down unanimously.

3. McDonald made a motion to form a subcommittee to start the process of carrying out the RFP (requests for proposals) to operate Public Access Television. It was noted that an evaluation of the current contract would be part of the RFP process. The motion passed.

**PUBLIC ACCESS ADMINISTRATION**
**AGREEMENT BETWEEN THE CITY OF FAYETTEVILLE**
**AND ACCESS 4 FAYETTEVILLE, INC.**
**A.K.A.COMMUNITY ACCESS TELEVISION**

THIS AGREEMENT is made and entered into this ___ day of June______, 2002, by and between the City of Fayetteville, a municipal corporation of the State of Arkansas (hereafter City), and Community Access Television, (hereafter Contractor) for the operation of the public access channel.

**SECTION I.**
**CONTRACT PERIOD.**

A. The contract period shall begin the 1st day of July , 2002 and shall continue until the 31th day of December, 2002.

**SECTION II.**
**SERVICES/DUTIES.**

A. The Contractor hereby agrees and shall be responsible for operating the public access channel, which shall entail the following:

1. Scheduling and teaching of video production and telecommunications workshops for the Fayetteville general public.

2. Scheduling of programs on the public access channel.

3. Cablecasting of programs on the public access channel.

4. Promoting use of the Public Access Channel.

B. The Contractor shall provide, oversee, administer, and carry out all of the activities and services set out in this Agreement with such satisfactory performance as is determined solely by the City in accordance with all the terms, provisions and requirements of the Agreement.

C. In furtherance of the above referenced services and duties, the parties hereby agree as follows:

1. Facility:

a. The City shall provide a facility to which the Contractor shall have access for the performance of their duties hereunder. Such facility shall be known as the Access Center.

b. The City shall be responsible for the payment of the Access Center utilities, routine building and grounds maintenance and maintenance of the structure.

c. Use of the Access Center conference/breakroom will be scheduled through the City.

2. Copier:

a. The Contractor may use the City's current copier at the Access Center for a charge of $.015 per copy. Additionally, the Contractor may use the copier located at the City Administration Building for the standard charge as is allocated per copy to the City Departments and Divisions. If the City upgrades the copier located in the Access Center, Contractor shall pay an adjusted charge per copy, up to, but not to exceed the standard City rate charged to City Departments and Divisions as determined annually.

b. Copy machine maintenance costs will be paid by the City.

3. Video Equipment:

a. The City and the Contractor shall each bear one-half of each separate maintenance expense incurred on the video equipment used by the Contractor. Contractor's total liability shall be limited to $1,000 cash and up to $1,000 in-kind maintenance on equipment. All in-kind maintenance shall be mutually agreed upon by City and Contractor.

b. One camera, to be designated by the City, and one tripod shall not be available for public access checkout. The reserved equipment shall be used only for government production, Contractor's contract productions, and contractor's promotional programs. Use of the reserved camera and tripod will be as scheduled by the City. Additional reservation of equipment may be required should it be determined, by the City, that the equipment was not available as needed for government channel productions.

c. The City will be responsible for scheduling use of the equipment. After hours scheduling must be confirmed by the City the next business day before it is finalized. Weekend checkout of equipment must be confirmed with the City by 5:00 Friday afternoon.

d. The Contractor is responsible for training all public access users on the equipment, certifying their ability to use the equipment, checking the equipment out to users, and checking it back into the facility. Contractor will make sure all of the City's equipment used for public access purposes is checked-out and returned in good working order. Contractor will notify the City immediately of any problems with equipment.

e. All video production equipment owned by the City and used for public, educational and/or government access productions shall be covered under the City's insurance policy.

4. Phone:

a. The City shall make one telephone line available for Contractor's business use. Contractor shall be responsible for reimbursing the City, on a quarterly basis, for this expense at a rate of $20 per month.

b. Contractor shall be responsible for their own long distance telephone calls.

c. Contractor shall be responsible for paying the costs of their listing in the telephone directory.

d. Contractor shall be responsible for answering their own phone line. Contractor will have an answering machine on their line when they are unable to answer calls.

e. Contractor shall not be required to answer the City's telephone lines at the Access Center.

5. Fees:

a. There shall be no charge to citizens of Fayetteville for the use of cable casting time on the public access channel, nor for the use of the facilities or equipment. However, Contractor's fees and charges may apply for such services as, but not limited to, instructions on video production and internet use, video tapes, video tape duplication, annual producer's fee and contracts for video productions.

6. Other/Misc.:

a. All communication between the City and the Contractor with regard to contractual matters will be directed through the Cable Administrator, or any other such representative as may be appointed by the City, and the Contractor's duly appointed representative. In the event of a disagreement over the administration of this agreement, either party may appeal to the Telecommunications board who shall make recommendations to the Mayor or City Council, as may be required.

b. The use of alcohol, tobacco products, and illegal drugs is strictly prohibited in the Access Center.

c. Contractor's and City's employees shall not park in the spaces in front of the Access Center.

d. Contractor shall have at least one paid staff person or a designated volunteer in the Access Center whenever a program is being produced in the studio. Contractor shall have a paid staff person on site during the production of live programming at the Access Center.

e. Contractor and City shall each bear one-half of the costs of supplies used by everyone in the facility's breakroom.

f. Contractor's staff shall do their part to keep the Access Center clean by keeping the breakroom clean after use by their staff and public access users.

g. Contractor shall be responsible for placing messages from non-profit groups and organizations on the public access channel.

h. Contractor will follow the City's rules for the use of the Access Center.

I. Live shows will be taped by the Contractor and held for four days. All other shows are on tape and available for review at the Access Center. The owners of the taped programs will be asked to leave them for four days if they are not in the tape library. Accurate cablecast logs will be kept by Contractor as proof of what programs were cablecast.

j. Ownership title to all capital acquisition, supplies, material or any other property purchased with funds received under this Contract, is vested with the City and possession of such property shall, upon termination of the Contract, revert to the City unless otherwise provided for by the City, in writing. Donations of goods to the Contractor remain with the Contractor.

## SECTION III.
## LEGAL AUTHORITY.

A. The Contractor assures and guarantees that it possesses the legal authority to enter into this Agreement. Further, that the person or persons signing and executing this Contract on behalf of the Contractor have been fully authorized by the Contractor to execute this Agreement on behalf of the Contractor. That such authority is evidenced pursuant to a proper, appropriate and official motion and resolution, which was passed and approved specifically to enter into this Agreement and shall legally bind the Contractor to all the terms, performances and provisions herein set forth. A copy of such resolution shall be provided upon execution of this Agreement.

B. The City may exercise its right to either temporarily suspend or permanently terminate this Agreement if there is a dispute as to the legal authority of either the Contractor or the person signing the Agreement to enter into this Agreement. The

City shall not be obligated to pay Contractor for any performance of the provisions of this Agreement after the City has suspended or terminated this Agreement as provided in this Section.

**SECTION IV.**
**COMPLIANCE WITH FEDERAL, STATE AND LOCAL LAWS.**

A. The Contractor shall comply with all applicable laws, regulations, procedures and policies of the Federal, State and local governments.

**SECTION V.**
**FUNDING/CONSIDERATION.**

A. Consideration.

1. The City hereby agrees to pay Contractor the monthly sum of $5,750 for services performed under the terms of this contract. Each monthly payment will be remitted on or before the 15th day of each month, beginning July 15th, 2002.

**SECTION VI.**
**PROGRAMMING.**

A. Public access equipment shall be provided on a first come, first served, non-discriminatory basis, subject only to any restrictions set forth herein. Public access channel time shall be made available on a non-discriminatory basis, with consideration being given to an appropriate scheduling time.

B. Contractor shall require access producers to sign an agreement warranting that the program they are submitting does not contain:

1. any violation of any state or federal law relating to obscenity;

2. any material that is libelous, slanderous, or other defamation of character, or an unlawful invasion of privacy;

3. any advertising or material which promotes any commercial product or service;

4. any use of material which violates copyright law; or,

5. any material contrary to local, state or federal laws, regulations, procedures and policy.

**SECTION VII.**
**PERSONNEL.**

A. Contractor shall adequately staff the public access operation to meet the services and duties outlined in this agreement.

B. During the contract period, the staff for the public, educational and government channels will be working together at the Access Center. The Contractor's staff will be expected to work in a cooperative manner with all groups using the facility.

## SECTION VIII.
## REPORTS AND INFORMATION.

A. At such times and in such form as the City may require, the Contractor shall furnish such statements, records, reports, data and information, as the City may request and deem pertinent to matters covered by this Agreement.

B. The City shall provide the Contractor with equipment usage forms which are to be completed by Contractor's staff as well as public access users each time equipment is used. Contractor is responsible for submitting these completed forms to the City within one working day after the equipment is used.

C. Contractor shall submit quarterly reports on the operations of the public access channel to the City.

D. Contractor shall submit an annual report which shall include a summary of all quarterly reports, review contract requirements and document compliance with contract requirements. The annual report will be due sixty (60) days following the end of the contract year.

E. In addition to the above listed reports, the Contractor shall provide the following additional information to the City:

1. Reports of stolen or damaged equipment within one working day of learning of each occurrence.

2. Requests for changes in any procedures or rules pertaining to protection or preservation of City owned equipment and facilities.

3. All corporate documents, including but not limited to the Contractor's by-laws, articles of incorporation, certification of compliance with affirmative action plan and EEO standards, and a list of Board members.

4. Amendments or changes to programming policies.

## SECTION IX.
## AUDIT/REVIEW

A. The Contractor agrees to provide the City with a monthly financial report summarizing activity during the preceding 30 day period. Said report shall include income and balance sheet statements.

B. Contractor shall have a certified public accountant complete an official review of its financial records annually. This report shall be submitted to the City by the last day of the third month after the end of Contractor's fiscal year.

## SECTION X.
## ACCESSIBILITY OF RECORDS.

A. At any reasonable time and as often as the City may deem necessary, the Contractor shall make available to the City, or any of its authorized representatives, all of Contractor's records related to all matters covered by this Agreement and shall permit the City to audit, examine, make excerpts and copies of such records, and to make audits of all contracts, invoices, materials, payrolls, records of personnel, conditions of employment and other data relating to matters covered by this Contract.

## SECTION XI.
## INSURANCE.

A. Contractor shall obtain and keep in force during the term of this agreement a policy or policies of public liability and property damage insurance. The coverage, at a minimum, shall be in the following amounts:

1. General Liability:

| | | |
|---|---|---|
| a. | General Aggregate | $1,000,000 |
| b. | Products/Completed Oper. Aggr. | $1,000,000 |
| c. | Personal & Advertising Injury | $1,000,000 |
| d. | Each Occurrence | $100,000 |
| e. | Fire Damage (any one fire) | $50,000 |
| f. | Medical Expense (any one person) | $5,000 |

2. Worker's Compensation for all employees as required by Arkansas Statutes.

B. Contractor shall furnish the City with a certificate showing that such coverage has been obtained and is currently in effect. Contractor shall not change or cancel any policy of insurance obtained for the purposes of this agreement except after thirty (30) days written notice to City and written acceptance by the City of such changes or cancellation.

## SECTION XII.
## DIRECTOR'S MEETINGS

A. During the term of this Contract, the Contractor shall cause to be delivered to the City copies of all notices of meetings of its Board of Directors, setting forth the time and place thereof. Such notice shall be delivered to the City in a timely manner to give adequate notice and shall also include an agenda.

B. Minutes of all meetings, if taken, and materials distributed in meetings of the Contractor's Board of Directors, or committees thereof, shall be submitted to the City.

C. The Contractor's Board meetings and records shall be subject to the provisions of the Arkansas Freedom of Information Act, Ark. Code Ann., §25-19-101 et. seq.

## SECTION XIII.
## BONDING.

A. The Contractor shall obtain a fidelity bond covering all persons handling funds received or disbursed and/or signing or co-signing checks to disburse funds under this Agreement, within ten (10) days of Contract execution. The fidelity bond shall be in an amount equal to ten percent (10%) of the City grant award or $5,000, whichever is less. The Contractor shall furnish the City proof of an adequate fidelity bond prior to the first payment of funds under this Agreement.

## SECTION XIV.
## EQUAL OPPORTUNITY.

A. Contractor shall comply with all applicable equal opportunity, affirmative action and ADA laws or regulations, including those of the City of Fayetteville.

B. The Contractor will furnish all information and reports requested by the City, and will permit access to its books, records, and accounts for purposes of investigation to ascertain compliance with such rules and regulations.

C. In the event of the Contractor's non-compliance with the non-discrimination requirements of this Agreement, this Agreement may be canceled, terminated, or suspended in whole or in part, and the Contractor may be debarred from further agreements with the City.

## SECTION XV.
## PERSONNEL POLICIES.

A. Personnel policies shall be established by the Contractor and shall be available for examination by the City. Public access operations shall be open to the public the maximum hours permitted by resources available but at least forty (40) hours per week. In planning these times, Contractor shall take into consideration the needs of the public to include evening and weekend hours.

B. Upon termination of an employee by the City Cable Administrator, and in the event that the contractor's manager wishes to hire the employee over the objections of the Cable Administrator, an appeal of the action may be brought by the Cable Administrator to the contractor's Board of Directors. Similarly, upon termination of an employee by the contractor, and in the event that the Cable Administrator wishes to hire the employee over the objections of the contractor's manager, an appeal of the action may be brought by the contractor's manager to the Telecommunications Board.

## SECTION XVI.
## CONFLICT OF INTEREST.

A. The Contractor covenants that neither it nor any member of its Board of Directors currently has any interest or shall acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Agreement. The Contractor further covenants that in the performance of this Agreement no person having such interest shall be employed or appointed as a member of its Board of Directors.

B. The Contractor further covenants that no member of its Board of Directors or its staff or employees shall possess any interest in or use their position for a purpose that is or gives the appearance of being motivated by desire for private gain for themselves, or others particularly, those with which they have family, business, or other ties.

C. No officer, member, or employee of the City and no member of its governing body who exercises any functions or responsibilities in the review or approval of the undertaking or carrying out of this Agreement, shall:

1. Participate in any decision relating to the Agreement which affects his or her personal interest or the interest of any corporation, partnership, or association in which he has a personal financial direct or indirect interest; or

2. have any personal financial interest, direct or indirect, in this Agreement or the proceeds thereof.

## SECTION XVII.
## POLITICAL ACTIVITY.

A. No portion of the funds received by the Contractor hereunder shall be used by the Contractor to directly produce any programs nor to participate in any Contractor-sponsored activities of a political nature (including, but not limited to, any activity to further the appointment, election, defeat or removal of any applicant, incumbent, or candidate for public office or any activity undertaken to influence the passage, defeat or final content of any legislation). However, Contractor will cablecast programs made by the public which express opinions on issues or candidates.

**SECTION XVIII.**
**SECTARIAN ACTIVITY.**

A. No portion of the funds received by the Contractor here under shall be used by the Contractor to directly produce any programs nor participate in any Contractor-sponsored activities which establish any religion or prohibit the free exercise thereof.

**SECTION XIX.**
**PUBLICITY.**

A. In any news release, sign, brochure, or other medium disseminating information prepared or distributed by or for the Contractor, mention shall be made of the City of Fayetteville having made the project possible, i.e. "'Community Access Television' is a project partially funded by the City of Fayetteville."

**SECTION XX.**
**HOLD HARMLESS.**

A. It is expressly understood and agreed by both parties hereto that the City is contracting with the Contractor as an independent contractor and that as such, the Contractor shall save and hold the City, its officers, agents and employees harmless from all liability of any nature of any kind, including costs and expenses for, or on account of, any claims, audits exceptions, demands, suits or damages of any character whatsoever resulting from injuries or damages sustained by persons or property, resulting in whole or in part from the performance or omission of any employee, agent or representative of the Contractor. This Agreement shall not be construed in any manner or form as a waiver of that Tort Immunity as set out under Arkansas Law.

**SECTION XXI.**
**USE OF CITY PROPERTY.**

A. Contractor hereby recognizes that it is performing services for the City on City-owned property and that while on such property, Contractor shall not engage in any activity that is not directly related to services provided pursuant to this Agreement.

## SECTION XXII.
## OPERATIONAL POLICIES AND PROCEDURES.

A. Contractor's policies relating to the use of City owned equipment and facilities shall be submitted to the Telecommunications Board for approval and may be reviewed periodically as needed.

## SECTION XXIII.
## CONTRACT ENTIRE AGREEMENT.

A. This Agreement constitutes the entire agreement between the parties hereto, and any prior agreement, assertion, statement, understanding, or other commitment antecedent to this Agreement, whether written or oral, shall have no force or effect whatsoever, nor shall any agreement, assertion, statement, understanding, or other commitment occurring during the term of this Agreement, or subsequent thereto, have any legal force or effect whatsoever unless properly executed in writing and if appropriate, recorded as a addendum to, or amendment of, this Agreement.

## SECTION XXIV.
## TERMINATION OF AGREEMENT.

A. This contract may be terminated by either party with a thirty day written notice.

## SECTION XXV.
## SEVERABILITY.

A. If any section, subsection, sentence, clause, phrase or word of this agreement is held to be invalid or unconstitutional by any court of competent jurisdiction, such section, subsection, sentence, clause, phrase or word will be deemed a separate, distinct and independent provision, and such holding will not affect the validity of the remaining provisions of this agreement.

COMMUNITY ACCESS TELEVISION

By:______________________________
Title:_____________________________

ATTEST:

By:______________________________
Title:_____________________________

CITY OF FAYETTEVILLE, ARKANSAS

By:______________________________
Dan Coody, Mayor

ATTEST:

By:______________________________
Heather Woodruff, City Clerk

**City of Fayetteville, Arkansas**
**Budget Adjustment Form**

| Budget Year | Department: Urban Development | Date Requested | Adjustment # |
|---|---|---|---|
| 2002 | Division: Cable Administration | 06/04/2002 | |
| | Program: | | |

**Project or Item Requested:**

$34,500 is requested in the Cable Administration Program to fund the Community Access Television contract from July 1 to December 31, 2002.

**Project or Item Deleted:**

$34,500 in additional franchise fee revenue for the remainder of 2002. The City received an additional $19,224 above projected revenue for the first quarter 2002.

**Justification of this Increase:**

The item is requested to fund the proposed contract for operating the public access television station activities for the second half of 2002.

**Justification of this Decrease:**

The cable franchise fee revenue is generating additional revenue.

**Increase Expense (Decrease Revenue)**

| Account Name | Amount | Account Number | | | | | Project Number | |
|---|---|---|---|---|---|---|---|---|
| Transfer to Community Access | 34,500 | 1010 | 0600 | | 5713 | 00 | | |

**Decrease Expense (Increase Revenue)**

| Account Name | Amount | Account Number | | | | | Project Number | |
|---|---|---|---|---|---|---|---|---|
| Franchise Tax - Cable | 34,500 | 1010 | 0001 | | 4105 | 03 | | |

**Approval Signatures**

| | Date |
|---|---|
| Requested By | 5-28-02 |
| Budget Manager | 5-28-02 |
| Department Director | 5/28/02 |
| Admin. Services Director | 5/28/02 |
| 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*

*H:\BUDGET\PROJECTS\BUD_ADJ\BA_2002\BADJFORM.WK4*

# FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

DATE: May 24, 2002

TO: Mayor and City Council

FROM: Hugh Earnest
Urban Development Director

RE: Cox Cable Franchise/Community Access Television

Cable television in this country and franchises for use of the public right-of-way for installation of the necessary cable has become a part of Municipal Government. Fayetteville is certainly no exception. The first franchise for operation of a cable system was negotiated in 1957. Since that first franchise the City has had a number of agreements with several companies. The current franchise, negotiated in 1992, secured for the City three channels for use by the public. One of these channels was assigned by contract to the University of Arkansas for educational purposes. The other two channels are utilized for Public (Government) information and Public Access. The Public channel is managed by our Cable Administration Division manager, who is also responsible for providing administrative support to the Telecommunication Board. The City also contracts with a not for profit organization, Community Access Television (CAT) for operation of the Public Access Channel. The current franchise agreement expired on October 31, 2000 and City representatives have been negotiating at some level with Cox Communication since that time.

The cable industry itself has gone through wrenching changes since its entry into the American marketplace. During the franchise periods in Fayetteville, we have seen several operators as consolidation and the entry of new players into the marketplace has occurred. In addition, the industry has successfully used the national legislative process as a means to lessen the ability of local governments to exercise significant controls over their operation. National legislation passed in 1992 and 1996 has had significant impact on all aspects of the industry. Another significant factor impacting this industry and local governments is the entry into the market of satellite technology allowing the extensive use of wireless signals for television broadcasting. This technology has created in all markets a level of competition that did not exist when franchises were first negotiated.

As has been stated, Fayetteville has been successful in securing, at no direct cost to the City, the dedication of three separate channels for use. Fayetteville has also created a Telecommunications Board to manage some portions of the Public, Educational and

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

Governmental channels that were secured. The Board is also by ordinance empowered to advise the City Council on policy issues relating to the franchise and certain aspects of the operation of the three channels. This Board was created by the City Council to advise the city council and make recommendations on a wide range of telecommunication issues. In addition, ordinance 4219 also assigns to the Board oversight responsibilities for administration of the access facility as well as access services administered by other entities. A private not for profit group has a contract for the operation of a channel for use by the public in whatever form or fashion they may desire. This Community Access component of the channel lineup has, over time, been a point of some public debate The city has historically collected from Cable franchisees a fee for use of the public Right of Way which goes into the General Fund. This franchise fee has grown over the years as shown below.

1991 $251,272
1995 $316,260
2000 $371,613
2002 $402,000 (estimated)

A significant percentage of this money has been used for of a successful PEG endeavor that is matched nowhere else in Arkansas. A copy of the budget for 2002 is attached as reference.

There is one financial issue on the table which has not been resolved. A recent federal ruling by the FCC stating that charges for cable modems are no longer subject to a franchise fee, has caused Cox to inform us that they will no longer collect a franchise fee on this service. Our City Attorneys have responded that the company remains responsible for collecting the fee under our franchise language. While all parties expect a rash of legal filings at the national level to resolve the disagreement, the fact remains that Cox is no longer collecting the fee locally.

**Current Situation**

Over the past several years, City representatives had been moving slowly through a laborious negotiating process. The City had employed in 2000 a Mr. Brian Grogan, who is an attorney, to represent the City in developing a draft franchise agreement. This process culminated in the development of a draft document that was approved by Mr. Grogan and Mr. Lutzker, an attorney in Washington D.C. representing Cox Communication. This document was furnished to the City in the fall of 2001 for approval. It was felt by several individuals connected with the process that certain references to an institutional network were lacking in scope. This lack caused various City officials to reopen the discussion surrounding what constitutes an institutional network and how it can or should be incorporated in a franchise network.

Also, at that time, the City was involved in intense discussions revolving around the preparation of the 2002 budget. One of the decisions arising out of that discussion was including funding for the CAT contract only through June 30, 2002. This decision was

coupled with an instruction to the staff to investigate other options for securing the monies necessary for CAT funding. The draft franchise agreement received by the City did contain an allocation for capital equipment for use to support the PEG activities and it was hoped that the money could be switched in some form or fashion to cover operational costs associated with public access. However, sometime early this year, the negotiating posture of Cox has changed. The company has employed as its principal negotiator a Mr. Tom Cantrell. It has been Mr. Cantrell's clearly articulated position that the earlier draft was unacceptable to the company and that both sides needed to revisit the basic principles underlying a franchise agreement. One of the early casualties of this process was any mention of additional financial support. Mr. Cantrell has also expressed a willingness to explore the entire existing relationship between the City and his company relative to how the three channels are utilized. In effect, he is challenging us as a public body to analyze how we are using these three channels and to look at alternatives which may be preferable from a public policy perspective.

**Recommendations**

From a fact driven perspective, there is little or no direct connection between the issue of CAT funding and the seemingly interminable negotiations with Cox. However, there is a real possibility that linking the two ongoing discussions will result in better and more efficient use of the three channels that are available for public use in Fayetteville. The position being taken by Cox Communications in our ongoing conversation, namely that a strengthened public access format is of interest to both parties, perhaps offers us the chance to explore regional linkages, a closer working relationship with the University of Arkansas and more efficient management of PEG related activities. As in any contractual relationship between a small city and a large national corporation, there are no guarantees that the interest of both sides can be met. Nonetheless, it is my opinion that the benefits to the City merit the effort. The following are a series of recommendations and actions that we would ask the Council to adopt. We would then, from a staff perspective, be more effective in our discussions wit Cox and in the associated discussions over the future of public access.

The recommendations are as follows:

1. The deadline for franchise discussions with Cox be extended to December 31, 2002.

2. The funding for CAT, which is due to expire on June 30th, 2002 be extended by six months through an appropriation of additional funds by the Council.

3. The Council request to secure an audit of the rate increase in the basic rate charged to a certain group of local subscribers be dropped.

Each of these recommendations demands some explanation.

1. Franchise Deadline

The Cox negotiator, Mr. Cantrell, has furnished us with a much simpler document for consideration. As might be expected, there are certain issues that have been removed, such as any additional funding for public access. However, he has expressed a willingness to limit the time to five years, which is a significant change from the 15 years that had been plugged into the earlier draft. In addition, the City is suffering no harm from a revenue perspective in continuing to operate under the old franchise. Finally, the willingness of the company to explore with us changes in public access is an issue that demands more discussion.

2. CAT Funding

The City Telecommunication Board is currently looking at the possibility of having the PEG City staff assume the operational control of this operation. There is some merit to this idea, given some recent operational problems with the system. However, I remain convinced that all parties will be best served by utilizing the remainder of this year to thoroughly evaluate all options. In addition, the Telecommunications Board did, at their May 16th meeting, pass a motion to recommend to the City Council that the funding for the second half of 2002 be appropriated.

3. Rate Audit

The City council passed a resolution on February 19, 2002, requesting that an audit of the recent rate change on basic service be done. We have secured some contacts from Mr. Grogan and have opened a conversation on this issue. In addition, we have discussed this with Cox representatives in the hope that the company would offer what some in the field call a reduced lifeline tier rate that would offer fewer channels than the 23 now available under the base rate. Their position on this issue is that competitive pressures make such an operation very difficult at this time.

The feedback on the rate audit that has been received is that it is essentially an exercise in futility. The companies have become very skillful in meeting the demands of the required federal forms and any discrepancy found through an audit would be in the penny range. Cox has also made it clear that any claim of an overcharge would be contested. In summary, I would suggest to the Council that the probability of success in this effort is limited.

## Urban Development Department
## Cable Administration Division
## Cable Administration Program

Fund 1010 - General | Program 0600

Program Description, Objectives, and Analysis:

This division oversees the operations of the Public, Educational, and Government Access Television Center. The division operates the City's Government Access Channel 3; monitors and enforces the City's franchise agreement with Cox Communications; works with the Telecommunications Board and the City Council to enforce federal cable television regulations; and supervises the performance of the public access provider and the educational access channel's operation. The main goals are: 1) ensure that the P.E.G. television center is equipped, maintained, open, and accessible to Fayetteville citizens as a channel of public expression; 2) use the government channel to keep citizens informed on local government issues and services; 3) assist City staff with production of audio/video presentations; and 4) study cable rate and franchise regulation issues and make recommendations to the Telecommunications Board, Mayor, and City Council.

This program has a budgeted increase in Utility Expense and Insurance-Vehicles/Buildings of $1,644 over actual 2000 expenses. The reduction in the Services & Charges Category is due to the Community Access Television transfer being reduced by 50% ($34,500).

| | Actual 2000 | Budgeted 2001 | Estimated 2001 | Budgeted 2002 |
|---|---|---|---|---|
| **Program Staff** | | | | |
| Full-Time Equivalent Positions | 5.25 | 5.25 | 5.25 | 5.25 |
| **Program Expenditures** | | | | |
| Personnel Services | $ 136,136 | $ 141,367 | $ 141,367 | $ 147,818 |
| Materials and Supplies | 5,175 | 5,498 | 5,498 | 4,298 |
| Services and Charges | 75,975 | 81,465 | 81,393 | 46,565 |
| Maintenance | 6,463 | 8,103 | 8,103 | 7,215 |
| Capital | 709 | 401 | 401 | 0 |
| | $ 224,458 | $ 236,834 | $ 236,762 | $ 205,896 |

Performance Measures

| | Actual 2000 | Budgeted 2001 | Estimated 2001 | Budgeted 2002 |
|---|---|---|---|---|
| **Demand/Workload** | | | | |
| 1. Hours Video Equipment Used by Public & Staff | 15,818 | 15,000 | 13,000 | 16,000 |
| 2. CAT Video Workshops | 141 | 250 | 176 | 180 |
| 3. City Video Tapes Duplicated | 329 | 350 | 320 | 330 |
| 4. CAT Channel Total Cablecast Hrs. | 5,876 | 6,500 | 6,454 | 6,500 |
| 5. Gov't Channel Total Cablecast Hrs. | 2,262 | 2,392 | 2,490 | 2,500 |
| **Results** | | | | |
| 1. Administer PEG Center Hrs./Month | 75 | 75 | 75 | 75 |
| 2. Gov't Channel Meetings Taped | 240 | 200 | 310 | 300 |
| 3. Gov't Channel Info Videos Produced | 215 | 210 | 215 | 215 |
| 4. CAT Workshop Participants | 96 | 200 | 516 | 500 |
| 5. CAT First Time Producers | N/A | 24 | 52 | 50 |
| 6. CAT New Program Hrs. - Local | N/A | 404 | 343 | 350 |
| 7. Gov't New Prog. Hrs. - Meetings/Info | 342 / 123 | 280 / 105 | 468 / 112 | 428 / 112 |
| 8. Gov't/CAT Bulletin Board Messages | 688 / N/A | 750 / 420 | 720 / 802 | 750 / 850 |

CC 6/4/02
B. 1

# City of Fayetteville, Arkansas

**General Fund Revenue and Expenditures**
**Comparison of Results 1993 and 2002**

| Service Cost Impact Change | 1993 | 2002 | Increase/ Decrease | Percent |
|---|---|---|---|---|
| Consumer Price Index Change | 144.00 | 179.80 | 35.80 | 24.86% |
| Population Growth | 46,406 | 60,887 | 14,481 | 31.21% |
| Total Change | | | | 56.07% |

The costs of City services would have to have increased by 56% to keep up with inflation and population growth from 1993 to 2002.

| Revenue: | | | | |
|---|---|---|---|---|
| City Sales Tax | $5,059 | $2,841,000 | $2,835,941 | |
| Property Taxes | 1,109,410 | 0 | -1,109,410 | |
| Total City Sales Tax and Property Taxes | $1,114,469 | $2,841,000 | $1,726,531 | 154 92% |
| All Other General Fund Revenue | $10,179,728 | $13,305,000 | $3,125,272 | 30 70% |
| Total | $11,294,197 | $16,146,000 | $4,851,803 | 42 96% |

Revenue lagged population growth and inflation by 13%.

| Department Net Program Cost: | 1993 | 2002 | Increase | Percent |
|---|---|---|---|---|
| Parks & Recreation | $727,055 | $1,119,149 | $392,094 | 53.93% |
| Library | 278,416 | 713,720 | 435,304 | 156.35% |
| Salary Contingency - All General Fund | | 1,392,353 | 1,392,353 | |
| **Public Safety Total** | **4,744,197** | **10,445,964** | **5,701,767** | **120.18%** |
| Police | 2,508,526 | 5,435,457 | 2,926,931 | 116 68% |
| Fire | 2,067,101 | 4,466,513 | 2,399,412 | 116.08% |
| Animal Services | 168,570 | 543,994 | 375,424 | 222.71% |
| **All Other Departments** (see listing below) | **4,708,356** | **5,501,631** | **793,275** | **16.85%** |
| Total Net Program Cost | $10,458,024 | $19,172,817 | $8,714,793 | 83.33% |
| Net Program Cost Compared to Undefined Revenue (Increase Reserves)/Decrease Reserves | ($836,173) | $3,026,817 | | |

Population growth and inflation increased 40% more than basic City administration costs for 1993 - 2002 However, because our two largest departments, police and fire, each grew 116%, the total General Fund cost increased by 83% while revenue increased by only 43%.

* Parks & Recreation amounts do not include any HMR tax monies.

**Listing of All Other Departments:**

**General Government**
- Mayor's Administration
- City Council
- City Attorney
- City Prosecutor
- Hot Check
- District Judge
- District Court
- Economic Development
- City Clerk
- Miscellaneous

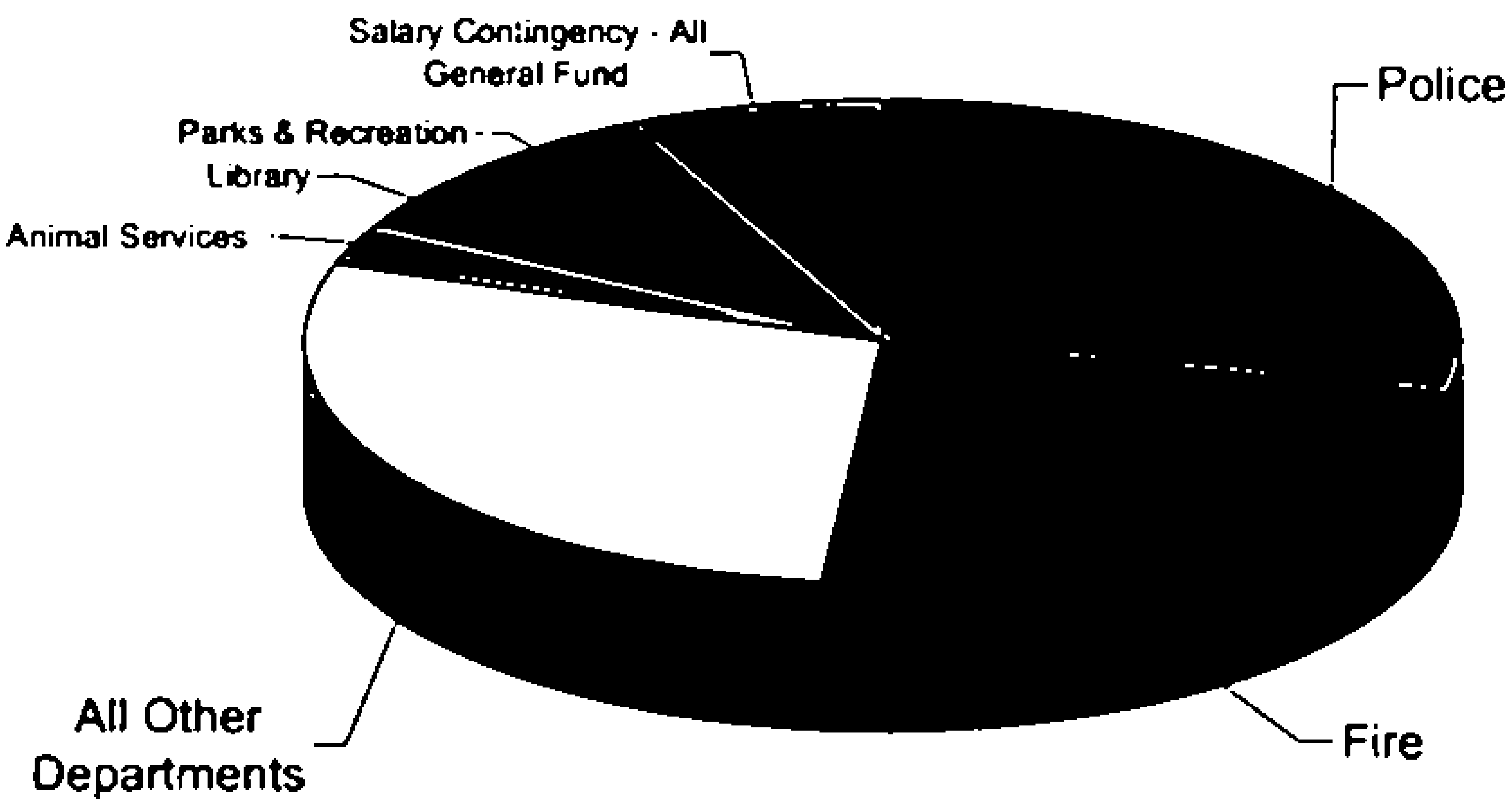
**Urban Development**
- Urban Development Director
- Cable Administration
- Yvonne Richardson Community Center
- Public Lands Maintenance
- Planning
- Inspections

**General Services Department**
- General Services Director
- Utilities Management
- Parking Management

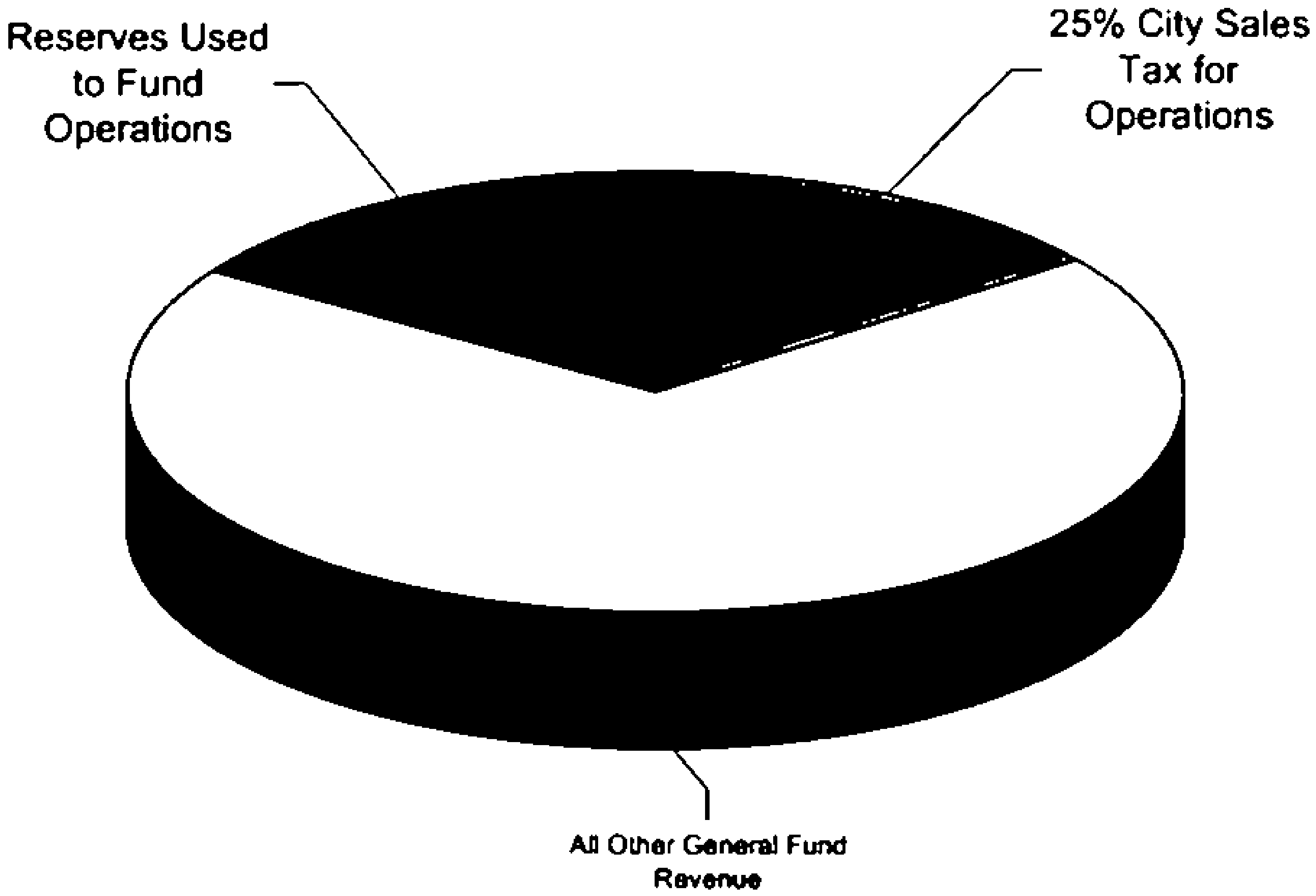
**Administrative Services Department**
- Administrative Services Director
- Human Resources
- Accounting & Audit
- Budget & Research
- Billing & Collections
- Program Integnty
- Building Maintenance
- Purchasing
- Information Technology

## City of Fayetteville, Arkansas
## General Fund

### 2002 Net Expenditures
### $19,172,817

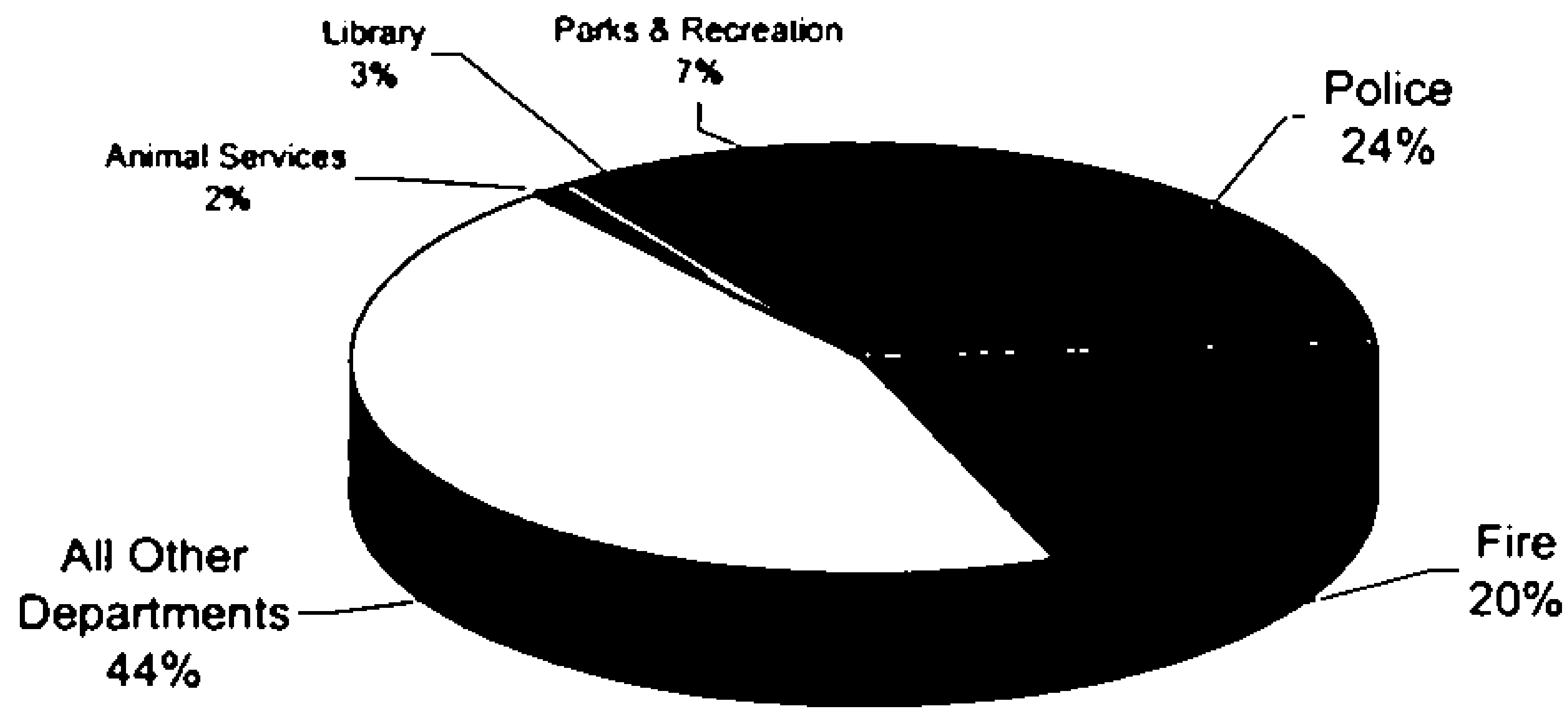



### 2002 Revenue - $16,146,000 and
### Use of Reserves - $3,026,817

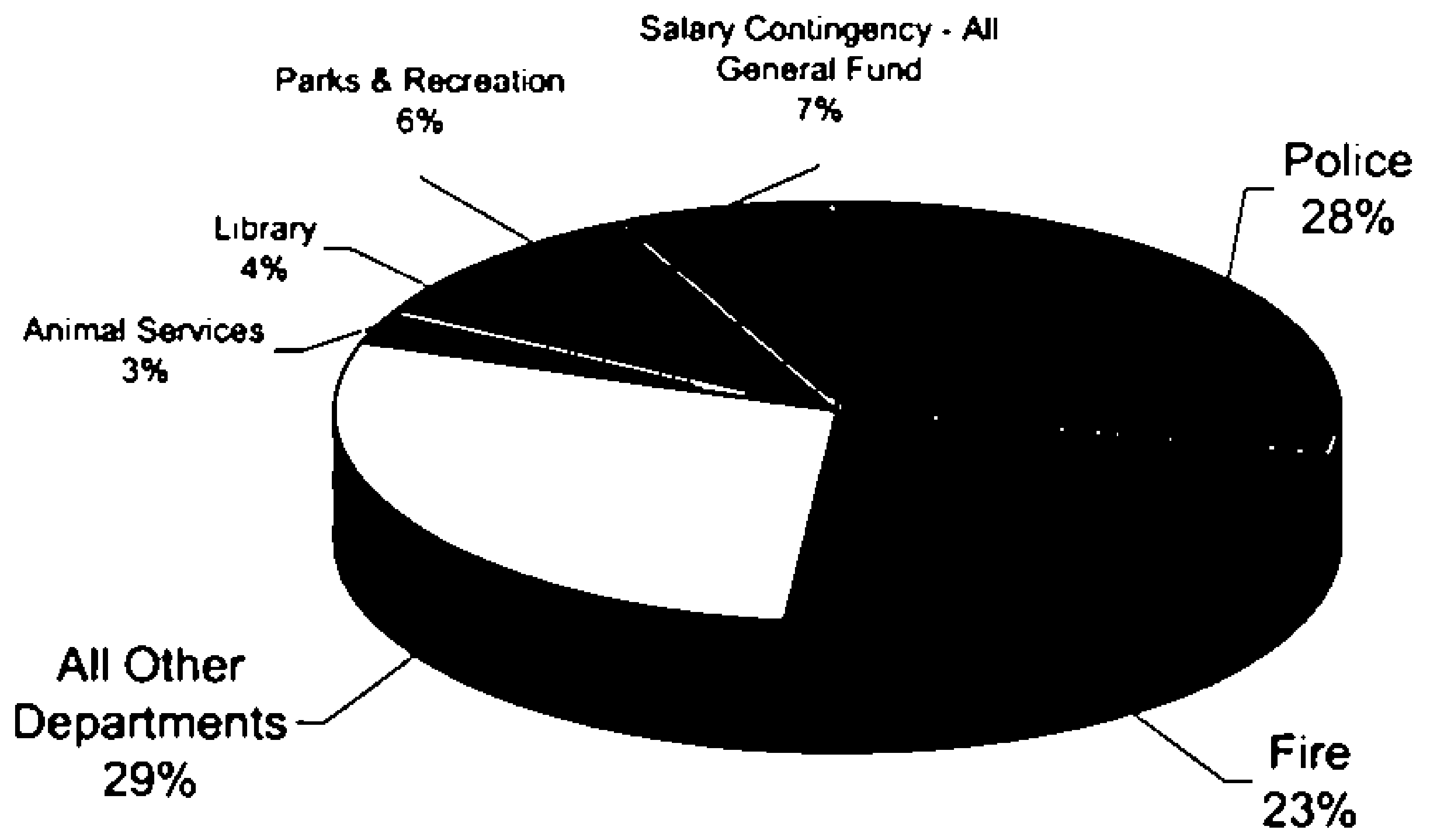


## City of Fayetteville, Arkansas
## General Fund

### 1993 Net Expenditures



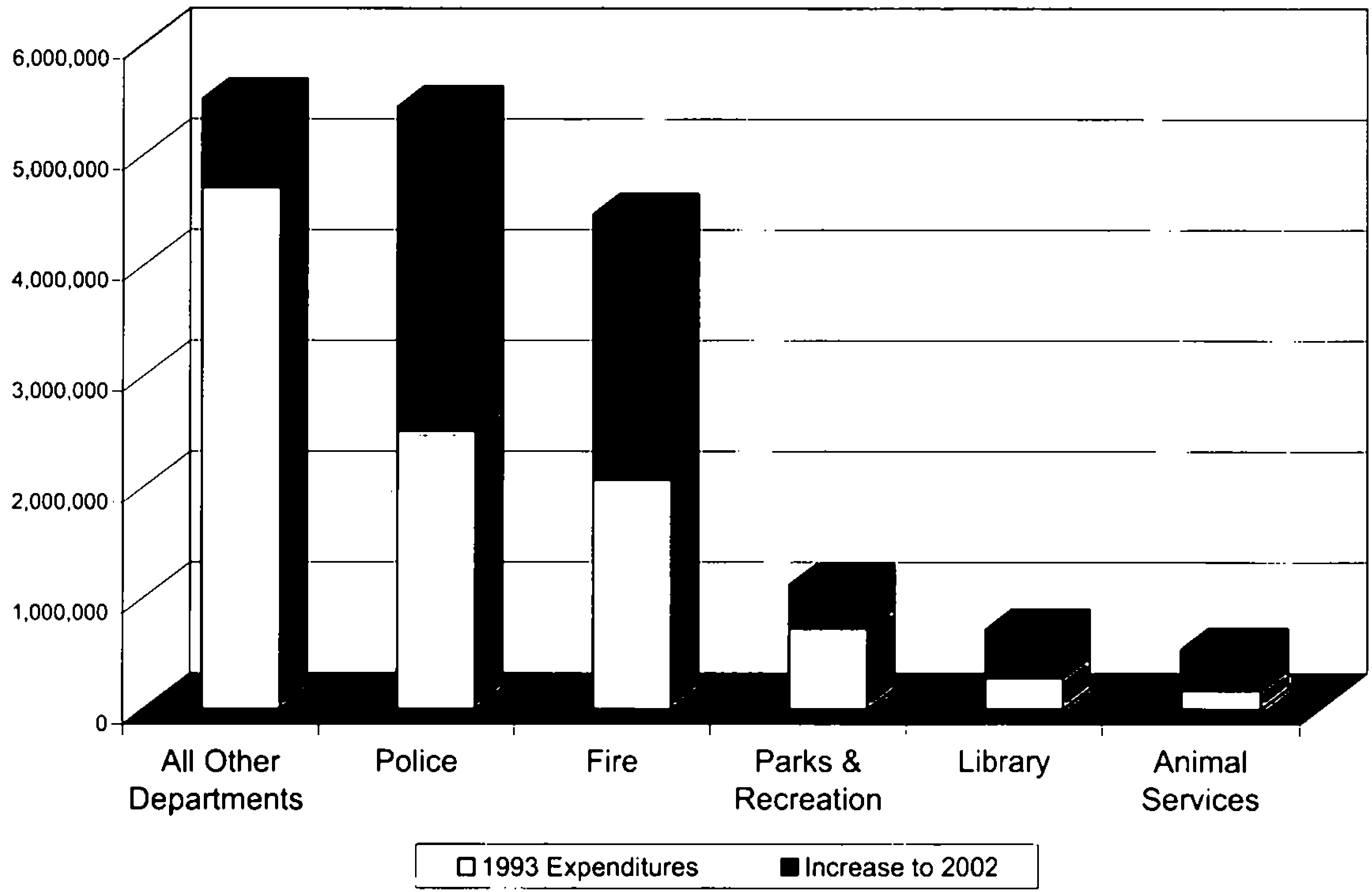

### 2002 Amended Budgeted Net Expenditures




Salary contingency is used to fund salary increases and group benefit costs for all departments in General Fund.

City of Fayetteville, Arkansas
General Fund

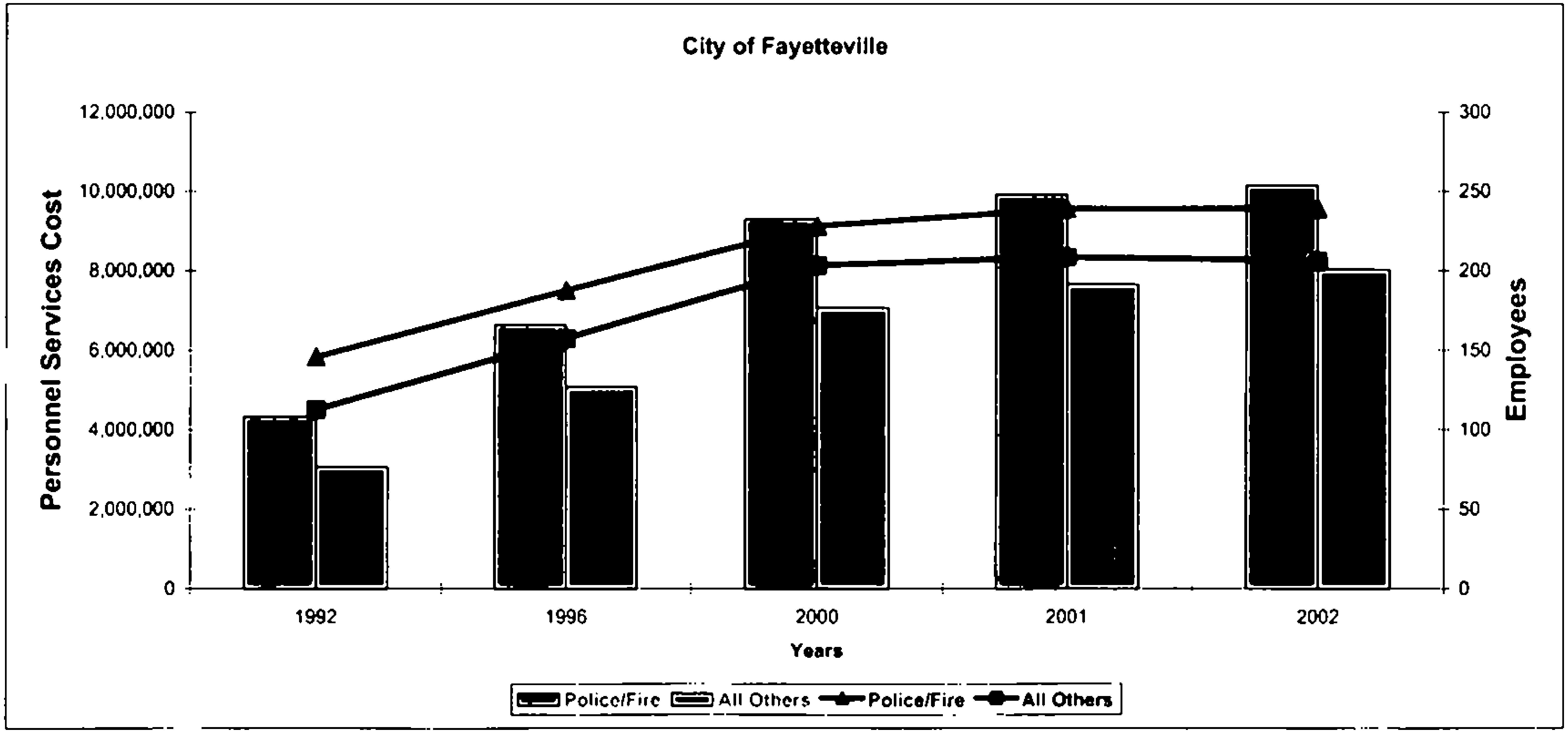
# 1993 Expenditures & Increase in Expenditures to 2002



## City of Fayetteville

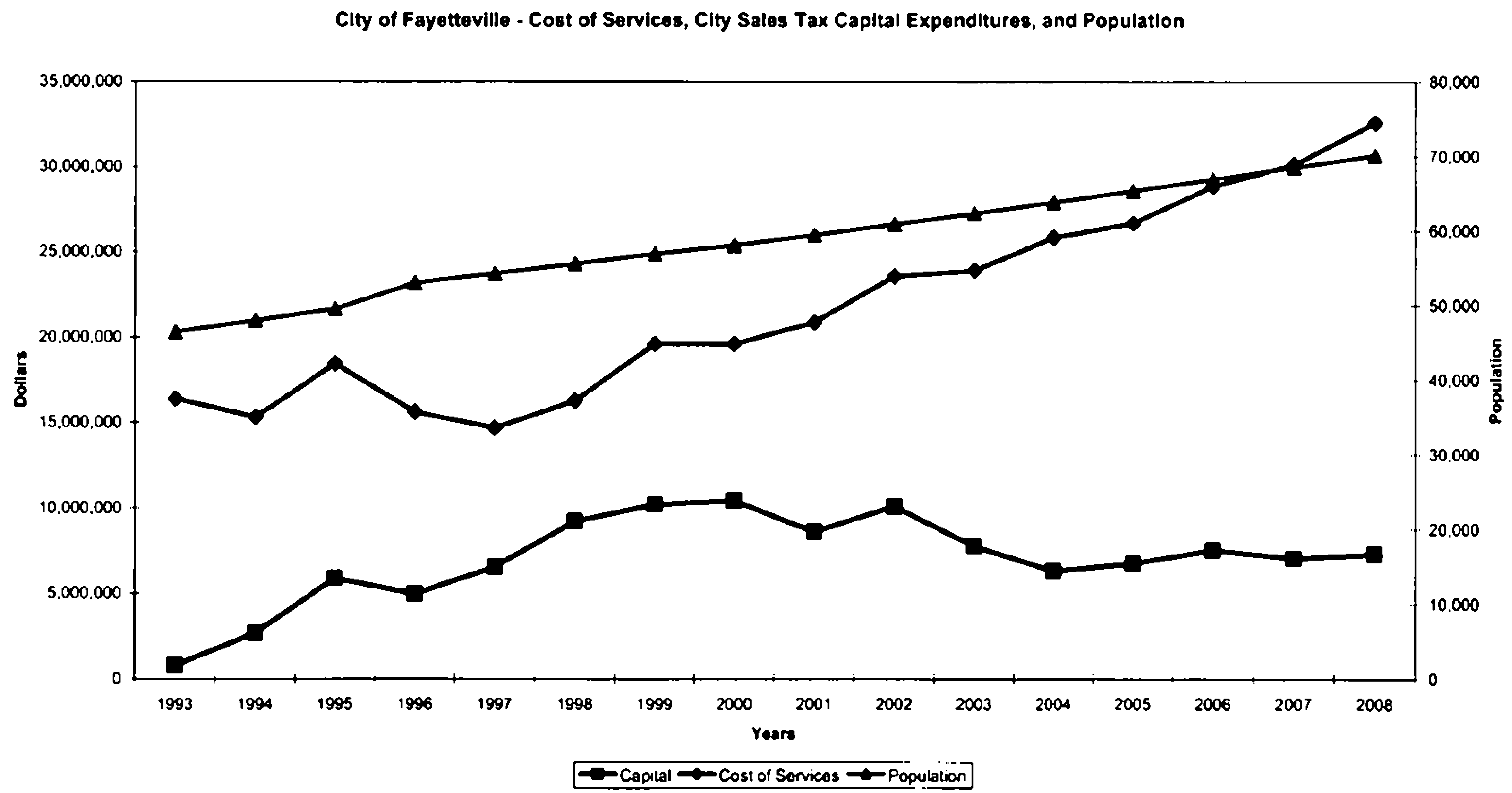
# Full Time Equivalent Positions (Employees) and Dollar Amount for General Fund Personnel Services

| | 1992 | | 1996 | | 2000 | | 2001 | | Budgeted 2002 | |
|---|---|---|---|---|---|---|---|---|---|---|
| | FTEs | Dollars | FTEs | Dollars | FTEs | Dollars | FTEs | Dollars | FTEs | Dollars |
| Police Department | 86 00 | 2,491,262 | 114.73 | 3,888,510 | 142.33 | 5,491,998 | 150.33 | 5 892,690 | 150.33 | 6,049,164 |
| Fire Department | 60 00 | 1,634,162 | 73 00 | 2,745,634 | 88 00 | 3,807,294 | 89 00 | 4 020,987 | 89 00 | 4,096,195 |
| All Other General Fund Personnel | 113 05 | 3,063,134 | 157 83 | 5,068,901 | 203 65 | 7,062,835 | 208 95 | 7,660,826 | 206 40 | 8,026,684 |
| Salary Contingency will be allocated to each department as needed | | | | | | | | | | 1,645,658 |
| Totals | 259 05 | 7,388,558 | 345 56 | 11,703,245 | 431.98 | 16,362,127 | 448.28 | 17,574,503 | 445.73 | 19,817,701 |



# City of Fayetteville
# Cost of Services for General Fund and City Sales Tax Capital Expenditures

| | 1993 | 1994 | 1995 | 1996 | 1997 | 1998 | 1999 | 2000 | 2001 | 2002 | 2003 | 2004 | 2005 | 2006 | 2007 | 2008 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Capital | 813,394 | 2,702,593 | 5,897,143 | 4,964,121 | 6,540,440 | 9,220,255 | 10,199,804 | 10,430,080 | 8,618,852 | 10,108,000 | 7,780,000 | 6,318,000 | 6,762,000 | 7,527,000 | 7,060,000 | 7,307,000 |
| Cost of Services | 16,400,610 | 15,317,539 | 18,446,422 | 15,624,886 | 14,681,860 | 16,283,861 | 19,606,533 | 19,603,725 | 20,894,587 | 23,587,377 | 23,911,259 | 25,853,775 | 26,693,649 | 28,876,795 | 30,154,580 | 32,594,048 |
| Population | 46,406 | 47,937 | 49,519 | 52,976 | 54,247 | 55,549 | 56,883 | 58,047 | 59,440 | 60,867 | 62,327 | 63,823 | 65,355 | 66,924 | 68,530 | 70,175 |



# FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

**TENTATIVE AGENDA**
**CITY COUNCIL**
**JUNE 4, 2002**

A meeting of the Fayetteville City Council will be held on June 4, 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. **HOLLYBROOKE ESTATES:** A resolution to approve the offer and acceptance contract with Hollybrooke Estates Phase III for Lots 6 and 7 in the amount of $36,000 for closing costs.

3. **BRISTOL PARK:** A resolution approving a waiver of Ordinance 3793 to accept money in lieu as the park land requirement of the Bristol Park Large Scale Development.

4. **ROBINSON AVIATION:** A resolution approving a contract with the FAA and with Robinson Aviation for Fayetteville Municipal Airport tower services.

5. **APAC:** A resolution approving Change Order No. 2 to APAC-Arkansas Inc., McClinton Anchor Division.

**B. OLD BUSINESS**

1. **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. The ordinance was left on the second reading at the May 21, 2002 meeting.

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

2. **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. The ordinance was left on the second reading at the May 21, 2002 meeting.

3. **RESOLUTION OF INTENT FOR SALES TAX:** A resolution to identify the City's intent to use tax collections if the current 1% city sales tax is extended for a second ten year term by the voters.

4. **SOLID WASTE CART PROGRAM:** A resolution authorizing the purchase of carts from Toter Inc. for the automated residential waste collection program. Final cost will be determined by the individual customer choices.

5. **ARKANSAS POWER STEERING & HYDRAULICS:** A resolution awarding Bid 02-24, Item 1, to Arkansas Power Steering and Hydraulics for the purchase of seven, 2003 Mack LE613 with mounted Labrie Automated Solid Waste Bodies for a total purchase price of $1,375,416.

C. **NEW BUSINESS**

1. **RIGHT OF WAY DEDICATION:** An ordinance accepting the street right-of-way dedicated with Bridgeport Subdivision Phase VI, Copper Creek Subdivision, and Crystal Springs Subdivision, Phase II as approved by the City of Fayetteville Planning Commission.

2. **RZN 02-13.00:** An ordinance approving rezoning request RZN 02-13.00 as submitted by Mel Milholland of Milholland Engineering on behalf of Marjorie Brooks, Nanchar, Inc., and Bristol Development Group, LLC for property know as Lot 1A of CMN Business Park II, Phase I. The property is zoned C-2, Thoroughfare Commercial, and contains approximately 32.62 acres. The request is to rezone to RMF-12, Moderate Density Multi-family residential.

3. **VA 02-3.00:** An ordinance approving vacation request VA 02-3.00 as submitted by the Fayetteville School District for property located on Eagle Street west of Garland Ave. The request is to vacate a 50' wide portion of the unimproved Eagle Street right-of-way.

4. **SALEM ROAD:** A resolution awarding Bid 02-33 and approval of contract with ??? in the amount of ??? for construction of Salem Road at the Gary Hampton Softball Complex. *(Final Packet given out at agenda session).*

5. **CAT:** A resolution to reinstate CAT funding for the remainer of 2002 at a rate of $34,500 *Information will be provided at Agenda Session).*

D. **INFORMATIONAL**

1. **I-540 BUSINESS TECHNOLOGY PARK:** Status report on the I-540 Business Technology Park

2. **YARD WASTE PROGRAM:** Review of Yard Waste Program.

3. **COX FRANCHISE**

# FAYETTEVILLE

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**CITY COUNCIL**
**JUNE 4, 2002**

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Pull off Consent NB #1

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## D. INFORMATIONAL

1. **I-540 BUSINESS TECHNOLOGY PARK:** Status report on the I-540 Business Technology Park

2865 Homes
total collect 86 ton
172 M #

2. **YARD WASTE PROGRAM:** Review of Yard Waste Program. Paper + plastic Bag - moving

42 # from each home

Pl. Bag across Hall at school - ~~not Rack~~ tent

3. **COX FRANCHISE** add to New Item C-6

there will be at 4:30

Need to put on

Council tour 4:30 put on agenda

Mayor said this is the 3rd time it has been left off

on the next New Week

ARK -
State Hwy -
working on Hwy.
making RAMPS
at intersections

STAFF REVIEW FORM

X ___ AGENDA REQUEST
X CONTRACT REVIEW
GRANT REVIEW

For the Fayetteville City Council meeting of June 4, 2002

FROM:

| Connie Edmonston | Parks & Recreation | Urban Development |
|---|---|---|
| Name | Division | Department |

ACTION REQUIRED:
Resolution to approve the Offer and Acceptance Contract with Hollybrooke Estates Phase III for lots 6 and 7 in the amount of $36,000 plus closing costs.

COST TO CITY:

| | | |
|---|---|---|
| $36,000 plus closing costs | $40,000<br>Category/Project Budget | Park Acquisition<br>Category/Project Name |
| 2250-9250-5805.00<br>Account Number | $0<br>Funds Used To Date | **Park Development**<br>Program Name |
| 02016-1<br>Project Number | $40,000<br>Remaining Balance | **Parks Development**<br>Fund |

BUDGET REVIEW: _x____ Budgeted Item ______ Budget Adjustment Attached

[signature] 5-20-02
Budget Manager Administrative Services Director

CONTRACT/GRANT/LEASE REVIEW: GRANTING AGENCY: ____________

Marla Farthing 5/24/02 * See Comments. — Accounting Manager, Date
Nancy Smith 5/20/02 — Internal Auditor, Date

D. J. Whitaker 5/22/2002 — City Attorney, Date
ADA Coordinator, Date

[signature] 5/22/2002 — Purchasing Officer, Date

STAFF RECOMMENDATION:
Approval of Resolution

Connie Edmonston 5-14-02
Division Head Date

Hugh Earnest 5-17-02
Department Director Date

[signature]
Administrative Services Director Date

Mayor Dan Coody 5/23/02 Date

Cross Reference

New Item: Yes No

Prev Ord/Res #: [Prev Ord/Res #]

Orig Contract Date: [Orig Contract Date]

Orig Contract Number: [Contract #]

STAFF REVIEW FORM

Description *Hollybrook Estates, Phase III* Meeting Date *June 4, 2002*

Comments: Reference Comments:

Budget Coordinator

Accounting Manager

City Attorney *A new set of Bills of Assurance are being filed to exempt our lots from the single-family housing covenants. [initials] See Attached.*

Purchasing Officer

ADA Coordinator

Internal Auditor

# FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

**TO:** Mayor Coody and City Council

**THRU:** Hugh Earnest, Urban Development Director

**FROM:** Connie Edmonston, Parks & Recreation Superintendent C.E.

**DATE:** May 14, 2002

**SUBJECT:** Purchase of Land adjoining Lake Sequoyah Park

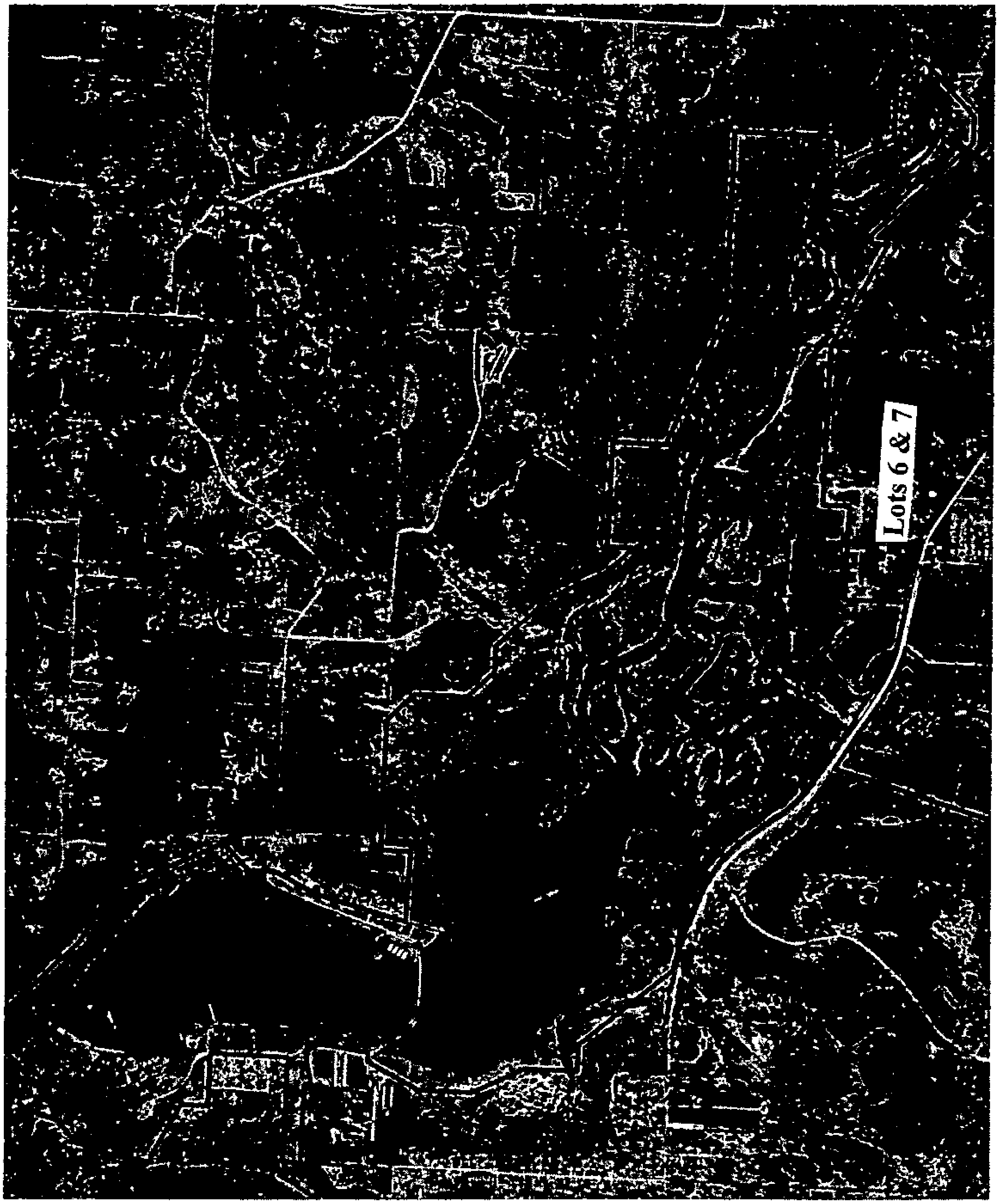
**Background**
Lake Sequoyah Park contains 1,779 acres, of which 495 acres is water. This park is a wonderful resource for the City of Fayetteville. It is currently used for fishing and provides several trails leading to the Lake and White River. Future trails to and around Lake Sequoyah has been discussed at the Trails Master Plan Public Meetings.

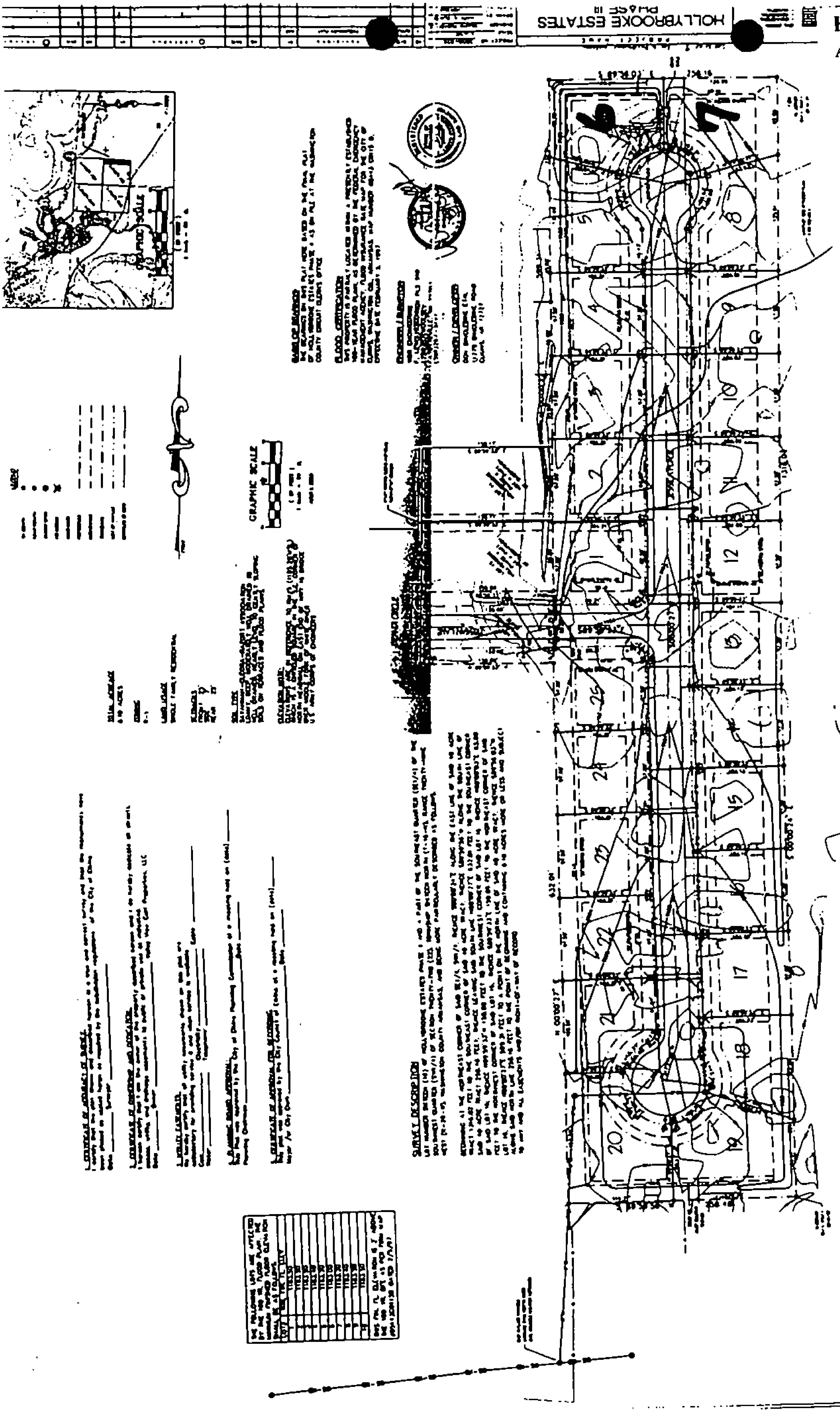
**Current Status**
Park land is very difficult to access on the northeast and southeastern sides of the lake along the White River without going on private property or through marsh lands. Hollybrooke Estates Phase III, a new subdivision in Elkins, is currently selling lots bordering the southeastern side of the park. Lots 6 and 7 contain approximately one half acre at the end of a cul-de-sac. Lots are selling for $18,000 each.

**Recommendation**
Parks and Recreation Advisory Board toured the site on May 1, 2002 and recommended to purchase the land at their May 6, 2002 meeting. Parks and Recreation staff recommends to purchase this land for future access before the park becomes landlocked on the southeast side. The two end lots of 6 and 7 provide a cul-de-sac entryway opening to the recreational opportunities for trails, fishing, and wildlife and nature enjoyment along the White River. This southern portion of the park provides a very scenic area with open meadows and trees leading to the river. An Offer and Acceptance Contract to purchase the two lots for a total of $36,000 plus closing costs from Hollybrooke Estates, Phase III is attached for your consideration.

Attachments:
Lake Sequoyah Map
Hollybrooke Estates, Phase III Plat
Parks & Recreation Advisory Board Meeting Minutes May 6, 2002
Offer and Acceptance Contract

# Lake Sequoyah Park




HOLLYBROOKE ESTATES
PHASE II
GRAPHIC SCALE

and trips to the ABA Grandnationals of BMX.[1]

Future lighting needs and rider helmet and other safety concerns were discussed.

**MOTION:**

**Mr. Mauritson moved to expend up to Nine Thousand Six Hundred Dollars ($9,600) from the Southeast Park District to furnish 750-feet of electrical line, circuits and plugs for the Walker Park north pavilion, BMX track and future skate park area.**

**Mr. Marley seconded the motion.**

**Upon roll call, the motion was approved 5-0-0 with Cook, Mauritson, Hill, Colwell and Marley voting 'yes' and Pawlik-Holmes absent for the vote.**

**IV. Lake Fayetteville Trail Grant Application: Steve Hatfield**

Parks and Recreation Staff requests permission from City Council on May 7, 2002 to apply for $100,000 from Arkansas Recreational Trails Fund to enhance the Lake Fayetteville Trail. This is an 80/20 matching grant. Mr. Hatfield said the project was located on the north side of Lake Fayetteville and will include a loop trail system as well as a short section of boardwalk which will allow accessibility close to the lake.

**V. Lake Sequoyah Land Purchase Discussion**

Mr. Colwell said two lots were visited during the May 1, 2002 park tour which would give access on the southeast side of Lake Sequoyah. Ms. Edmonston said both lots combined are about one-half an acre and the current asking price is $18,000 each. An appraisal will be obtained before seeking City Council approval for the purchase. Mr. Colwell recommended fencing the area immediately to prevent dumping. Capital funds from Park Land Acquisitions would be used for the purchase.

**MOTION:**

**Mr. Colwell moved to recommend Park Staff pursue the purchase of two lots to improve access to Lake Sequoyah.**

**Mr. Mauritson seconded the motion.**

**Upon roll call, the motion was approved 6-0-0.**

**VI. Lake Fayetteville Race Information**

| | |
|---|---|
| May 18 | Lewis & Clark's Frontier Challenge<br>Run and Duathlon around Lake Fayetteville |
| June 8 | Lewis & Clark and Big Brothers Big Sisters Sports for Kids Sake<br>Canoe and bicycle race at Lake Fayetteville |

1 http://www.ababmx.com/race_for_life.html

# OFFER AND ACCEPTANCE CONTRACT

1. The City of Fayetteville, Arkansas, a municipal corporation, hereinafter referred to as the Buyer, offers to buy, subject to the terms and conditions set forth herein, the following described property:

PROPERTY DESCRIPTION

Lot No. 6 and Lot No. 7 of Hollybrooke Estates Phase III to the City of Elkins as per plat filed with the Circuit Clerk in the County of Washington, State of Arkansas.

2. **Purchase Price**: Subject to the following conditions, the Buyer shall pay for the property at closing, the total and cash payment of **$ 36,000.00**.

3. **Contingent Earnest Money Deposit**: The Buyer herewith tenders a check for **$2,000.00** to **Hollybrooke Estates, Phase III**, hereinafter referred to as the Seller, as earnest money, which shall apply on the purchase price. This offer to purchase is contingent upon approval of the City Council of the City of Fayetteville, Arkansas, and, if they do not so approve, the earnest money deposit will be returned to the Buyer by the Seller. If title requirements are not fulfilled or the Seller fails to fulfill any obligations under this contract, the earnest money shall be promptly refunded to the Buyer. If the Buyer fails to fulfill his obligations under this contract or after all conditions have been met, the Buyer fails to close this transaction, the earnest money may become liquidated damages to the Seller.

4. Conveyance will be made to the Buyer by general Warranty Deed, except it shall be subject to recorded plats, Protective Covenants, instruments and easements, if any, which do not materially affect the value of the property. Such conveyance shall include mineral rights owned by the Seller.

5. The Seller shall furnish a policy of title insurance in the amount of the purchase price from a title insurance company as selected by the Buyer. The cost of such title insurance shall be that of the Seller.

6. Seller agrees to allow Buyer, if Buyer so desires, at Buyer's expense, to survey the property. Seller agrees to cure any title problems which may result from any differences between the recorded legal descriptions of the property and the survey description. Said title problems, if any, must be solved prior to closing to the satisfaction of the Buyer.

7. Taxes and special assessments due on or before closing shall be paid by the Seller. Insurance, general taxes, ad valorem taxes, special assessments and rental payments shall be prorated as of closing.

8. The closing date is designated to be within **Thirty (30) days** after approval of this Contract by the Fayetteville City Council. This Contract will be submitted to the Fayetteville City Council for approval within four weeks of the date of Seller signature.

9 Closing costs, except for those items heretofore mentioned, shall be shared equally between Buyer and Seller.

10. Possession of the property shall be delivered to the Buyer on the date of closing.

11. Seller hereby grants permission for the Buyer or its employees or designates to enter the above described property and improvements for the purpose of inspec-tion and/or surveying.

12. All fixtures, improvements and attached equipment are included in the purchase price.

13. Risk of loss or damage to the property by fire or other casualty occurring up to the time of closing is assumed by the Seller.

14. Seller shall disclose to Buyer any and all environmental hazards of which Seller has actual knowledge. Upon acceptance of all conditions and terms of this Offer and Acceptance, Buyer and Seller shall share equally the costs of any and all testing for the existence of environmental hazards. Should the existence of environmental hazards be known or determined, Seller shall cure such, at Seller's expense, or in the alternative, at Buyer's discretion, Buyer may cure such environmental hazard, and Seller shall indemnify Buyer for all costs associated with said cure.

15. This agreement shall be governed by the laws of the State of Arkansas.

16. This agreement, when executed by both the Buyer and the Seller shall contain the entire understanding and agreement of the parties with respect to the matters referred to herein and shall supersede all price or contemporaneous agreements, representations and understanding with respect to such matters, and no oral representations or statements shall be considered a part hereof.

17. This contract expires, if not accepted by the Seller on or before the **22nd** day of **May**, 2002.

18. **NOTICE: BUYER ASSERTS AND SELLER HEREBY ACKNOWLEDGES THAT THIS OFFER IS EXPRESSLY CONTINGENT UPON THE APPROVAL OF THIS OFFER OF PURCHASE BY THE CITY COUNCIL OF FAYETTEVILLE AND THAT THE FAILURE OF THE COUNCIL TO SO APPROVE WILL MAKE ALL PORTIONS OF THIS OFFER NULL AND VOID, EXCEPT, THE $ 2,000.00 EARNEST MONEY DEPOSIT WILL BE RETURNED TO BUYER BY THE SELLER.**

**SELLER:**
**Hollybrooke Estates, Phase III**

Donald C. Dingledine
Donald C. Dingledine — Date: 5/20/02

Linda C. Dingledine
Linda C. Dingledine — Date 5/20/02

**AGENT OR WITNESS:**

______________________ Date: ____________

**BUYER:**

**City of Fayetteville, Arkansas,**
a municipal corporation

Dan Coody
Dan Coody, Mayor — Date: 5/20/02

Heather Woodruff
Heather Woodruff, City Clerk — Date 5/20/02

SEAL)

**ACKNOWLEDGMENT**

STATE OF ARKANSAS )
) SS.
COUNTY OF WASHINGTON )

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

WITTNESS my hand and seal on this 20th day of May, 2002

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

Notary Public

MY COMMISSION EXPIRES:

**ACKNOWLEDGMENT**

STATE OF ARKANSAS )
) ss.
COUNTY OF WASHINGTON )

BE IT REMEMBERED, that on this date, before the undersigned, a duly commissioned and acting Notary Public within and for said County and State, personally appeared **Donald C. Dingledine** and **Linda C. Dingledine**, husband and wife, to me well known as the person who executed the foregoing document, and who stated and acknowledged that they are managers and partial owners of **Hollybrooke Eatates Phase III**, and are duly authorized to execute the foregoing instrument for and in the name and behalf of said enterprise, and further stated and acknowledged that **they** had so signed, executed and delivered said instrument for the consideration, uses and purposes therein mentioned and set forth.

WITNESS my hand and seal on this 20th day of May, 1997.

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

Notary Public

MY COMMISSION EXPIRES:
05-01-~~09~~ 2010

# BILL OF ASSURANCES AND PROTECTIVE COVENANTS
# FOR
# HOLLYBROOKE ESTATES PHASE III

Know ALL MEN BY THESE PRESENTS;

These covenants of assurance are entered into by and between the parties hreto on this 16 day of August 2001.



WITNESSETH:

WHEREAS. Donald C. Dingledine and Jeff Cannon are the developers of the described real property situated in Washington County, Arkansas to-wit:

Hollybrooke Estates Phase III, the plat of which is filed for record in the office of the Circuit Clerk and Ex-Officio Recorder of Washington County, Arkansas

and,

WHEREAS, said developer desires to establish a Bill of Assurances and Protective Covenants to assure the orderly development of the above-described real property and to further assure the protection of the investment made in such property by the developers and all others who
shall purchase herein. THEREFORE, the following Bill of Assurances and Protective Covenants
are deemed in full force and effect the same to run with and apply to all of the above-described INSERT,
real property from this ~~date forward~~ until the same shall terminate or be modified according to the provisions herein, to-wit:

(1) All lots in said planned development shall be one family dwellings not to exceed two stories in height with two or three car garage.

(2) Utility easements are reserved over the lots in those widths as shown on the recorded plat, and such easements are for the utility use only, the ownership of the same remaining in the lot owner. All utilities must be underground.

(3) No noxious or offensive trade shall be carried on upon any lot, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood, It being the express understanding that the planned development is for residential purposes only.

(4) No building shall be erected on any lot nearer than 25 feet to the front lot line, nor nearer than 8 feet to any sideline nor nearer than 20 feet to the rear lot line. On corner lots, no structure shall be permitted nearer than 25 feet to the side lot line abutting a side

After "above described real property ....." INSERT

"except for Lots 6 & 7, so long as said lots are owned and used by the City of Fayetteville for ingress and egress to and from Lake Sequoyah Park" from this date forward......

street. . .

(5) No residential lot s[illegible] re-subdivided into a small[illegible]

(6) No trailer, basement, tent, shack, garage, barn or other building shall be erected in the subdivision to be used as a temporary dwelling, nor shall any residence of any tempor character be permitted. Basements and garages may be built only as a part of a perman residence, except that with approval garages may be detached from the main structure. prefabricated modular houses shall be built on any lot. This shall not preclude or prevent the erection of temporary construction facilities on said lots, by the subdividers during construction phases.

(7) No structure shall be moved onto any lot to be utilized as a residence. No building shall be erected, or altered, on any lot until the design, plans, elevations and location thereof have been approved in writing by a committee appointed by the subdivisioners, or the subdividers acting in the the capicity of such committee until and unless such committee is or is not appointed. If no such committee has been appointed by the subdivider at the time a majority of the lots in said subdivision have been sold, then such committee shall be elected by a majority of the owners of the lots in the subdivision. However, in the event such committee is not in existence, or fails to approve or disapprov a design, size and location on the lot conforms to these regulations and is in harmony with the existing structure, already in the planned development. The floor area of any building must meet the following minimum requirement, to-wit: A minimum square footage of 125( square feet. The foregoing minimum is exclusive of storage, garages, porches, patios and decks. Exceptions to the foregoing minimum square feet of living area may be specifically granted by the committee previously set forth herein, or by the subdividers for specially designed or unusually expensive homes to be built, provided that the design and quality of the structure would be in harmony with the general contractor or other homes in the planned development, or not be detrimental to the future development of said developmen

(8) No signs, with the exception of the development signs, shall be displayed to the publi view on any lot. However, one professional sign of not more than one square foot, or one sign of not more than five square feet advertising the property for sale or rent, or any sig used by the subdividers or a builder to advertise the property during the construction and sales period, will be permitted.

(9) No vehicles may be parked overnight in the streets of this subdivision. Lot owners shall provide sufficient off-street parking to accommodate the vehicles used by their famil and guests. No semi-trailer trucks shall be allowed to park in this subdivision.

(10) All vehicles must be parked on a concrete drive. If any RV's, boats, etc. are to be stored on a lot they shall be on concrete pads.

(11) All storage buildings, workshops and other outbuildings shall be constructed of the same material as the dwelling, or of a material compatible with all other structures in the subdivision.

(12) All homes must have a two car garage.

(13) No animals, livestock or poultry of any kind shall be raised, bred or kept on any lot, except that dogs, cats or other household pets may be kept provided that they are not kept, bred or maintained for any commercial purposes. Dogs must be kept in fenced yards.

(14) No lot shall be used or maintained as a dumping ground for rubbish. Trash, garbage,



2001099108

(14) No lot shall be used or maintained as a dumping ground for rubbish. Trash, garbage, or otherwise shall not be kept except in sanitary containers. incinerators or other equipment for the sotrage or disposal of such materials shall be kept in a clean and sanitai condition.

(15) Nothing in these covenants shall be deemed to resrict the rights of the subdividers or the property owners or established horizontal property regimes within said development to establish and enforce rules, regulations and maintenance of said development located therein. However, in no event shall said rules and regulations so promulgated have any force and effect if the same shall conflict with these covenants of assurance, the same shall be null, void and of no effect whatsoever.

(16) These covenants and restrictions are to run with the land, and shall be binding upon the subdividers, its successors and assigns for a period of twenty-five (25) years from th date hereof. At any time within six (6) months from the expiration period, a majority of th lot owners may express their intention in writing, drafted so as to be recorded with the registrar of deeds, that they no longer wish for said covenants of assurance to remain in full force and effect, then the same shall therefore be terminated as of the expiration date. In the event that no such action is taken, then these covenants shall continue for an additional period of five years, and may then be terminated in accordance with the terms set forth for the original termination. It is further provided that should a three-fourths majority of lot owners at any time wish to amend these covenants of assurance, whether b adding to or taking from the present form, the same shall be incorporated as a written instrument capable of being recorded as above referred to and under the same terms and conditions thereof.

(17) If any of the parties hereto, or their successors in title, or their heirs or assigns shall violate or attempt to violate any of these covenants or restrictions as hereinabove set forth, prior to the expiration or termination of these covenants or assurance, both in the original term and continuations thereof, then it shall be law and authorized for any othe person or persons, either as a class or sinularly, who own any lot in this development, or an portion thereof, to prosecute any proceedings at law or in equity against the person or persons so violating or attempting to violate, any such covenant or restriction, and thereby either prevent said violation, or recover damages, or other penalties for such violation and further, to utilize any and all other remedies at law or equity which may now exist or which may hereinafter apply.

(18) Any home built in the known flood area shall comply with F.E.M.A. regulations. More specifically, the floor shall be at least two feet above established F.E.M.A. floor levels.

(19) All fences in this subdivision shall be kept in good repair. All fences shall be no more than six (6) feet in height. No barbed wire or welded wire fences shall be permitted. No fence shall be built closer than the side garage door. No front yard fence will be permitted.

(20) In keeping with this bill of assurances and protective covenants, no lot purchased foi construction shall remain empty for more than 3 years. It is the desire of the subdividers to have a fully developed subdivision. Any lot purchased that is not immediately built on shall be kept mowed and maintained so as not to prevent other property owners from fully enjoying their property.



2001099109

# RESOLUTION NO. ______

A RESOLUTION EXPRESSING THE CITY'S INTENT AS TO THE USE OF COLLECTIONS OF THE PROPOSED RENEWAL OF THE CITY WIDE SALES TAX AND USE TAX

**WHEREAS**, the City Council of the City of Fayetteville, Arkansas (the "City") has passed on June 4, 2002, Ordinance No. ______ providing for continuing the levy of a 1% Sales and Use tax within the City (the "Tax") if approved by the voters; and

**WHEREAS**, the Tax will continue to be levied under Title 26, Chapter 75, subchaper 2 of the Arkansas Code of 1987 Annotated and may be used by the City for any purpose for which the City's general funds may be used, and;

**WHEREAS**, after public hearings and a vote of the City Council, the City updates yearly a five year plan of capital improvements which lists the specific capital improvement goals of the City and prioritizes the need for such capital improvement projects, and;

**WHEREAS**, the purpose of this resolution is to clarify for the Fayetteville voters some of the purposes for which the City Council expects to finance and/or maintain with tax collections.

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

Section 1: The City hereby expresses its intent to utilize 50% of Tax collections in each calendar year through December 31, 2006 for the financing of capital improvements as set forth in the City's five year Capital Improvement Program. It is the City's further intent that these funds be accounted for separately and used only for capital improvement projects.

Section 2: The City hereby further expresses its intent to utilize the remaining 50% of tax collections in each calendar year for City operations and maintenance and, should such collections exceed any need for such purpose, the remaining amounts may be used for financing capital improvements.

Section 3: The City Council shall reexamine the revenue needs of the City in reference to both capital improvements and operating expenses and needs for budget year 2007 and thereafter and may adjust the division of the sales tax collections between capital improvements and operating expenses as needed. However, no yearly adjustment may exceed ten percent (10%) from the division existing in the previous year and the amount devoted to capital improvements shall never drop below thirty percent (30%).

Section 4: It is the City's intent to finance these capital improvements on a pay-as-you-go basis without the necessity of a bond issue.

**PASSED** and **APPROVED** this the 4th day of June, 2002.

APPROVED:

DRAFT

By: ______________________
DAN COODY, Mayor

ATTEST:

By: ______________________
Heather Woodruff, City Clerk

# 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 4th day of June, 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 4th day of June, 2002.

APPROVED:

By: DRAFT ____________________
**DAN COODY**, Mayor

ATTEST:

By: ____________________
Heather Woodruff, City Clerk

## 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 4th day of June, 2002.

APPROVED:

DRAFT

By: ______________________
**DAN COODY, Mayor**

ATTEST:

By: ______________________
Heather Woodruff, City Clerk

EXECUTED THIS ___ day of August 2001.

______________________ Jeffrey L. Cannon

______________________ Donald C. Dingledine

Acknowledgement

State of Arkansas
County of Washington

BE IT REMEMBERED, that on this date, before me, a Notary Public within and for said County and State, duly commissioned and acting, persoanlly appeared Donald C. Dingledine
Jeffrey L. Cannon, ______________________, ______________________
to me well known as the person (s) who executed the foregoing Bill of Assurances and Protective Covenants, and that they had executed the same for the consideration and purpose therein mentioned and set forth.

WITNESS my hand and seal on this 16th day of August, 2001.

Amy M. Brink
Notary Public

My Commission expires: 2/12/2009

Amy M. Brink, Notary Public
Washington County, Arkansas
My Commission Exp. 2-12-2009
Notary Public



2001099110

STAFF REVIEW FORM

Bristol Park
A. 3. Page 1

X AGENDA REQUEST
CONTRACT REVIEW
GRANT REVIEW

For the Fayetteville City Council meeting of June 4, 2002

FROM:

| | | |
|---|---|---|
| Connie Edmonston | Parks & Recreation | Urban Development |
| Name | Division | Department |

ACTION REQUIRED:
Resolution to waive Ordinance 3793 to accept money in lieu as the park land requirement of the Bristol Park Large Scale Development.

COST TO CITY:

| | | |
|---|---|---|
| 0 | | |
| $[Cost of this Request] | $ | [Category/Project Name] |
| Cost of this Request | Category/Project Budget | Category/Project Name |
| [Account Number] | $ | [Program Name] |
| Account Number | Funds Used To Date | Program Name |
| [Project Number] | $ | [Fund] |
| Project Number | Remaining Balance | Fund |

BUDGET REVIEW: ____ Budgeted Item ____ Budget Adjustment Attached

No budget impact at this time. 5/9/02

Budget Manager    Administrative Services Director

CONTRACT/GRANT/LEASE REVIEW:    GRANTING AGENCY: ____________

| | | | |
|---|---|---|---|
| Accounting Manager | 5/9/02 Date | Internal Auditor | 5/9/02 Date |
| City Attorney | 5/10/02 Date | ADA Coordinator | Date |
| Purchasing Officer | 5/10/02 Date | | |

STAFF RECOMMENDATION:
Resolution to Waive Ordinance 3793 to accept money in lieu as the park land dedication requirement of Bristol Park Large Scale Development.

| | |
|---|---|
| Division Head | 5-7-02 Date |
| Department Director | 5-8-02 Date |
| Administrative Services Director | Date |
| Mayor | 5/15/02 Date |

Cross Reference

New Item: Yes No

Prev Ord/Res #: [Prev Ord/Res #]

Orig Contract Date: [Orig Contract Date]

Orig Contract Number: [Contract #]

STAFF REVIEW FORM

Description Bristol Park Ordinance Waiver

Meeting Date June 3, 2002

Comments:

Reference Comments:

Budget Coordinator

Accounting Manager

City Attorney

Purchasing Officer

ADA Coordinator

Internal Auditor

# FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

**TO:** Mayor Coody and City Council

**THRU:** Hugh Earnest, Urban Development Director

**FROM:** Connie Edmonston, Parks & Recreation Superintendent C.E.

**DATE:** May 7, 2002

**SUBJECT:** Waiver of the Park Land Dedication Ordinance 3793

**Background**

Bristol Park is a proposed large scale development located north of Joyce Street and west of the Northwest Arkansas Mall. The owner is Bristol Development Group, L.L.C. and the engineer is Milholland Company. The development contains 272 multi-family units on 32.6 acres. The requirement for park land is 5.44 acres and money in lieu is $102,000. The Park Land Dedication Ordinance states if a large scale development is over 40 acres or 100 units, the requirement is land.

> "...*However, if the Parks and Recreation Advisory Board determines that a neighborhood park is not feasible or advisable, it may recommend to the City Council that a cash contribution pursuant to our ordinance be accepted in lieu of land dedication. The City Council will either accept the recommendation for a cash contribution or return the subdivision plat to the Parks Board with instructions or further study.*" (Unified Development Ordinance No. 166.03K )

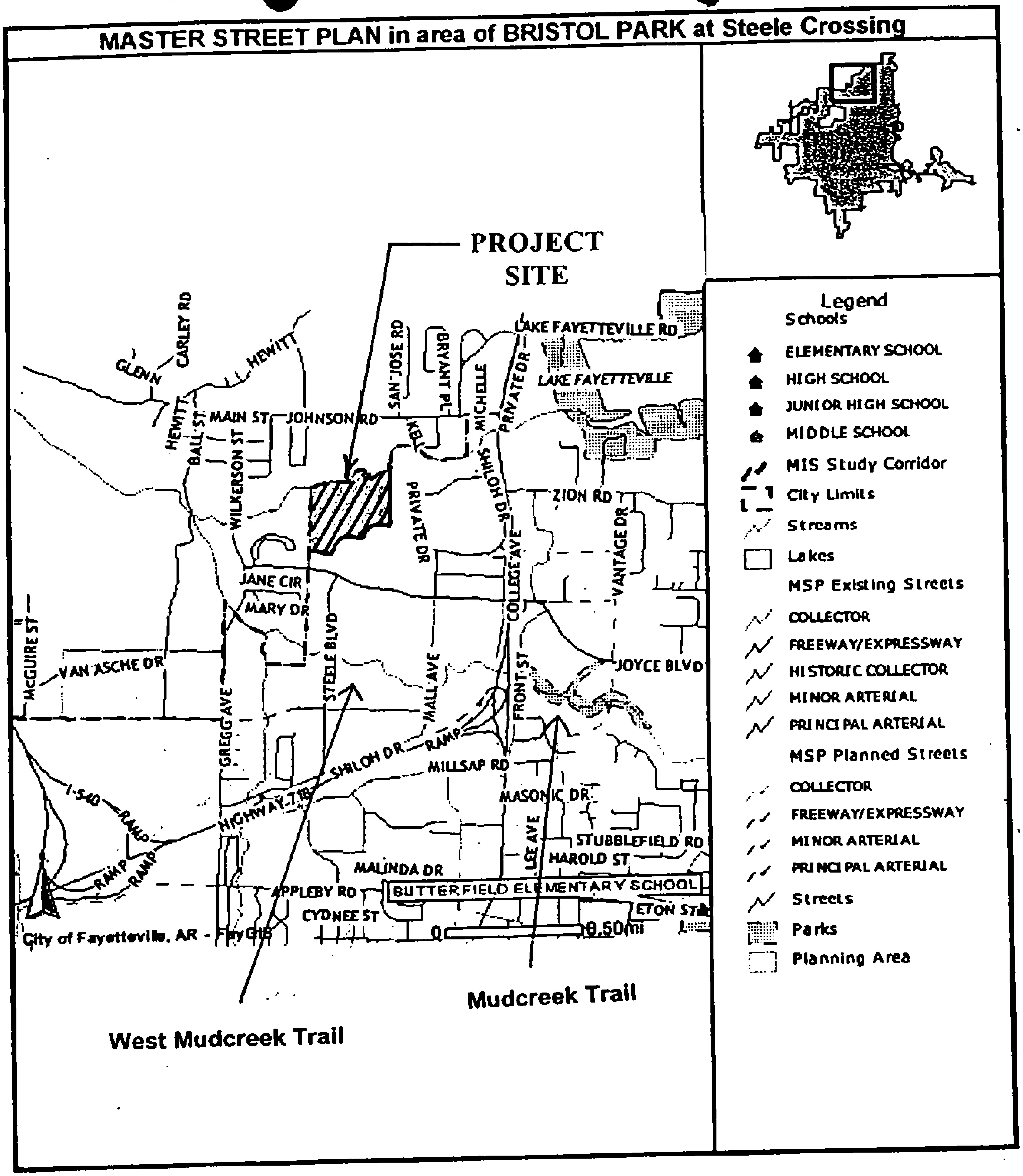
**Current Status**

Parks and Recreation staff met with the owner and engineering firm to evaluate the site. The Parks and Recreation Advisory Board (PRAB) visited the site on May 1, 2002. The development was reviewed at the May 6, 2002 PRAB meeting. See attached minutes.

**Recommendation**

Parks and Recreation staff and Parks and Recreation Advisory Board recommends money in lieu as the requirement of the Park Land Dedication Ordinance for Bristol Park. This development contains over 100 units, which requires a waiver of the ordinance. The apartments will be surrounded by commercial development and have a gated entryway. It will have sidewalks leading to the Mud Creek Trail via Steele Boulevard. The development has a conceptual plan to include landscaped courtyards with grills and picnic tables, village green with a fountain, club house with a business center, conference rooms, and a theater or billiards room, swimming pool, gazebo with a large barbeque grill, mail kiosk, carwash, sand volleyball courts, detention ponds to be used as fishing ponds, and connecting walks and bike racks. The proposal also states, "There are large open and protected forested areas that remain aesthetically pleasing and park like." The Park Master Plan does note this is an area where a park is needed. However, given the limitations of the apartment complex having a gated entryway in an area surrounded by commercial zoning, and the addition of many park amenities, money in lieu is recommended.

Attachments:
Location Map
PRAB May 6, 2002 Meeting Minutes
Letter Bristol Park Development


MASTER STREET PLAN in area of BRISTOL PARK at Steele Crossing
PROJECT SITE
Legend
Schools
ELEMENTARY SCHOOL
HIGH SCHOOL
JUNIOR HIGH SCHOOL
MIDDLE SCHOOL
MIS Study Corridor
City Limits
Streams
Lakes
MSP Existing Streets
COLLECTOR
FREEWAY/EXPRESSWAY
HISTORIC COLLECTOR
MINOR ARTERIAL
PRINCIPAL ARTERIAL
MSP Planned Streets
COLLECTOR
FREEWAY/EXPRESSWAY
MINOR ARTERIAL
PRINCIPAL ARTERIAL
Streets
Parks
Planning Area
LAKE FAYETTEVILLE RD
LAKE FAYETTEVILLE
CARLEY RD
GLENN
HEWITT
MAIN ST
JOHNSON RD
SAN JOSE RD
BRYANT PL
MICHELLE
PRIVATE DR
BALL ST
WILKERSON ST
SHILOH DR
ZION RD
VANTAGE DR
COLLEGE AVE
JANE CIR
MARY DR
STEELE BLVD
WALL AVE
JOYCE BLVD
FRONT ST
McGUIRE ST
VAN ASCHE DR
GREGG AVE
RAMP
MILLSAP RD
I-540
HIGHWAY 71B
MASONIC DR
LEE AVE
STUBBLEFIELD RD
HAROLD ST
MALINDA DR
APPLEBY RD
BUTTERFIELD ELEMENTARY SCHOOL
CYDNEE ST
ETON ST
0
0.50mi
City of Fayetteville, AR - FayGIS
Mudcreek Trail
West Mudcreek Trail

## II. Park Land Dedication

| | |
|---|---|
| Development: | **Bristol Park Apartments** |
| Engineer: | Milholland Company, Tom Jefcoat |
| Owner: | Bristol Development Group, L.L.C. |
| Location: | North of Joyce, West of NWA Mall |
| Park District: | NW |
| Units: | Multi 272 units |
| Acres: | 32.6 acres |
| Land Dedication Requirement: | 5.44 acres |
| Money in Lieu: | $102,000 |
| Existing Park Land: | Lake Fayetteville (652 acres), Gordon Long (6.62 acres), Mud Creek Trail (20 acres) |
| Staff Recommendation: | Money in lieu of land & waiver of Ordinance |

*"...However, if the Parks and Recreation Advisory Board determines that a neighborhood park is not feasible or advisable, it may recommend to the City Council that a cash contribution pursuant to our ordinance be accepted in lieu of land dedication. The City Council will either accept the recommendation for a cash contribution or return the subdivision plat to the Parks Board with instructions or further study."* (Unified Development Ordinance No. 166.03K)

Justification: This development contains over 100 units and will require a waiver of the Park Land Dedication Ordinance. The apartments will be surrounded by commercial development. The subdivision will have a gated entryway. It will have sidewalks leading to the Mud Creek Trail via Steele Boulevard. The development has a conceptual plan to include landscaped courtyards with grills and picnic tables, village green with a fountain, club house with a business center, conference rooms, and a theatre or billiards room, swimming pool, gazebo with a large barbeque grill, mail kiosk, carwash, and connecting walks and bike racks. The proposal also states, "There are large open and protected forested areas that remain aesthetically pleasing and park like." The Park Master Plan does note this is an area where a park is needed. However, given the limitations of the apartment complex having a gated entryway in an area surrounded by commercial zoning and the addition of many park amenities, money in lieu is recommended.

Thomas Jefcoat, Projects Manager for Milholland Company, said additional amenities may include a sand volleyball court and fishing ponds with aeration [fountains]. The fishing ponds would be created from the detention ponds.

Mr. Colwell inquired about land bordering this development on the west side. Mr. Jefcoat said the land was zoned single family in the City of Johnson.

**MOTION:**

**Mr. Cook moved to recommend money in lieu of a land dedication and request a waiver from City Council to satisfy the Park Land Dedication requirements for the proposed Bristol Park at Steele Crossing development.**

**Mr. Hill seconded the motion.**

**Upon roll call, the motion was approved 5-0-0 with Cook, Mauritson, Hill, Colwell and Marley voting 'yes' and Pawlik-Holmes absent for the vote.**

Milholland Company
Engineering & Surveying
Melvin L. Milholland, PE, PLS

REGISTRATIONS:
PE: AR, OK, MO
PLS: AR, OK

April 17, 2002

Project No. E-622

Fayetteville Parks and Recreation
113 West Mountain
Fayetteville, Arkansas 72701

**Attn:** **Kim Rogers**
**Subject:** **BRISTOL PARK at Steele Crossing**

Dear Kim:

Attached, please find, are two copies of Conceptual Preliminary Plan, for the referenced proposed development. These are provided, due by April 23rd, for meeting with Parks Staff on April 25th. MCO will provide twelve additional copies with additional supporting materials and revision by April 30th for meeting with Parks & Recreation Advisory Board on May 6, 2002. The submittal packets are provided in accordance with provisions of the Unified Development Ordinance 166.03 (K), and **a waiver to accept money in-lieu of park land dedication is requested**.

Milholland Company, MCO has been retained as Civil Engineering Consultant and Representative for the proposed project development by:

**Bristol Development Group, LLC**
624 Grassmere Park Drive #10
Nashville, Tennessee 37211
Phone (615) 369-9009
Fax (615) 369-9020
Contact Person(s): Ray Ledoux; David Hanchrow, Ashlyn Hines

The proposed development is located on a portion of Lot 1, CMN Business Park II, Phase I. A Lot Split Application is submitted to the City Planning Department for processing and approval. Lot 1, CMN Business Park II, Phase I presently contains 35.824 acres or 1,560,500.614 sq.ft. The Lot Split will cause the division of Lot 1A containing 32.626 acres or 1,421,193.798 sq.ft and Lot 1B containing 3.198 acres or 139,306.816 sq.ft. Lot 1A is the area proposed for development as "Luxury" Apartments. A porting of Lot 1A, 2.46 acres, has been "Deed Restricted", Instrument No. 2001-53928 (copy of plat enclosed), of which there is "Floodway" Area. The proposed development consists of 15 building units, totaling 272 apartments - a density ratio of 9 : acre (considered a *major development*). There are no future phases in connection with this project.

*Milholland Company*
*Engineering & Surveying*
Melvin L. Milholland, PE, PLS



REGISTRATIONS:
PE: AR, OK, MO
PLS: AR, OK

Lot 1, CMN Business Park II, Phase I is presently Zoned "C-2", Thoroughfare Commercial. A Re-Zoning Application/Request is submitted to the City Planning Department for processing and approval for Lot 1A to Zoned Use "R-2", Medium Density Residential. Lot 1B, created by Lot Split, will remain as presently Zoned "C-2". The request, proposed project development, is supported by the City's Planning Division.

Please note that while the proposed development is for residential use, apartments, amenities include: landscaped courtyards (the largest of which is approximately 7,500 sq. ft.) on which the developer is proposing grills and table; there is a village green (approximately 31,200 sq. ft. of manicured turf area) and fountain (there is discussion of two fountains - one on village green and one on the major east-west roadway axes); a club house with business center, conference rooms and a theater or billiard's room; there will be a pool and bathhouse, a gazebo and large group bar-b-que grill, there will be a mail kiosk, carwash, and extensive connecting walks and bike racks for leisure pedestrian circulation. Some of the sidewalks are proposed as seven foot in width for accommodating trail use. There are large open and protected forested areas that remain aesthetically pleasing and park like. These green spaces are pleasing buffers. And, the view from this area is fantastic.

The Conceptual Preliminary Plan, indicates current and proposed property lines and easements, floodway and deed restricted land areas. The addition of public dedicated utility easements will be determined as the proposed developed is designed and is reviewed by City Engineering Staff. Storm Water Drainage will correspond with the drainage sub-basins determined during the development of the infrastructure of CMN Business Park II, Phase I. Existing Drainage Easements are shown of the attached Conceptual Preliminary Plan. Generally, drainage will be controlled underground and conveyed to the north to Clear Creek. Detention ponds (release basins) are anticipated to the north side of the site's developed area. These will be defined as plans are finalized.

The attachments contain, aerial photographs of the site, master street plan, and similar required data for referencing. A list of adjoining property owners is provided and submitted to the Planning Division with the request to re-zone. All adjoining properties in the City of Fayetteville are zoned "C-2". The area north, in the City of Johnson, is zoned Medium Commercial and Agriculture. The land to the west, in the City of Johnson, is zoned Low Residential and should considered the proposed development more desire than use as commercial property. All adjoining property owners are shown on the proposed Lot Split Plat.

A visit to the site by Park personnel is welcomed. If Parks staff will coordinate their site visit through MCO, Mr. Milholland or another MCO staff, Owner's Representative, will make arrangements to be present to acknowledge your visit and hopefully answer any question that might arise. Unfortunately, a scheduled date of during the week of April 22$^{th}$ conflicts with my planned vacation and I will not be able to attend. April 25$^{th}$ is also the day that MCO staff will

205 West Center Street; Fayetteville, Arkansas 72701; Phone: (479) 443-4724; Fax: (479) 443-4707; E-mail: MCOengr@swbell.net

*Milholland Company*
*Engineering & Surveying*
Melvin L. Milholland, PE, PLS

REGISTRATIONS:
PE: AR, OK, MO
PLS: AR, OK

attend the City's Work Shop on Development Process. Your understanding and assistance here are appreciated.

According to Park Land Ordinance 159.30 (K)/UDO 166.03K and subsequent updated resolutions, MCO has calculated the in-lieu fee to be 272 units at $375 per unit for a total of **$102,000**. Cash contribution in-lieu are based upon actual residential density. The use of this money, for park development in the same park quadrant, in the completion of trails along Mud Creek within CMN Business Park II is advocated.

A favorable response to this request is anticipated. Should Parks Staff have any questions, do not hesitate in contacting MCO. I look forward to meeting with the PRAB and their prompt, positive acceptance of this request.

Respectfully Submitted
**Milholland Company**

Thomas M. Jefcoat, ASLA
Projects Manager

205 West Center Street; Fayetteville, Arkansas 72701; Phone: (479) 443-4724; Fax: (479) 443-4707; E-mail: MCOengr@swbell.net

# STAFF REVIEW FORM

X AGENDA REQUEST
X CONTRACT REVIEW
__ GRANT REVIEW

For the Fayetteville City Council meeting of June 4, 2002

**FROM:**

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

**ACTION REQUIRED:** Approval of Contract with the FAA and with Robinson Aviation (RVA) Inc. for Fayetteville Municipal Airport tower services.

**COST TO CITY:**

| | | |
|---|---|---|
| $111,146.00 | $177,000.00 | Contract Tower Program |
| Cost of this Request | Category/Project Budget | Category/Project Name |
| 5550.3950.5314.00 | $3,000.00 | Professional Services |
| Account Number | Funds used to date | Program Name |
| N/A | $174,000.00 | Airport |
| Project Number | Remaining Balance | Fund |

**BUDGET REVIEW:** X Budgeted Item ___ Budget Adjustment Attached

| | | | |
|---|---|---|---|
| [signature] | 5-16-02 | | |
| Budget Manager | Date | Administrative Services Dir. | Date |

**CONTRACT/GRANT/LEASE REVIEW:**

| | | | | |
|---|---|---|---|---|
| Marsha Farthing | 5/16/02 | Danny Smith | 5/16/02 | **GRANTING AGENCY** |
| Accounting Manager | Date | Internal Auditor | Date | |
| [signature] | 5/16/02 | | | |
| City Attorney | Date | ADA Coordinator | Date | |
| [signature] | 5/17/02 | | | |
| Purchasing Officer | Date | Grants Coordinator | Date | |

**STAFF RECOMMENDATION: Approve the Contract Tower Cost Share Agreement and the Contract with RVA**

Division Head — Date

[signature] Boudreaux — 5/15/02

Department Director — Date

Administrative Services Director — Date

[signature] — 5/17/02

Mayor — Date

Cross Reference

New Item: Yes X No
Prev. Ord/Res#:
Orig Cont. Date:
Orig Cont #:

## STAFF REVIEW FORM



**Meeting Date:** June 4, 2001

Comments: Approval of the FAA Contract Tower Cost Share program and contract with RVA, the contractor.

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<br>City Council Members |
| THRU: | Staff Review Committee |
| FROM: | Ray M. Boudreaux, Director |
| DATE: | May 15, 2002 |
| SUBJECT: | Airport Contract Tower Cost Share Program agreements |

**Background:** Attached please find the contract with the FAA for the Contract Tower Cost Sharing Agreement. A contract between Robinson Aviation (RVA), Inc. the ATC service provider and the City is also required and will be forthcoming from the company. The program is administered by the FAA. The airport owner must enter into a contract with the service provider and pay the service provider that portion of the total cost determined by the FAA to be the responsibility of the airport. The FAA uses a cost/benefit analysis to determine the cost share. Fayetteville Municipal Airport is responsible for 70% of the cost.

**Purpose:** To approve a contract with the FAA for the contract tower program Cost Sharing Agreement for operation of the Fayetteville Municipal Airport Tower.

**Budget Considerations:** Cost to the airport is $15,878.00 per month. It is budgeted.

**Requested Action:** **Approval by the City Council and signature by the Mayor.**

Attachments: Staff Review Form
FAA Cost Sharing Agreement

U.S. Department
of Transportation
Federal Aviation
Administration

800 Independence Ave, SW
Washington, DC 20591

RECEIVED
MAY 14 2002
AIRPORT

Mr. Ray Boudrux
Airport Manager
4500 Southschool Ave. Suite F
Fayetteville, AR 72701

Dear Mr. Boudrux:

This letter is a follow-up to your acceptance of the opportunity for Drake Field Airport (FYV) to continue its participation in the FAA Contract Tower Program though the cost-sharing plan. Enclosed are two copies of the Cost Sharing Agreement. The amount reflects the airport's share, which is 70 percent of the total cost for ATC services at FYV. The Government will continue to pay the additional amount. We are looking forward to your participation in this exciting new program. Please review, sign, and return both originals to:

Mr. Willie F. Card, ATP-140
Federal Aviation Administration
800 Independence Ave., S.W., Room 628
Washington, DC 20591

One of the properly executed originals will be returned to you upon completion.
If you have any questions or concerns, please contact Mr. Ricky Atkins, at (202) 267-7571.

Sincerely,

Willie F. Card
Manager, Contract Tower Branch

Enclosures

cc:
ATP-100/140/140.

# COST SHARING AGREEMENT

THIS AGREEMENT made this 1st day of June, 2002, by and between the City of Fayetteville, Arkansas, (Airport Authority) and the Federal Aviation Administration (FAA).

WHEREAS,

The Airport Authority wishes to participate in the FAA's Federal Contract Tower Cost Sharing Program (the "Program"), and

The FAA has performed a benefit/cost study relating to the feasibility of placing air traffic control services at Fayetteville Drake Field, an airport operated and Controlled by the Airport Authority, and

The FAA and the Airport Authority have agreed that, as a result of the outcome of the benefit/cost study, the Airport Authority is eligible to participate in the Program, and

The Airport Authority has entered into a agreement (the Service Agreement) with Robinson Aviation (RVA) (Inc) (Contractor), whereby among other things, the Airport Authority agreed to pay the Contractor $15,878.00 per month for air traffic services at said airport, all as more fully described in the said agreement.

NOW THEREFORE,

Pursuant to the authority granted in 49 U.S.C. 106(1) and the Department of Transportation Appropriations Act for Fiscal Year 1999, and in consideration of the terms, conditions and covenants set forth herein, it is mutually agreed as follows;

a) The Airport Authority shall promptly and timely satisfy its obligations under the Service Agreement, including the payments described above. The parties further agree the terms and conditions of the parties' cost sharing allocations and payments are effective June 1, 2002.

b) Upon notification, by any means, that the Airport Authority is in arrears on its payments to the Contractor, the FAA will remove all air traffic control services at the subject airport. Upon such removal, the Airport Authority will not be eligible for further participation in the Program. The continued operation of air traffic control services by the Contractor at the airport, after notification of arrearage to the FAA, shall not be construed as a waiver by the FAA of any of its rights under this agreement.

c) The Airport Authority shall reimburse the FAA, including interest calculated as per FAAMS Clause 3.3.1-9 (April, 1996), for all sums paid by the FAA to the Contractor for services provided by the Contractor to the Airport Authority on and after the date the Airport Authority went into arrears.

d) The parties agree that if the Federal Contract Tower benefit/cost analysis demonstrates a change in the applicable benefit-to-cost ratio, the parties may renegotiate this agreement.

e) Execution of this Agreement does not constitute a commitment by the FAA to provide air traffic control services, via contract or otherwise, to said airport. This Agreement is subject to the laws and regulations of the United States, as are in force and effect now, or as may be in the future.

| Airport Authority: | Federal Aviation Administration |
|---|---|
| By:____________________ | By:____________________ |
| ____________________ Title | Contracting Officer |
| | By:____________________ Federal Contract Tower Program Manager |
| Dated:____________________ | Dated: ____________________ |

# COST SHARING AGREEMENT

THIS AGREEMENT made this 1st day of June, 2002, by and between the City of Fayetteville, Arkansas, (Airport Authority) and the Federal Aviation Administration (FAA).

WHEREAS,

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The FAA has performed a benefit/cost study relating to the feasibility of placing air traffic control services at Fayetteville Drake Field, an airport operated and Controlled by the Airport Authority, and

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d) The parties agree that if the Federal Contract Tower benefit/cost analysis demonstrates a change in the applicable benefit-to-cost ratio, the parties may renegotiate this agreement.

e) Execution of this Agreement does not constitute a commitment by the FAA to provide air traffic control services, via contract or otherwise, to said airport. This Agreement is subject to the laws and regulations of the United States, as are in force and effect now, or as may be in the future.

| Airport Authority: | Federal Aviation Administration |
|---|---|
| By:______________________ | By:______________________ |
| ______________________<br>Title | Contracting Officer |
| | By:______________________<br>Federal Contract Tower<br>Program Manager |
| Dated:______________________ | Dated: ______________________ |

# STAFF REVIEW FORM

RECEIVED
MAY 20 2002
CITY OF FAYETTEVILLE
CITY CLERK'S OFFICE

XX AGENDA REQUEST
CONTRACT REVIEW
GRANT REVIEW

For the Fayetteville City Council meeting of 6/4/02

FROM:

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

ACTION REQUIRED:

Review and approve Change Order #2 to APAC-Arkansas Inc., McClinton Anchor Division. Signature of the Mayor required.

COST TO CITY:

| $ (102,202) - Reduction to Contract | $ 2,719,234 | Airfield Pavement Rehab / Taxiway |
|---|---|---|
| Cost of this Request | Category/Project Budget | Category/Project Name |
| 5550.3960.7820.29 | 699,311 | Capital |
| Account Number | Funds Used to Date | Program Name |
| 00029 | 2,019,923 | Airport |
| Project Number | Remaining Balance | Fund |

BUDGET REVIEW: XX Budgeted Item X Budget Adjustment Attached

Budget Manager

Administrative Services Director

CONTRACT/GRANT/LEASE REVIEW:

GRANTING AGENCY:

Accounting Manager Date Internal Auditor Date

City Attorney Date ADA Coordinator Date

Purchasing Officer Date

STAFF RECOMMENDATION: Approval of Change Order #2

Division Head Date

Boudreaux 5/17/02

Department Director Date

Administrative Services Director Date

Mayor Date

Cross Reference

New Item: Yes No

Prev Ord/Res #: 123-01

Orig Contract Date: 09/04/2001

Orig Contract Number: # 814

05-20-02A07:25 RCVD

**STAFF REVIEW FORM**
Page 2

Description: Change Order #2 - Airfield Pavement Rehab / Taxiway Widening

Comments: Reference Comments:

**Budget Coordinator:**

**Accounting Manager:**

**City Attorney:**

**Purchasing Officer:**

**ADA Coordinator:**

**Internal Auditor:**

# 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<br>City Council Members |
| THRU: | Staff Review Committee |
| FROM: | Ray M. Boudreaux, Director |
| DATE: | May 17, 2002 |
| SUBJECT: | Change Order # 2 – Airfield Pavement Rehabilitation /Taxiway Widening |

---

**Background:** APAC Inc., McClinton Anchor Division began construction on the Airfield Pavement Rehabilitation and Taxiway Widening project in September, 2001. The project consists of taxiway strengthening and widening, and includes parking ramp expansion of the east-side general aviation ramp.

**Purpose:** APAC Inc., McClinton Anchor Division has submitted Change Order #2 which represents a net *reduction* of $102,202 to the Contract amount. The Change Order is the result of a reduction to the quantity of select fill materials due to the existing presence of materials in the work area, plus additional conduit for Runway lighting electrical, underdrain connection pipe, and stone backfill materials.

**Budget Considerations:** The Change Order represents a reduction to the project cost. A Budget Adjustment reflecting the budget changes is attached.

**Requested Action:** Staff recommends approval by the City Council of Change Order #2 to APAC Inc., McClinton Anchor Division, and the associated Budget Adjustment.

RMB/jn
Attachments: /4/

- Budget Adjustment Form
- McClelland Consulting Engineers, Inc.; letter
- 4 originals; Change Order #2
- Project expense summary

**City of Fayetteville, Arkansas**
**Budget Adjustment Form**

| Budget Year | | Date Requested | Adjustment # |
|---|---|---|---|
| 2002 | Department: Aviation & Economic Development<br>Division: Airport<br>Program: Capital | 06/04/2002 | |

| Project or Item Requested: | Project or Item Deleted: |
|---|---|
| To recognize $91,982 reduction in Fed. Grant Revenue<br>To recognize $ 5,110 reduction in State Grant Revenue<br>Increase Use of Fund Balance $5,110 | $102,202 reduction to Pavement Rehabilitation & Maint. Capital Project |

| Justification of this Increase: | Justification of this Decrease: |
|---|---|
| APAC/ McClinton Anchor Change Order #2 will reduce the project cost, thus reducing associated grant revenues which are based on percent of project cost as follows:<br><br>Federal - FAA 90%<br>State - Dept of Aero 5%<br>Local - Airport Fund 5% | APAC/ McClinton Anchor Change Order #2 will reduce the project cost.<br><br>Sufficient funding remains to comply with City Policy. |

**Increase Expense (Decrease Revenue)**

| Account Name | Amount | Account Number | | | | | Project Number | |
|---|---|---|---|---|---|---|---|---|
| Federal Grant #29 | 91,982 | 5550 | 0955 | | 6820 | 29 | 00029 | 1 |
| State Grants on Federal Projects | 5,110 | 5550 | 0955 | | 6803 | 00 | " | " |
| Use of Fund Balance | 5,110 | 5550 | 0955 | | 4999 | 99 | " | " |

**Decrease Expense (Increase Revenue)**

| Account Name | Amount | Account Number | | | | | Project Number | |
|---|---|---|---|---|---|---|---|---|
| Pavement Maint & Rehab | 102,202 | 5550 | 3960 | | 7820 | 29 | 00029 | 1 |

| Approval Signatures | | Budget Office Use Only |
|---|---|---|
| Requested By | Date | Type: A B C D E |
| Budget Manager | Date | Date of Approval |
| Department Director | Date 5/17/02 | Posted to General Ledger |
| Admin. Services Director | Date | Posted to Project Accounting |
| Mayor | Date | Entered in Category Log |

*Blue Copy: Budget & Research / Yellow Copy: Requester*

Project Name: Pavement Rehabilitation & Apron
**AIP #:** AIP3-05-0020-2901
**State Aero Grant:** 1853-01
AS400 Project #: 00029
Vendor: APAC - McClinton Anchor
Bid #: 01-46
Contract #: 814
Contract Amount: $2,713,912.65
Change Order #1: $5,321.60

Contract Total: $2,719,234.25

| Date: | Check # | Expense | Retainage | Payment | Project Balance |
|---|---|---|---|---|---|
| 21-Nov-01 | 286131 | 135,638.20 | (12,924.37) | 122,713.83 | 2,596,520.42 |
| 07-Jan-01 | 287720 | 329,948.96 | (32,994.90) | 296,954.06 | 2,299,566.36 |
| 15-Feb-02 | 289384 | 168,295.53 | (16,829.55) | 151,465.98 | 2,148,100.38 |
| 15-May-02 | submitted | 65,428.65 | (6,542.87) | 58,885.78 | 2,089,214.60 |
| | | | | 0.00 | 2,089,214.60 |
| | | | | 0.00 | 2,089,214.60 |
| | Retainage Subtotal | | (69,291.69) | | |
| Totals | | 699,311.34 | | 630,019.65 | |

C:\Documents and Settings\jnicholson\My Documents\James\proj_track\Proj_#29_Construction.123

MLE McCLELLAND CONSULTING ENGINEERS, INC.
DESIGNED TO SERVE

P.O. Box 1229
Fayetteville, Arkansas 72702-1229
501-443-2377
FAX 501-443-9241

May 15, 2002

Mr. Ray Bourdeaux
Airport Department
City of Fayetteville
113 West Mountain
Fayetteville, AR 72701

RE: Airfield Pavement Rehabilitation &
Taxiway Widening and Strengthening
Drake Field
AIP 3-05-0020-2901

Dear Mr. Boudreaux:

Enclosed please find four (4) copies of Change Order No. 2 for the reduction in the excavation and select borrow material quantities for the east apron expansion, the relocation of the widening of Taxiway "F" to Taxiway "D", and the addition of 1" conduit for the relocated runway lighting circuit, underdrain connection to storm drainage, and stone backfill in wet areas to stabilize select embankment. This Change Order decreases the Contract amount by $102,202.00. Please return one copy to our office and one copy to the Contractor.

If there are any questions regarding this change order, please contact us.

Sincerely,
McCLELLAND CONSULTING ENGINEERS, INC.

R. Wayne Jones

R. Wayne Jones, P.E.
Vice President

Enclosure: Change Order No. 2 (4 copies)

J:\2000\002105\correspondence\Boudreaux-516.wpd:

# CHANGE ORDER

Order No. 2

Date: May 15, 2002

Agreement Date: September 4 , 2001

NAME OF PROJECT: Airfield Pavement Rehab. & Taxiway Widening and Strengthening - Drake Field

OWNER: City of Fayetteville (Airport Department)

CONTRACTOR: APAC-Arkansas Inc., McClinton Anchor Division

The following changes are hereby made to the CONTRACT DOCUMENTS:

1. Revise the Quantity for Bid Item No. 3 for Unclassified Excavation for the East Apron due to existing Select Material under the Apron Expansion Area. Reduce the Quantity for 18,400 Cy to 13,100 CY at $10.40/cy.
   Deduct cost of $ 55,120.00 from contract.
2. Revise the Quantity for Bid Item No. 5 for Select Borrow Embankment for the East Apron due to existing Select Material under the Apron Expansion Area. Reduce the Quantity for 16,600 Cy to 13,200 CY at $18.80/cy.
   Deduct cost of $ 63,920.00 from contract.
3. Relocate the taxiway widening and strengthening from Taxiway "F" to Taxiway "D" between the Runway and Taxiway "B". Adjust the quantities and cost per the attached page 3 of 3 of this Change Order.
   Add cost of $ 12,475.50 to contract.
4. Add Bid Item No. 56 for the 1" Conduit to relocate Runway Light cable in radii for 400 LF at $1.95 per LF.
   Add cost of $ 780.00 to contract.
5. Add Bid Item No. 57 for Underdrain connection to existing Pipe or Inlet Structure for 2 each at $ 515.00 per each.
   Add cost of $ 1,030.00 to contract.
6. Add Bid Item No. 58 for Stone Backfill of subgrade stabilization for 75 Tons at $ 34.00 per Ton.
   Add cost of $ 2,550.00 to contract.

Justification:

1 &2. The east Apron Expansion area, when previously expanded, had select borrow material placed 60plus feet east of the east edge of the apron. This select borrow material is three (3) to five (5) thick and therefore the need to excavate this material per the plans is not required and the quantity of borrow material required is therefore less. The excavation quantity saved is 5300 CY and the Borrow material quantity saved is 3400 CY.

3. The Federal Funding for the east parallel taxiway is not available to extend to Taxiway "F. Therefore the Forest Service Fire Fighting Aircraft will need to use Taxiway "D" to return the their base n the east side of the Airport.

4. The radii extensions on Taxiway "D" each side of the Runway require the relocation of two runway lights, lighting cable and the 1" conduit for the cable between the runway light bases.

5. The underdrain in two locations needs to be connected to existing storm drainage facilities. The original planned underdrain was to drain to daylight from the East Apron.

6. The subgrade in several locations have water seepage that continues to saturate the select embankment.

The installation of an 18" layer of Stone Backfill (3" to 5") wrapped with filter fabric will allow for completion of the embankment material. The underdrains also serve to drain these areas.

| | |
|---|---|
| CONTRACT PRICE prior to this Change Order: | $ 2,560,744.25 |
| Decrease in Contract Price: | ($ 102,205.00) |
| Revised CONTRACT PRICE Including this Change Order: | $ 2,458,539.25 |
| Final Completion Time Prior to This Change Order: | 150 Calendar Days |
| Net Time Change Resulting From This Change Order: | 0 Calendar Days |
| Current Contract Completion Dates Including This Change Order: | |
| Completion Date: | July 1, 2001 |

**Change to CONTRACT TIME:**
The CONTRACT TIME will be (increased) ~~(decreased)~~ by 0 calendar days.

**Approvals Required:**
To be effective this Order must be approved by the Owner if it changes the scope or objective or the PROJECT, or as may otherwise be required by the GENERAL CONDITIONS.

Requested by: James A. Cole — 05/16/02
APAC- Arkansas, Inc., McClinton Anchor Division — Date

Recommended by: R Wayne Jones — 5-15-02
McClelland Consulting Engineers, Inc. — Date

Approved by: ______________________ — ________
City of Fayetteville — Date

# Change Order #2

## Fayetteville Municipal Airport (Drake Field)

## Airfield Paving Rehab & Taxiway Widening & Strengthening

## May 1, 2002

### Work to be Added to Project

| Bid Item No. | Description | Unit | Unit Price | Plan Qty | Plan $ |
|---|---|---|---|---|---|
| | **Taxiway "D" (Runway to Taxiway "B")** | | | | |
| 2 | Topsoil Removal (Plan Quantity) | CY | $9.40 | 250 | $2,350.00 |
| 3 | Unclassified Excavation (Plan Quantity) | CY | $10.40 | 675 | $7,020.00 |
| 4 | Embankment from Excavation (Plan Quantity) | CY | $6.55 | 175 | $1,146.25 |
| 5 | Select Borrow Embankment (Plan Quantity) | CY | $18.80 | 450 | $8,460.00 |
| 6 | Topsoil Replacement (Plan Quantity) | CY | $16.25 | 200 | $3,250.00 |
| 8 | Soil Stabilization Fabric | SY | $1.30 | 900 | $1,170.00 |
| 9 | Asphalt Milling | SY | $6.45 | 100 | $645.00 |
| 12 | Crushed Aggregate Base Course | TON | $19.60 | 600 | $11,760.00 |
| 13 | Asphalt Binder Course | TON | $52.00 | 290 | $15,080.00 |
| 14 | Asphalt Leveling or Strengthening Course | TON | $59.25 | 410 | $24,292.50 |
| 15 | Asphalt Surface Course | TON | $54.85 | 270 | $14,809.50 |
| 16 | Bituminous Prime Coat | GAL | $2.40 | 210 | $504.00 |
| 17 | Bituminous Tack Coat | GAL | $1.05 | 380 | $399.00 |
| 18 | Crack Cleaning & Sealing | GAL | $0.71 | 450 | $319.50 |
| 35 | Seeding, Fertilizing & Mulching | AC | $1,570.00 | 0.32 | $502.40 |
| 37 | Taxiway Light Relocation including Base | EA | $405.00 | 16 | $6,480.00 |
| 39 | Taxiway Light Base Removal | EA | $101.50 | 16 | $1,624.00 |
| 41 | Relocate Taxiway Sign | EA | $1,520.00 | 3 | $4,560.00 |
| 42 | Lighting Cable, Counter & Cable Trench | LF | $5.08 | 950 | $4,826.00 |
| 43 | 2" Condiut for Lighting Cable | LF | $2.05 | 900 | $1,845.00 |
| 44 | 2-way, 4" Electrical Duct | LF | $76.10 | 40 | $3,044.00 |
| | **Total for Items** | | | | **$114,087.15** |

### Work to be Deleted from Project

| Bid Item No. | Description | Unit | Unit Price | Plan Qty | Plan $ |
|---|---|---|---|---|---|
| | **Taxiway "F" ( Runway to Taxiway "B" )** | | | | |
| 2 | Topsoil Removal (Plan Quantity) | CY | $9.40 | 250 | $2,350.00 |
| 3 | Unclassified Excavation (Plan Quantity) | CY | $10.40 | 800 | $8,320.00 |
| 4 | Embankment from Excavation (Plan Quantity) | CY | $6.55 | 150 | $982.50 |
| 5 | Select Borrow Embankment (Plan Quantity) | CY | $18.80 | 500 | $9,400.00 |
| 6 | Topsoil Replacement (Plan Quantity) | CY | $16.25 | 100 | $1,625.00 |
| 8 | Soil Stabilization Fabric | SY | $1.30 | 950 | $1,235.00 |
| 9 | Asphalt Milling | SY | $6.45 | 100 | $645.00 |
| 12 | Crushed Aggregate Base Course | TON | $19.60 | 650 | $12,740.00 |
| 13 | Asphalt Binder Course | TON | $52.00 | 300 | $15,600.00 |
| 14 | Asphalt Leveling or Strengthening Course | TON | $59.25 | 120 | $7,110.00 |
| 15 | Asphalt Surface Course | TON | $54.85 | 390 | $21,391.50 |
| 16 | Bituminous Prime Coat | GAL | $2.40 | 225 | $540.00 |
| 17 | Bituminous Tack Coat | GAL | $1.05 | 200 | $210.00 |
| 18 | Crack Cleaning & Sealing | GAL | $0.71 | 500 | $355.00 |
| 19 | Crack Control Fabric | GAL | $1.55 | 369 | $571.95 |
| 35 | Seeding, Fertilizing & Mulching | AC | $1,570.00 | 0.3 | $471.00 |
| 37 | Taxiway Light Relocation including Base | EA | $405.00 | 8 | $3,240.00 |
| 39 | Taxiway Light Base Removal | EA | $101.50 | 8 | $812.00 |
| 41 | Relocate Taxiway Sign | EA | $1,520.00 | 4 | $6,080.00 |
| 42 | Lighting Cable, Counter & Cable Trench | LF | $5.08 | 700 | $3,556.00 |
| 43 | 2" Condiut for Lighting Cable | LF | $2.05 | 650 | $1,332.50 |
| 44 | 2-way, 4" Electrical Duct | LF | $76.10 | 40 | $3,044.00 |
| | | | | | |
| | **Total for Items** | | | | **$101,611.45** |

| Total Addition Project Cost | $12,475.70 |
|---|---|

# CHANGE ORDER

Order No. 2

Date: May 15, 2002

Agreement Date: September 4 , 2001

NAME OF PROJECT: Airfield Pavement Rehab. & Taxiway Widening and Strengthening - Drake Field

OWNER: City of Fayetteville (Airport Department)

CONTRACTOR: APAC-Arkansas Inc., McClinton Anchor Division

The following changes are hereby made to the CONTRACT DOCUMENTS:

1. Revise the Quantity for Bid Item No. 3 for Unclassified Excavation for the East Apron due to existing Select Material under the Apron Expansion Area. Reduce the Quantity for 18,400 Cy to 13,100 CY at $10.40/cy.
   Deduct cost of $ 55,120.00 from contract.

2. Revise the Quantity for Bid Item No. 5 for Select Borrow Embankment for the East Apron due to existing Select Material under the Apron Expansion Area. Reduce the Quantity for 16,600 Cy to 13,200 CY at $18.80/cy.
   Deduct cost of $ 63,920.00 from contract.

3. Relocate the taxiway widening and strengthening from Taxiway "F" to Taxiway "D" between the Runway and Taxiway "B". Adjust the quantities and cost per the attached page 3 of 3 of this Change Order.
   Add cost of $ 12,475.50 to contract.

4. Add Bid Item No. 56 for the 1" Conduit to relocate Runway Light cable in radii for 400 LF at $1.95 per LF.
   Add cost of $ 780.00 to contract.

5. Add Bid Item No. 57 for Underdrain connection to existing Pipe or Inlet Structure for 2 each at $ 515.00 per each.
   Add cost of $ 1,030.00 to contract.

6. Add Bid Item No. 58 for Stone Backfill of subgrade stabilization for 75 Tons at $ 34.00 per Ton.
   Add cost of $ 2,550.00 to contract.

Justification:

1 &2. The east Apron Expansion area, when previously expanded, had select borrow material placed 60plus feet east of the east edge of the apron. This select borrow material is three (3) to five (5) thick and therefore the need to excavate this material per the plans is not required and the quantity of borrow material required is therefore less. The excavation quantity saved is 5300 CY and the Borrow material quantity saved is 3400 CY.

3. The Federal Funding for the east parallel taxiway is not available to extend to Taxiway "F. Therefore the Forest Service Fire Fighting Aircraft will need to use Taxiway "D" to return the their base n the east side of the Airport.

4. The radii extensions on Taxiway "D" each side of the Runway require the relocation of two runway lights, lighting cable and the 1" conduit for the cable between the runway light bases.

5. The underdrain in two locations needs to be connected to existing storm drainage facilities. The original planned underdrain was to drain to daylight from the East Apron.

6. The subgrade in several locations have water seepage that continues to saturate the select embankment.

The installation of an 18" layer of Stone Backfill (3" to 5") wrapped with filter fabric will allow for completion of the embankment material. The underdrains also serve to drain these areas.

| | |
|---|---|
| CONTRACT PRICE prior to this Change Order: | $ 2,560,744.25 |
| Decrease in Contract Price: | ($ 102,205.00) |
| Revised CONTRACT PRICE Including this Change Order: | $ 2,458,539.25 |
| Final Completion Time Prior to This Change Order: | 150 Calendar Days |
| Net Time Change Resulting From This Change Order: | 0 Calendar Days |
| Current Contract Completion Dates Including This Change Order: | |
| Completion Date: | July 1, 2001 |

**Change to CONTRACT TIME:**
The CONTRACT TIME will be (increased) ~~(decreased)~~ by 0 calendar days.

**Approvals Required:**
To be effective this Order must be approved by the Owner if it changes the scope or objective or the PROJECT, or as may otherwise be required by the GENERAL CONDITIONS.

Requested by: James A. Cole — 05/16/02
APAC- Arkansas, Inc., McClinton Anchor Division — Date

Recommended by: R Wayne Jones — 5-15-02
McClelland Consulting Engineers, Inc. — Date

Approved by: ____________________ ____________
City of Fayetteville — Date

# Change Order #2

## Fayetteville Municipal Airport (Drake Field)

## Airfield Paving Rehab & Taxiway Widening & Strengthening

## May 1, 2002

### Work to be Added to Project

| Bid Item No. | Description | Unit | Unit Price | Plan Qty | Plan $ |
|---|---|---|---|---|---|
| | **Taxiway "D" (Runway to Taxiway "B")** | | | | |
| 2 | Topsoil Removal (Plan Quantity) | CY | $9.40 | 250 | $2,350.00 |
| 3 | Unclassified Excavation (Plan Quantity) | CY | $10.40 | 675 | $7,020.00 |
| 4 | Embankment from Excavation (Plan Quantity) | CY | $6.55 | 175 | $1,146.25 |
| 5 | Select Borrow Embankment (Plan Quantity) | CY | $18.80 | 450 | $8,460.00 |
| 6 | Topsoil Replacement (Plan Quantity) | CY | $16.25 | 200 | $3,250.00 |
| 8 | Soil Stabilization Fabric | SY | $1.30 | 900 | $1,170.00 |
| 9 | Asphalt Milling | SY | $6.45 | 100 | $645.00 |
| 12 | Crushed Aggregate Base Course | TON | $19.60 | 600 | $11,760.00 |
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| 44 | 2-way, 4" Electrical Duct | LF | $76.10 | 40 | $3,044.00 |
| | **Total for Items** | | | | **$114,087.15** |

### Work to be Deleted from Project

| Bid Item No. | Description | Unit | Unit Price | Plan Qty | Plan $ |
|---|---|---|---|---|---|
| | **Taxiway "F" ( Runway to Taxiway "B" )** | | | | |
| 2 | Topsoil Removal (Plan Quantity) | CY | $9.40 | 250 | $2,350.00 |
| 3 | Unclassified Excavation (Plan Quantity) | CY | $10.40 | 800 | $8,320.00 |
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| 14 | Asphalt Leveling or Strengthening Course | TON | $59.25 | 120 | $7,110.00 |
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| 16 | Bituminous Prime Coat | GAL | $2.40 | 225 | $540.00 |
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| 39 | Taxiway Light Base Removal | EA | $101.50 | 8 | $812.00 |
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| 43 | 2" Condiut for Lighting Cable | LF | $2.05 | 650 | $1,332.50 |
| 44 | 2-way, 4" Electrical Duct | LF | $76.10 | 40 | $3,044.00 |
| | | | | | |
| | **Total for Items** | | | | **$101,611.45** |

| **Total Addition Project Cost** | **$12,475.70** |
|---|---|

# FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

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

## PLANNING DIVISION CORRESPONDENCE

| | |
|---|---|
| TO: | Mayor Dan Coody<br>Fayetteville City Council |
| FROM: | Tim Conklin, A.I.C.P., City Planner |
| THROUGH: | Hugh Earnest, Urban Development Director |
| DATE: | May 17, 2002 |

**BACKGROUND**

A.C.A. 14-301-102 requires that no street or alley shall be dedicated to public use unless accepted and confirmed by ordinance (please see attached A.C.A 14-301-102). The following subdivisions have been approved as a final plat by the Planning Commission and contain public streets that need to be accepted and confirmed by ordinance:

Bridgeport Subdivision Phase VI
Copper Creek Subdivision
Crystal Springs Subdivision, Phase II

**CURRENT STATUS**

The Planning Commission has approved the final plats for ordinance compliance and recordation.

**RECOMMENDATION**

Staff recommends acceptance and confirmation of the street dedications within these subdivisions by ordinance.

## STAFF REVIEW FORM

X Agenda Request
___ Contract Review
___ Grant Review

For the Fayetteville City Council meeting of June 4, 2002.

**FROM:**

| Name | Division | Department |
|---|---|---|
| Tim Conklin | Planning | Urban Development |

**ACTION REQUESTED:** To approve an ordinance accepting the street right-of-way dedicated with Bridgeport Subdivision Phase VI, Copper Creek Subdivision, and Crystal Springs Subdivision, Phase II as approved by the City of Fayetteville Planning Commission.

**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

I recommend naming the streets in the ordinance KA 5-17-02

City Attorney | Date | Internal Auditor | Date

Purchasing Officer | Date

**STAFF RECOMMENDATION:** Staff recommends approval.

Division Head — Date 5-17-02

Department Director — Date 5-17-02

Administrative Services Director — Date

Mayor — Date 5/17/02

**Cross Reference**

New Item: **Yes** **No**

Prev Ord/Res#: ________

Orig Contract Date: ______

**ORDINANCE NO. ______**

AN ORDINANCE TO ACCEPT AND CONFIRM
THE DEDICATION OF PUBLIC STREETS
WITHIN THE BRIDGEPORT SUBDIVISION, PHASE VI, COPPER CREEK
SUBDIVISION, AND CRYSTAL SPRINGS SUBDIVISION, PHASE II
AS APPROVED BY THE FAYETTEVILLE PLANNING COMMISSION

**WHEREAS**, the Fayetteville Planning Commission, after review of reports from City Departments, has recommended the dedication and acceptance of public streets within the Bridgeport Subdivision, Phase VI, Copper Creek Subdivision, and Crystal Springs Subdivision, Phase II by approving the aforesaid final plats.

**WHEREAS**, the City of Fayetteville wishes to formally accept and confirm all such dedication of said streets pursuant to A.C.A. §14-301-102.

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

Section 1. That the City Council of the City of Fayetteville, Arkansas hereby specifically accepts all streets located in the Bridgeport Subdivision, Phase VI, Copper Creek Subdivision, and Crystal Springs Subdivision, Phase II in Fayetteville, Arkansas as approved by the Fayetteville Planning Commission. The City Council of the City of Fayetteville, Arkansas confirms its acceptance of said streets dedicated by developers/owners to the City which have been approved by the Fayetteville Planning Commission.

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

APPROVED: DRAFT

By: ____________________________
DAN COODY, Mayor

ATTEST:

By: ____________________________
Heather Woodruff, City Clerk

**14-301-102. Dedication of streets.**

No street or alley which shall be dedicated to public use by the proprietor of ground in any city shall be deemed to be a public street or alley, or to be under the care or control of the city council, unless the dedication shall be accepted and confirmed by an ordinance specially passed for that purpose.

**History.** Acts 1875, No. 1, § 7, p. 1; C. & M. Dig., § 7608; Pope's Dig., § 9703; A.S.A. 1947, § 19-3802.

STAFF REVIEW FORM

X Agenda Request
Contract Review
Grant Review

For the Fayetteville City Council meeting of June 4, 2002.

**FROM:**

| Tim Conklin | Planning | Urban Development |
|---|---|---|
| Name | Division | Department |

**ACTION REQUESTED:** To approve an ordinance for RZN 02-13.00 as submitted by Mel Milholland of Milholland Engineering on behalf of Marjorie Brooks, Nanchar, Inc., and Bristol Development Group, LLC for property known as Lot 1A of CMN Business Park II, Ph. I. The property is zoned C-2, Thoroughfare Commercial, and contains approximately 32.62 acres. The request is to rezone to RMF-12, Moderate Density Multi-family residential.

**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

City Attorney Date 5/17/02

Purchasing Officer Date

ADA Coordinator Date

Internal Auditor Date

**STAFF RECOMMENDATION:** Staff recommended approval and on May 13, 2002 the Planning Commission voted 9-0-0 to recommend the rezoning be approved by the City Council.

Division Head Date 5-17-02

Department Director Date 5/17/02

Administrative Services Director Date

Mayor Date 5/17/02

**Cross Reference**

New Item: **Yes** **No**

Prev Ord/Res#: ____________

Orig Contract Date: ______

# FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

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

## PLANNING DIVISION CORRESPONDENCE

TO: Mayor Dan Coody
Fayetteville City Council
FROM: Tim Conklin, A.I.C.P., City Planner
THROUGH: Hugh Earnest, Urban Development Director
DATE: May 17, 2002

### BACKGROUND

RZN 02-13.00 was submitted by Mel Milholland of Milholland Engineering & Surveying on behalf of Bristol Development Group, LLC for property owned by CMN Properties and located on Lot 1A of CMN Business Park II, Ph. I. The property is zoned C-2, Thoroughfare Commercial and contains approximately 32.62 acres. The request is to rezone to RMF-12, Moderate Density Multi-Family Residential.

The subject property is located within the CMN Business Park II, north of Joyce Boulevard and west of Steele Boulevard, with direct access to Steele Boulevard. The Northwest Arkansas Mall is east of the property and the City of Johnson city limits are on the north and west sides of the property. To the south of the property, a commercial development (Party City) is under construction. The property and surrounding area within the Fayetteville city limits is zoned C-2, Thoroughfare Commercial and is identified as regional commercial in the Future Land Use Plan.

The applicant is proposing to construct a luxury apartment development on Lot 1A. The property is currently zoned C-2, Thoroughfare Commercial, which does not allow multi-family units. The request is to rezone Lot 1A from C-2, Thoroughfare Commercial to RMF-12, Moderate Density Multi-Family Residential to allow multi-family units with a maximum density of 12 units per acre and to decrease the intensity of use at this location.

### CURRENT STATUS

The Planning Commission voted 9-0-0 to recommend approval the requested rezoning by the City Council.

### RECOMMENDATION

Staff and the Planning Commission recommend the proposed rezoning.

ORDINANCE NO. _____

AN ORDINANCE REZONING THAT PROPERTY DESCRIBED IN REZONING PETITION RZN 02-13.00 FOR A PARCEL CONTAINING APPROXIMATELY 32.62 ACRES KNOWN AS CMN BUSINESS PARK II, PHASE I, LOT 1A, FAYETTEVILLE, ARKANSAS, AS SUBMITTED BY MEL MILHOLLAND ON BEHALF OF MARJORIE BROOKS, NANCHAR, INC., AND BRISTOL DEVELOPMENT GROUP, LLC

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

Section 1: That the zone classification of the following described property is hereby changed as follows:

From C-2, Thoroughfare Commercial, to RMF-12, Moderate Density Multi-Family Residential, as shown in Exhibit A attached hereto and made a part hereof.

Section 2. That the official zoning map of the City of Fayetteville, Arkansas, is hereby amended to reflect the zoning change provided in Section 1 above.

PASSED AND APPROVED this ______ day of __________, 2002.

APPROVED: DRAFT

By: ____________________
DAN COODY, Mayor

ATTEST:

By: ____________________
Heather Woodruff, City Clerk

EXHIBIT "A"

LOT ONE A (1A) OF CMN BUSINESS PARK II, PHASE I DESCRIBED AS FOLLOWS: A PART OF THE W ½ OF THE SW ¼ OF SECTIN 23, T-17-N, R-30-W, MORE PARTICULARLY DESCRIBED AS COMMENCING AT THE SOUTHWEST CORNER OF SAID SECTOIN; THENCE ALONG THE WEST BOUNDARY OF SAID SECTION N 02-25-28 E 842.08 FEET TO THE POINT OF BEGINNING; THENCE CONTINUING ALONG SAID BOUNDARY N 02-25-28 E 1097.18 FEET TO THE CENTELRINE OF CLEAR CREEK; THENCE ALONG SAID CREEK CENTERLINE N 74-35-14E 408.33 FEET, S 86-43-46 E 293.08 FEET, N40-49-18 E 328.07 FEET, S 73-58-43E 101.01 FEET, S 01-14-16 E 84.92 FEET, S 21-33-25 E 76.55 FEET, N 85-57-34 E 159.41 FEET, AND N 60-09-29 E 173.40 FEET TO THE EAST BOUNDARY OF SAID 80 ACRE TRACT; THENCE ALONG SAID BOUNDARY S 02-38-39 W 994.93 FEET TO THE NORTH RIGHT-OF-WAY OF STEELE BOULEVARD; THENCE ALONG SAID RIGHT-OF-WAY N 87-21-21 W 218.75 FEET TO THE P.C. OF A CURVE TO THE LEFT HAVING A RADIUS OF 235.00 FEET AND A DELTA ANGLE OF 66-06-07; THENCE ALONG SAID CURVE AN ARC DISTANCE OF 271.12 FEET, HAVING A CHORD BEARING AND DISTANCE OF S 59-35-36 W 256.33 FEET; THENCE S 26-32-32 W 124.63 FEET; THENCE LEAVING SAID RIGHT-OF-WAY N 63-27-28 W 260.17 FEET; THENCE S 66-03-55 W 154.77 FEET; THENCE S 26-32-32W 314.22 FEET TO THE SOUTHERLY BOUNDARY OF LOT 1; THENCE ALONG SAID BOUNDARY N 72-34-57W 343.54 FEET TO THE POINT OF BEGINNING, CONTAINING 32.626 ACRES OR 1,421,193.798 S.F., MORE OR LESS, CITY OF FAYETTEVILLE, ARKANSAS.

RZN 02-13.00
CMN Business Park II, Ph1, Lot 1a

# 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: | Shelli Rushing, Associate Planner |
| THRU: | Tim Conklin, A.I.C.P., City Planner |
| DATE: | May 9, 2002 |

**RZN 02-13.00: Rezoning (CMN Business Park II, ph. I Lot 1A, pp 134)** was submitted by Mel Milholland of Milholland Engineering & Surveying on behalf of Bristol Development Group, LLC for property owned by CMN Properties and located on Lot 1A of CMN Business Park II, ph. I. The property is zoned C-2, Thoroughfare Commercial and contains approximately 32.62 acres. The request is to rezone to RMF-12, Moderate Density Multi-Family Residential.

**RECOMMENDATION:**

**Staff recommends approval of the requested rezoning based on the findings included as part of this report.**

| | | |
|---|---|---|
| **PLANNING COMMISSION ACTION:** | **Required** <u>**YES**</u><br>**O Approved** | **O Denied** |
| **Date:** May 13, 2002 | | |
| **CITY COUNCIL ACTION:** | **Required** <u>**YES**</u><br>**O Approved** | **O Denied** |
| **Date:** June 4, 2002 (1st reading, if recommended) | | |

**Comments:** ______________________________

## BACKGROUND:

The subject property is located within the CMN Business Park II, north of Joyce Boulevard and west of Steele Boulevard, with direct access to Steele Boulevard. The Northwest Arkansas Mall is east of the property and the City of Johnson city limits are on the north and west sides of the property. To the south of the property, a commercial development (Party City) is under construction. The property and surrounding area within the Fayetteville city limits is zoned C-2 Thoroughfare Commercial and is identified as regional commercial in the Future Land Use Plan.

The subject property is part of a lot split request on the May 16, 2002 Subdivision Committee agenda. Lot 1 of CMN Business Park II, Phase 1 was originally platted on June 13, 2001 with 35.82 total acres. The applicant is requesting a lot split to create two lots: Lot 1a with 32.62 acres and Lot 1b, at the southeast corner, with 3.20 acres. The rezone request is for Lot 1a with 32.62 acres. The applicant does not propose to rezone Lot 1b, maintaining the zoning designation of C-2 Thoroughfare Commercial.

The applicant is proposing to construct a luxury apartment development on Lot 1a. The property is currently zoned C-2 Thoroughfare Commercial, which does not allow multifamily units. The request is to rezone Lot 1a from C-2 Thoroughfare Commercial to RMF-12 Moderate Density Multi-Family Residential to allow multifamily units with a maximum density of 12 units per acre and to decrease the intensity of use at this location.

There has been very little rezoning activity in the immediate area. Rezoning cases that have occurred have been requests to increase intensity. In this instance, the applicant is requesting a downzone which will decrease intensity. No previous requests in this area are similar to this case.

## SURROUNDING LAND USE AND ZONING

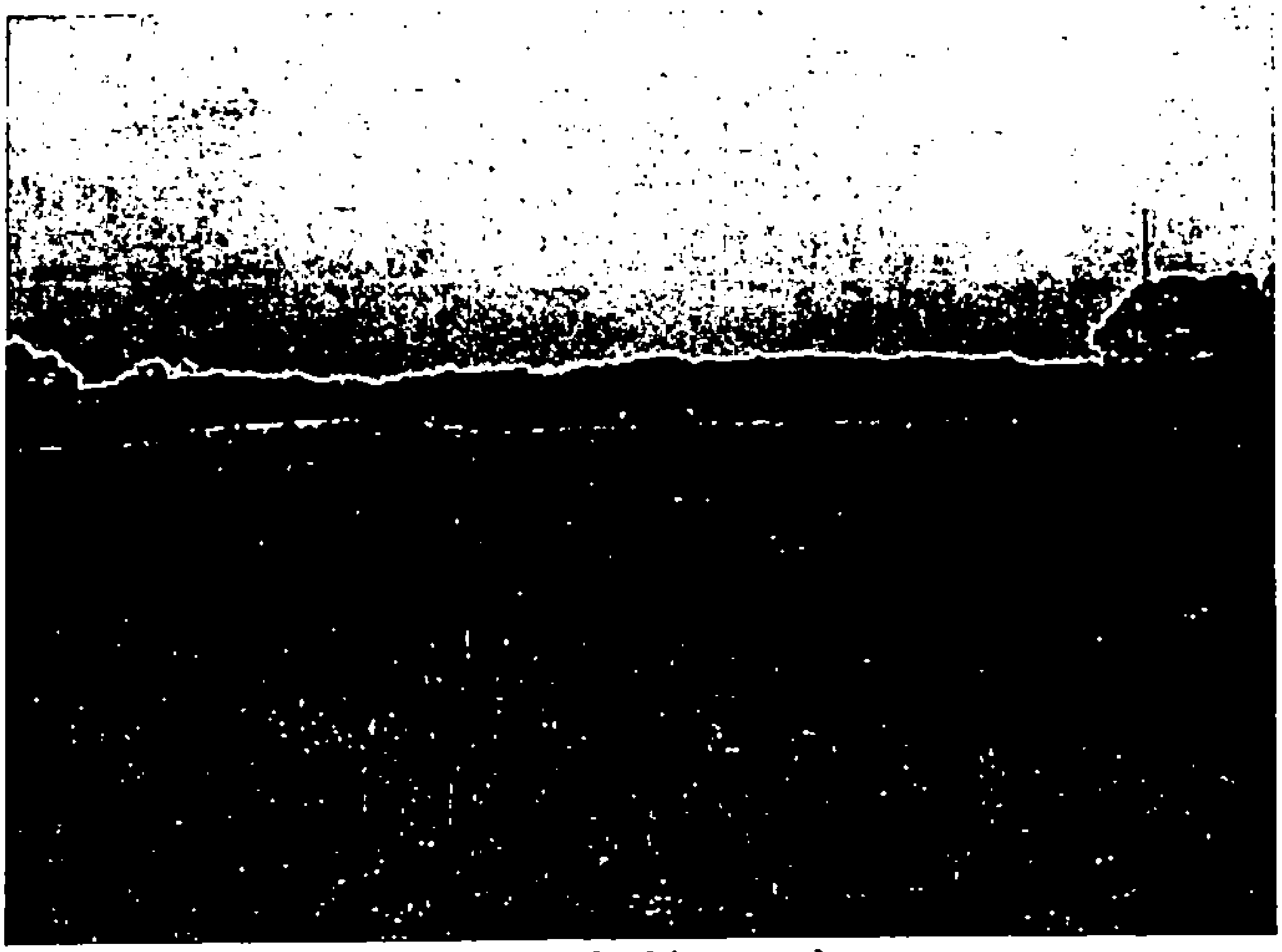
North: The property abuts the Johnson City Limits. The floodway of Clear Creek is to the north of the property. Properties further north are zoned A-1 Agriculture and C-1 Low-Intensity Commercial according to City of Johnson's zoning regulations.

South: A commercial development is under construction. Zoned C-2 Thoroughfare Commercial.

East: To the east of the property is the Northwest Arkansas Mall and a forested drainage gully separates the two properties. Zoned C-2 Thoroughfare Commercial.

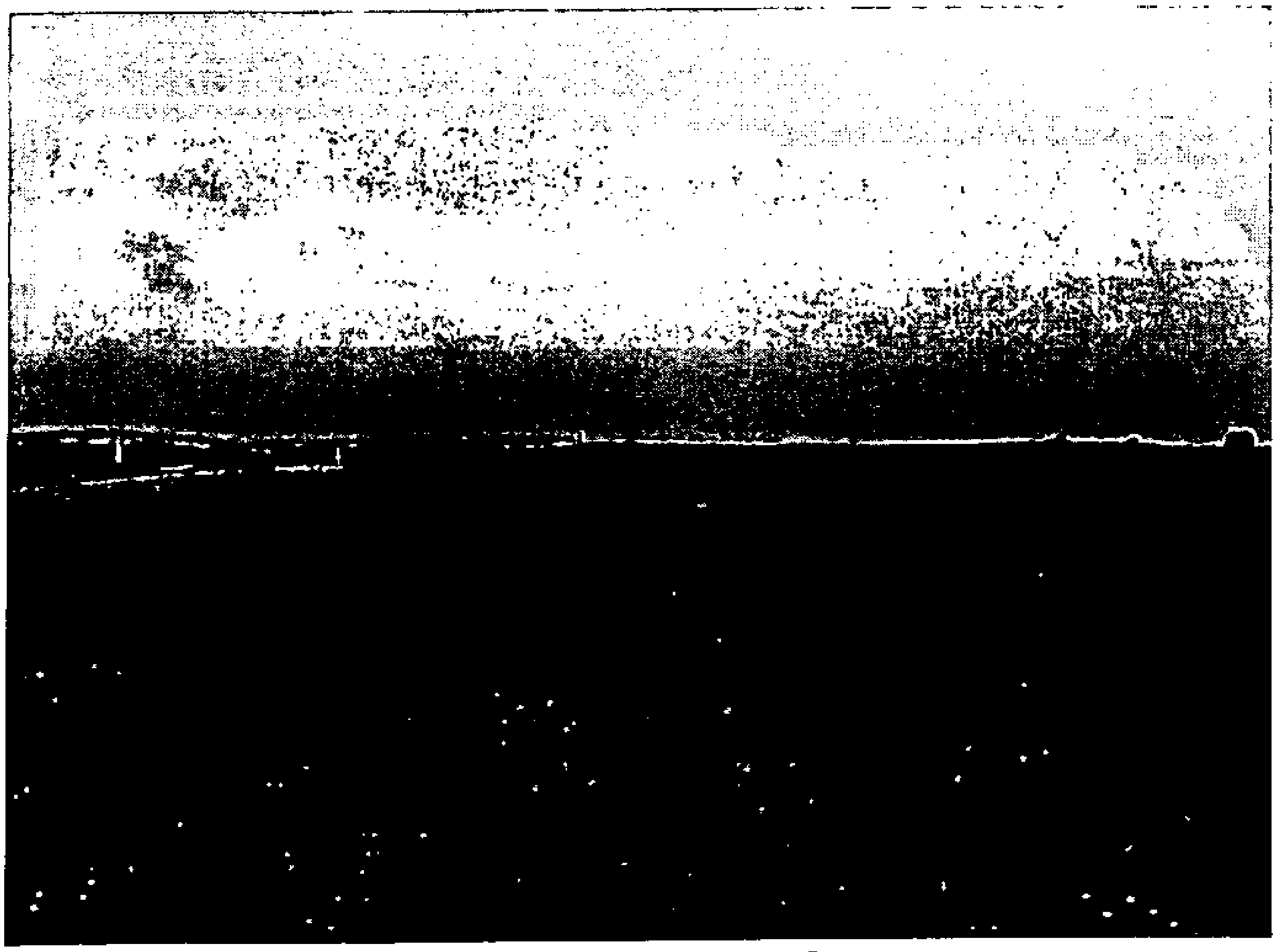
West: The property abuts the Johnson City Limits to the west and is zoned R-1 Low Density Residential according to City of Johnson's zoning regulations.

RZN 02-13.00
CMN Business Park II, Ph1, Lot 1a



On site, looking north

On site, looking east



**On site, looking south**

**On site, looking west**

## INFRASTRUCTURE:

The CMN Business Park II, Phase 1 was recently developed as platted on June 13, 2001. The City Engineer reviewed the plats to ensure that adequate infrastructure would be available for development of individual sites.

**Streets**: Street access is available from Steele Boulevard, to the east of the property, which is a Principal Arterial south of Joyce Boulevard and a local street between Joyce Boulevard and the outer road serving Northwest Arkansas Mall. Joyce Boulevard is approximately 400 feet south of the property and is a Principal Arterial on the Master Street Plan. Adjacent to this property, Steele Boulevard is constructed with a three lane section providing a turning lane available to serve a development on the subject property.

**Water:** An existing eight (8) inch water main is located along Steele Boulevard that is designed to serve Lot 1. There are three fire hydrants nearby: two are located on Lot 1 on the west side of Steele and the third is located on the east side of Steele Boulevard across from the southeast corner of Lot 1. The developer intends to extend water service throughout the development. The developer proposes to use a landscape irrigation system and install sprinkler systems in several units.

**Sewer:** Sanitary sewer is provided along Steele Avenue, along the south of the project's east boundary. Two sanitary sewer manholes are stubbed into Lot 1 and a service system will be designed for the project.

**LAND USE PLAN:** General Plan 2020 designates this site as regional commercial. Rezoning this property to R-MF12 is not consistent with the land use plan map. However, the proposed zoning is compatible with surrounding land uses in the area and will help implement policy 9.8f of the City's General Plan (see #1 under Findings of the Staff).

## 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 a downzone from an intense commercial use to a less intense residential use. The residential uses allowed in RMF-12 serve as appropriate buffers between adjacent commercial areas to the east and south and the low-density residential areas to the north and west in Johnson. The proposed zoning will provide a moderate density residential option that is**

**within walking distance of adjacent commercial areas. The propose rezone helps implement Policy 9.8f of the city's General Plan, which states: "*Site new residential areas accessible to roadways, alternative transportation modes, community amenities, infrastructure and retail and commercial goods.*"**

2. A determination of whether the proposed zoning is justified and/or needed at the time the rezoning is proposed.

Finding: **The proposed zoning will likely reduce the amount of impact this site would have if it were to remain a C-2 zone. The proposed residential use will help reduce total traffic by offering pedestrian access between residential and commercial uses. Further, as shown below, peak travel times of residential and commercial are different, therefore, the residential use should not significantly impact peak travel times on the adjacent road system. Additionally, there is little available land for a medium density residential in the northern portion of the city. The proposed zoning will increase the variety of residential options in northern Fayetteville.**

3. A determination as to whether the proposed zoning would create or appreciably increase traffic danger and congestion.

Finding: **The proposed zoning will increase traffic to the adjacent street system, however, is not anticipated to be extreme enough to create danger or reduce the level of service on adjacent streets. According to the Traffic Engineering Handbook , Institute of Transportation Engineers, the peak travel hours for residential use are different than that of commercial use. Peak travel hours for residential is generally in the early morning hours of the week, whereas, peak travel hours for commercial is typically Saturday, early morning and early afternoon. The proposed zoning should have less of an impact than if the site were to remain C-2.**

**Steele Boulevard provides access to the site and the applicant is proposing a single curb cut to serve the development. Steele Boulevard is a Primary Arterial on the City's Master Street Plan and has adequate capacity to support the impact that would be created by the proposed 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 increase the population density. However, it is not anticipated that it will create an undesirable load on existing facilities. The**

**water and sewer departments have indicated capacity is available for continued development that follows recent trends. The school district has indicated that they can support additional students and will adjust as necessary.**

**The maximum density level allowed in RMF-12 is 12 families per acre, which, with 32.6 acres proposed, amounts to 391 families or units. Using 2000 census data, the average household size of renter-occupied units is 2.04. When this figure is applied to this property, it results in approximately 797 persons (391 x 2.04).**

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:** **The proposed zoning is compatible with and compliments surrounding land uses, is consistent with the 2002 General Plan policies and will not create a negative impact to the existing street system or other public services.**

## §161.14 DISTRICT C-2 THOROUGHFARE COMMERCIAL.

**A. Purpose.** The Thoroughfare Commercial District is designed especially to encourage the functional grouping of these commercial enterprises catering primarily to highway travelers.

**B. Uses.**

**1. Permitted Uses.**

| | |
|---|---|
| Unit 1 | City-Wide Uses by Right |
| Unit 4 | Cultural and Recreational Facilities |
| Unit 12 | Offices, Studios and Related Services |
| Unit 13 | Eating Places |
| Unit 14 | Hotel, Motel and Amusement Facilities |
| Unit 15 | Neighborhood Shopping Goods |
| Unit 16 | Shopping Goods |
| Unit 17 | Trades and Services |
| Unit 18 | Gasoline Service Stations and Drive-In Restaurants |
| Unit 19 | Commercial Recreation |
| Unit 20 | Commercial Recreation, Large Sites |
| Unit 24 | Outdoor Advertising |
| Unit 33 | Adult Live Entertainment Club or Bar |

**2. Uses Permissible on Appeal to the Planning Commission.**

| | |
|---|---|
| Unit 2 | City-Wide Uses by Conditional Use Permit |
| Unit 3 | Public Protection and Utility Facilities |
| Unit 21 | Warehousing and Wholesale |
| Unit 28 | Center for Collecting Recyclable Materials |
| Unit 32 | Sexually Oriented Business |

**C. Bulk and Area Regulations.** Setback lines shall meet the following minimum requirements:

| | |
|---|---|
| From Street ROW | 50 ft. |
| From Side Property Line | None |
| From Side Property Line When Contiguous to a Residential District | 15 ft. |
| From Back Property Line | 20 ft. |

**D. Building Area.** On any lot the area occupied by all buildings shall not exceed 60% of the total area of such lot.

**E. Height Regulations.** In District C-2 any building which exceeds the height of 20 feet shall be set back from any boundary line of any residential district a distance of one foot for each foot of height in excess of 20 feet. No building shall exceed six stories or 75 feet in height.

(Code 1991, §160.036; Code 1965, App. A, Art. 5(VI); Ord. No. 1747, 6-29-89; Ord. No. 1833, 11-1-71; Ord. No. 2351, 6-2-177; Ord. No. 2603, 2-19-80; Ord. No. 4034, §§3,4, 4-15-97)

**§161.062 DISTRICT RMF-12 MODERATE DENSITY MULTI-FAMILY RESIDENTIAL.**

**A. Purpose.** The Moderate Density Multi-family Residential District is designed to permit and encourage the development of multifamily residences at a moderate density that is appropriate to the area.

**B. Uses.**

**1. Uses Permitted.**

| | |
|---|---|
| Unit 1 | City-Wide Uses by Right |
| Unit 8 | Single-Family Dwellings |
| Unit 9 | Multifamily Dwellings - Medium Density |

**2. Uses Permissible on Appeal to the Planning Commission.**

| | |
|---|---|
| Unit 2 | City-Wide Uses by Conditional Use Permit |
| Unit 3 | Public Protection and Utility Facilities |
| Unit 4 | Cultural and Recreational Facilities |
| Unit 11 | Mobile Home Park |
| Unit 25 | Professional Offices |

**C. Density.**

| | |
|---|---|
| Families Per Acre | 4 to 12 |

**D. Bulk and Area Regulations.**

**1. Lot Width Minimum.**

| | |
|---|---|
| Mobile Home Park | 100 Feet |
| Lot within a Mobile Home Park | 50 Feet |
| One Family | 60 Feet |
| Two Family | 60 Feet |
| Three or More | 90 Feet |
| Professional Offices | 100 Feet |

**2. Lot Area Minimum.**

| | |
|---|---|
| Mobile Home Park | 3 Acres |
| Lot Within a Mobile Home Park | 4,200 Sq. Ft. |
| Row House:<br>Development<br>Individual Lot | <br>10,000 Sq. Ft.<br>2,500 Sq. Ft. |
| Single-Family | 6,000 Sq. Ft. |
| Two-Family | 7,000 Sq. Ft. |
| Three or More | 9,000 Sq. Ft. |
| Fraternity or Sorority | 2 Acres |
| Professional Offices | 1 Acre |

**3. Land Area Per Dwelling Unit.**

| | |
|---|---|
| Mobile Home | 3,000 Sq. Ft. |
| Apartments:<br>Two or More Bedrooms<br>One Bedroom | <br>2,000 Sq. Ft.<br>1,700 Sq. Ft. |

| | |
|---|---|
| Mobile Home | 3,000 Sq. Ft. |
| No Bedroom | 1,700 Sq. Ft. |
| Fraternity or Sorority | 1,000 Sq. Ft. per Resident |

**E. Yard Requirements (feet).**

| FRONT YARD | SIDE YARD | REAR YARD |
|---|---|---|
| 25 | 8 | 25 |

Cross Reference: Variances Chapter 156.

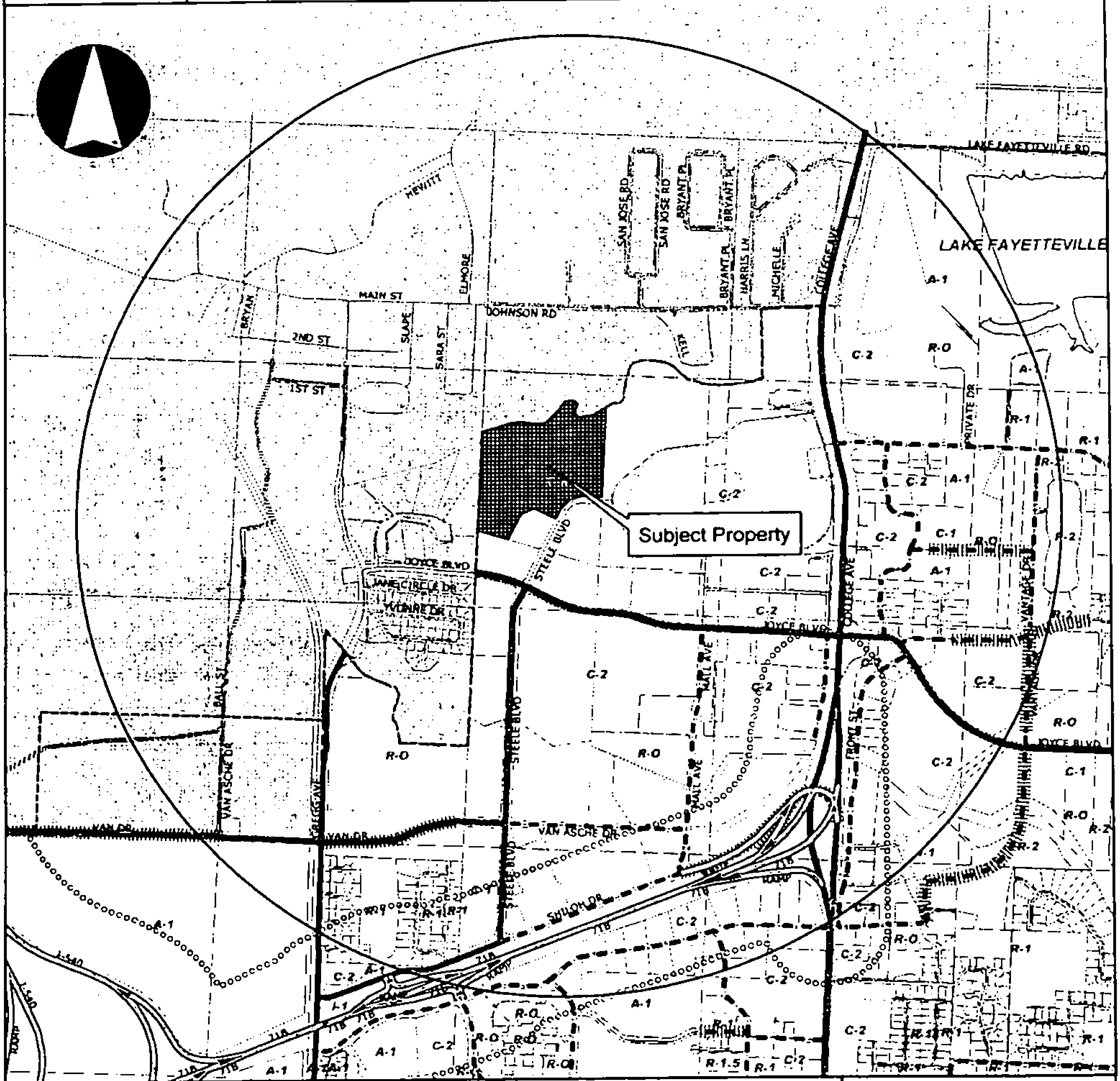
**F. Height Regulations.** Any building which exceeds the height of 20 feet shall be set back from any side boundary line an additional distance of one foot for each foot of height in excess of 20 feet.

(Code 1991, § 160.033; Code 1965, App. A, Art. 5(III); Ord. No. 2320, 4-5-77; Ord. No. 2700, 2-2-81)

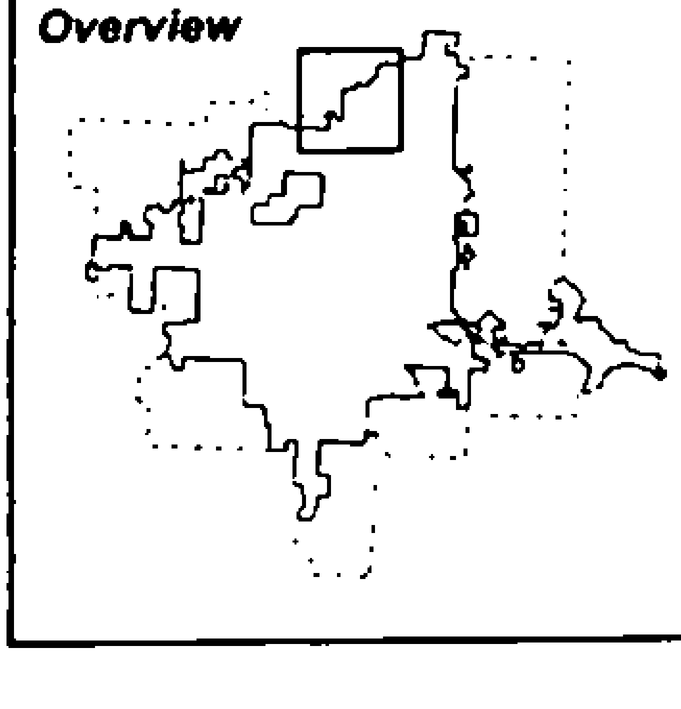
RZN02-13.00

*One Mile View*

# CMN BUSINESS PARK II PH 1 LOT 1A




*Overview*



*Legend*

**Subject Property**

RZN02-13.00

**Streets**

Existing

Planned

**Boundary**

Planning Area

Overlay District

City Limits

Outside City

**Master Street Plan**

Freeway/Expressway

Principal Arterial

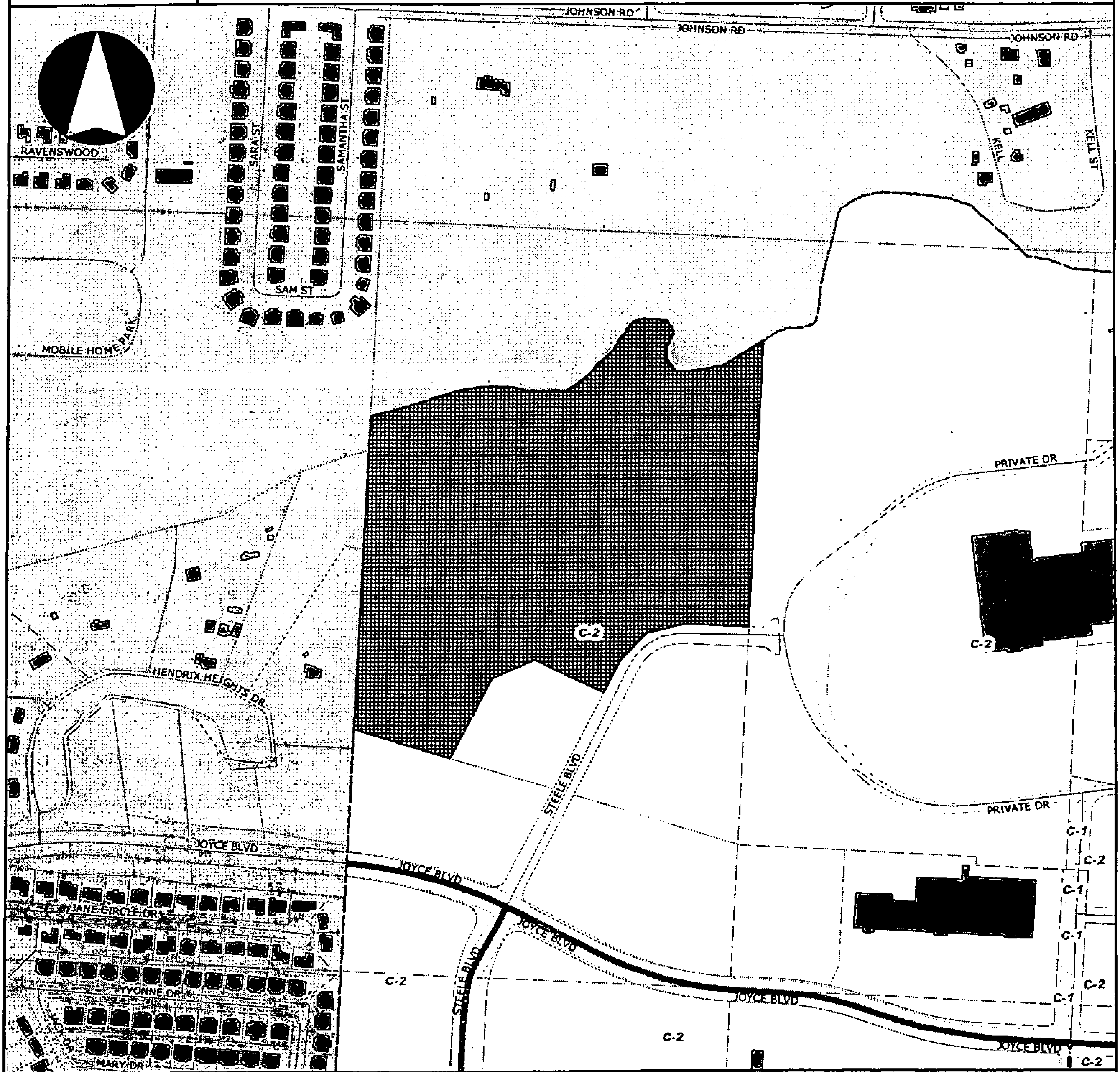
Minor Arterial

Collector

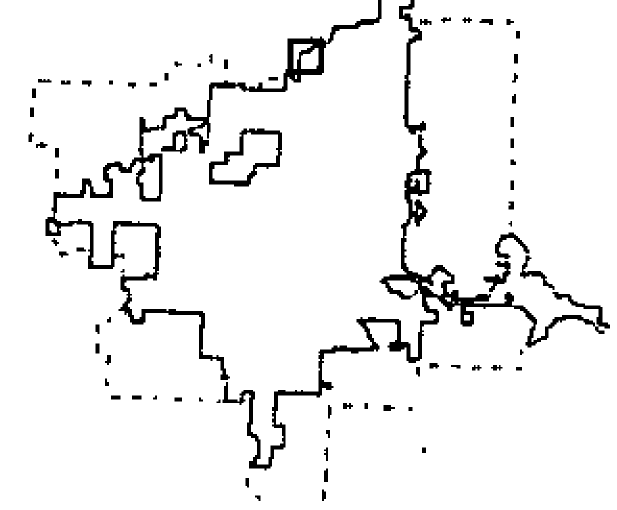
Historic Collector

0.25 0.125 0 0.25 0.5 0.75 Miles

| RZN02-13.00 | CMN BUSINESS PARK II PH 1 LOT 1A |
| --- | --- |
| *Close Up View* | |




***Overview***



***Legend***

**Subject Property**
RZN02-13.00

**Streets**
Existing
Planned

**Boundary**
Planning Area
Overlay District
City Limits
Outside City

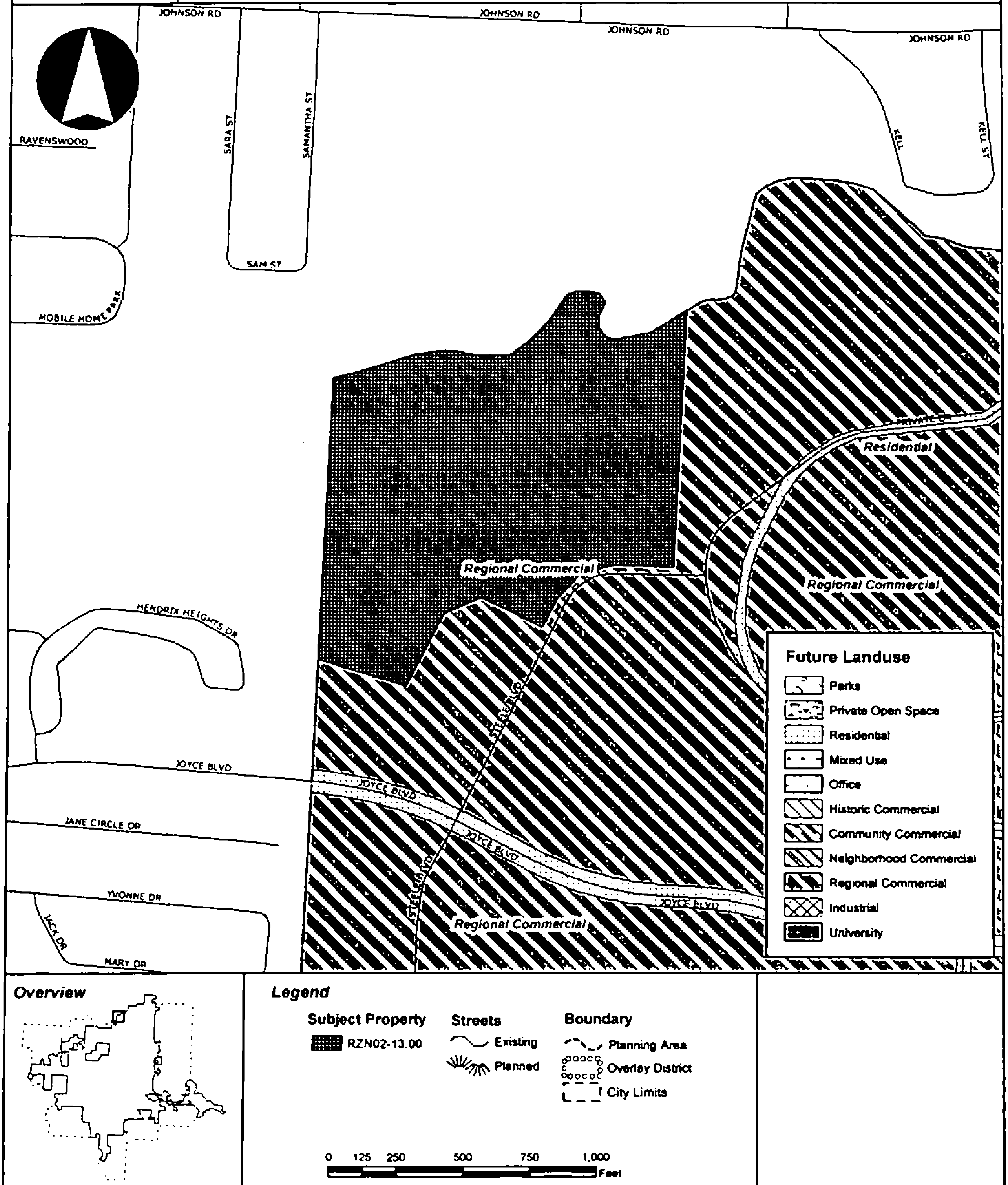
**Master Street Plan**
Freeway/Expressway
Principal Arterial
Minor Arterial
Collector
Historic Collector

0 150 300 600 900 1,200 Feet

**RZN02-13.00**

*Future Landuse*

# CMN BUSINESS PARK II PH 1 LOT 1A



**RZN 02-13.00: Rezoning (CMN Business Park II, ph. I Lot 1A, pp 134)** was submitted by Mel Milholland of Milholland Engineering & Surveying on behalf of Bristol Development Group, LLC for property owned by CMN Properties and located on Lot 1A of CMN Business Park II, Ph. I. The property is zoned C-2, Thoroughfare Commercial and contains approximately 32.62 acres. The request is to rezone to RMF-12, Moderate Density Multi-Family Residential.

Hoffman: Our next item is RZN 02-13.00 for CMN Business Park II, Phase I Lot 1A, which was submitted by Mel Milholland of Milholland Engineering on behalf of Bristol Development Group, LLC for property owned by CMN Properties and located on Lot 1A of CMN Business Park II, Phase I. The property is zoned C-2, Thoroughfare Commercial and contains approximately 32.62 acres. The request is to rezone to RMF-12, Moderate Density Multi-Family Residential. If the applicant is here would you say your name and give us the benefit of your presentation please?

Milholland: I am Melvin Milholland, Milholland Engineering. We have a client that is interested in doing something different from commercial, which was discussed to some degree during the rezoning process originally and in the same location. They feel it is an appropriate location for their investment. I have with me tonight the Senior Project Manager, Mr. Raymond Ledoux. He is here to answer any questions you may have as to their intent, quality of construction or whatever, if you needed that. Otherwise, we would respectfully request to rezone this to, we asked for R-2 and then they changed it to the RM, help me out here Tim.

Conklin: RMF-12.

Milholland: RMF-12, which is 12 units per acre average I understand. The number of units that is being requested, which is not a part of the rezoning, but just for your information. The highest, best use for the land is 272 units if it is zoned it would allow 391, so we are well under, actually by 69% with the layout that we have presently. If you have any questions I would be happy to answer them.

Hoffman: Ok, thank you Mel. I appreciate it. Is there any member of the audience that would wish to speak to us on this rezoning? Seeing none, I will bring it back to the applicant and to the Planning Commission for further discussion. Tim, could you talk to us a little bit about downzoning in a commercial district?

Conklin: This is an area that was rezoned back in the mid to early 90's. Most of it was rezoned to commercial, C-2, Thoroughfare Commercial, which is what you see around the mall with the large, big, box type retailers going in. The applicant has requested that this property be changed to Residential, RMF-12, which is 12 units per acre for apartments. Our land use plan does have policies that do encourage mixed use type use developments. It encourages residential uses to be accessible to commercial areas. Typically when you go from a commercial or industrial zoning, and you change it to a residential type zoning, that is what is referred to as a down zoning, it actually restricts the type of use and the intensity of development. You can see many different things that can be built in C-2 from car dealerships to like a Lindsey 75' tall, six-story office building. This does reduce the potential intensity of land use on the site. Thank you.

Hoffman: Thank you very much. Commissioners?

Ward: I would like to go ahead and maybe get the developer to give us a real brief outline of what he is proposing and what they are going to be and what they are going to look like.

Milholland: This is Mr. Raymond Ledoux, he is with Bristol Development, Inc. from Nashville, TN.

Ledoux: We have a plan, is it ok to show what we are proposing?

Ward: Sure, just real quick.

Marr: I have a question because we often get asked why we are considering design and actual plans in a rezoning. My only concern is I wouldn't want to confuse the public to think that that is a consideration for rezoning when we try so often to clearly distinguish the difference between the two. I will leave that up to your judgment.

Hoffman: That is an excellent point. I am inclined to go ahead and allow the presentation because it is being voluntarily given. I think it is great when we can have more information that we should certainly, and I believe they are actively working with the Planning staff right now. If it is ok with everybody else, if you will make a short presentation, that is good.

Milholland: Are you saying that you want to see the presentation?

Hoffman: A short one.

Milholland: I was leery to bring it out because I knew from some of the past issues that the Planning Commission wasn't supposed to be looking at that.

Ledoux: My name is Raymond Ledoux, I am the Senior Project Manager for Bristol Development out of Nashville, TN. What we are proposing is a 270 unit apartment project. Basically, Bristol is a class A development project. We develop class A properties. We are active in Tennessee and in Texas. We have eight projects in various forms of construction of completion and new starts, this will be the ninth one. Average value of our portfolio is somewhere in the neighborhood of 200 million dollars. This particular project incorporates our big house unit, which is a 12 unit two-story apartment structure with six direct access garages. It is called a big house because it looks like a big house. It was developed by Humphrey's Partners in Dallas, TX, who are national award winning architects who have been used throughout the United States and various market places. We have also mixed in this project three story bridge way style apartments so we catch a diversity of both somewhat of an upscale and somewhat of our standard scale type apartments. Our goal is to produce a class A property. We spend somewhere in the neighborhood of $1,500 per unit for amenities as far as landscaping, irrigation, club house, security, fencing, trails, you name it, we do it. Bristol has been in business for approximately three years, it has ten employees, we have a combined multi-housing experience of somewhere around 40 years. We are very active. I play a key role on a lot of the design, development and the construction of these projects. I travel from Texas to Tennessee to here this evening. I believe this is our site plan, 272 units. I will be glad to answer any other questions you may have of it.

Ward: What type of price range do these rent for?

Ledoux: On an average range, the higher units will rent for about $900 a month and the flats, the three story configuration, will start at around $800 a month. We have the garages as well as also interior garages that serve as the big house units for the higher rent so you can actually drive into your garage and walk into your apartment.

Ward: Thank you.

Hoffman: Thank you very much for your presentation, it is most informative to get that on a rezoning. I realized after we had begun hearing this matter that I've got a conflict. I am going to have to recuse from this vote so I am going to pass the matter onto our Vice Chair, Chairman Estes. Excuse me, I should've known that before we got started, but go ahead.

Estes: Commissioner Allen?

**Motion:**

Allen: I think this is an appealing project with nice diversity and with that said, I would like to move for RZN 02-13.00.

Estes: We have a motion to approve RZN 02-13.00 by Commissioner Allen, is there a second?

Hoffman: I will second.

Estes: We have a second by Commissioner Hoover. Are there any further questions of the applicant or the applicant's representative? We have a motion to approve RZN 02-13.00 by Commissioner Allen and a second by Commissioner Hoover, is there any further discussion?

Marr: A couple of questions. Our General Plan 2020 actually has this as commercial and I understand that we have sited also in the plan the mixed use or transition, could you speak a little bit about how these developments in the past work well with commercial areas and did they consider any other already rezoned properties?

Ledoux: Typically in apartment development in my experience, not only with Bristol but throughout the line of market, Dallas market, Houston market, it is nice to be in the commercial areas because it is convenient for the people. Once they are home they don't have to travel across town to go to the supermarket, the drycleaner, pick the kids up from child care or the schools if they are in the area and it is most beneficial from a marketing point of view to be in these areas. In fact, we try to target market, I at least try to target market in areas of commercial growth. For example, our project in San Antonio, at the entry to our apartment project is a subdivision, our apartment project, and a beautiful shopping center. It is very convenient. People come home, they can walk over to the grocery store, take it easy when they get off the freeway in some of the bigger cities. This is my first trip to Fayetteville. I am impressed so far, I've only been here 2 ½ hours but it is a definite plus. If we are stuck 30 miles out in the country somewhere without services, who wants to live there? Multi-housing is a convenience today. The rent we ask people to pay that is a fairly good rent between being a home owner and being a renter. It is not too much difference today. It is a definite plus to be in a commercial market.

Marr: Thank you.

Estes: Commissioners, the proposed zoning is a downzone from an intense commercial use to a less intense residential use and provides for a mixed use. What is proposed is 12 units per acre, which is a reduced density. I will certainly vote for the pending motion and am very enthusiastic about the proposed project. We have a motion by Commissioner Allen and a second by Commissioner Hoover, is there any further discussion? Renee, would you call the roll please?

**Roll Call:** Upon the completion of roll call the motion to forward RZN 02-13.00 to the City Council was approved by a vote of 8-0-1 with Commissioner Hoffman abstaining.

Estes: The motion passes by a vote of eight in favor and one recusal. Thank you.

STAFF REVIEW FORM

X Agenda Request
___ Contract Review
___ Grant Review

For the Fayetteville City Council meeting of June 4, 2002.

**FROM:**

| | | |
|---|---|---|
| Tim Conklin | Planning | Urban Development |
| Name | Division | Department |

**ACTION REQUESTED:** To approve an ordinance for VA 02-3 as submitted by The Fayetteville School District for property located on Eagle Street west of Garland, currently located within the school district's property, Fayetteville, Arkansas. The request is to vacate a 50' wide portion of the unimproved Eagle Street right-of-way, 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 | ADA Coordinator | Date |
| City Attorney | 5-17-02 Date | Internal Auditor | Date |
| Purchasing Officer | Date | | |

**STAFF RECOMMENDATION:** Staff recommends approval. Planning Commission will hear this item on May 28, 2002.

| | | |
|---|---|---|
| Division Head | 5-17-02 Date | **Cross Reference** |
| Department Director | 5-17-02 Date | New Item: **Yes** **No** |
| Administrative Services Director | Date | Prev Ord/Res#: ______ |
| Mayor | 5/17/02 Date | Orig Contract Date: ______ |

## ORDINANCE NO. _________

AN ORDINANCE APPROVING VA02-3.00 TO VACATE AND ABANDON A 50' WIDE RIGHT-OF-WAY FOR EAGLE STREET WEST OF GARLAND, CURRENTLY LOCATED WITHIN THE SCHOOL PROPERTY, 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: DRAFT

By_______________________________
Dan Coody, Mayor

ATTEST:

By___________________________
Heather Woodruff, City Clerk

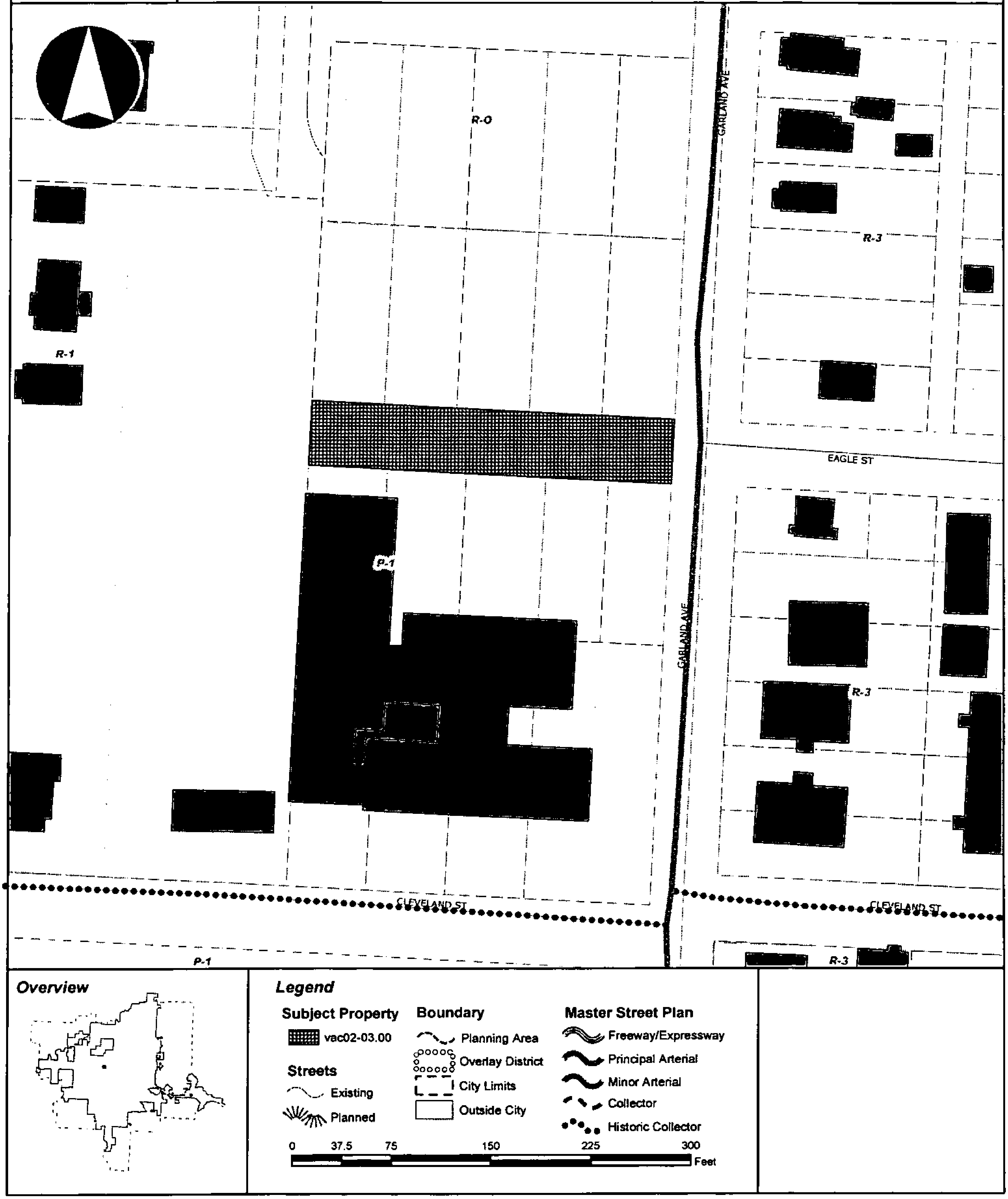
**EXHIBIT "A"**

ALL THAT PORTION OF EAGLE STREET RIGHT-OF-WAY LOCATED WITHIN THE NE ¼ OF THE SE ¼ OF SECTION 8, TOWNSHIP 16 NORTH, OF RANGE 30 WEST LYING WEST OF GARLAND AVENUE AND SITUATED BETWEEN BLOCKS ONE (1) AND TWO (2) OF THE READ SUBDIVISION IN THE CITY OF FAYETTEVILLE, WASHINGTON COUNTY, ARKANSAS, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS: BEGINNING AT THE NE CORNER OF SAID BLOCK ONE (1) OF THE READ SUBDIVISION, THENCE WEST ALONG THE NORTH SIDE OF BLOCK ONE (1) A DISTANCE OF 275 FEET TO THE NW CORNER OF SAID BLOCK ONE (1); THENCE NORTH ALONG THE WEST LINE OF EAGLE STREET 50 FEET TO THE SW CORNER OF SAID BLOCK TWO (2) OF THE READ SUBDIVISION; THENCE EAST ALONG THE SOUTH LINE OF BLOCK TWO (2) A DISTANCE OF 275 FEET TO THE SE CORNER OF BLOCK TWO (2), BEING A POINT ON THE WEST RIGHT-OF-WAY LINE FOR GARLAND AVENUE; THENCE SOUTH ALONG SAID GARLAND AVENUE RIGHT-OF-WAY A DISTANCE OF 50 FEET TO THE POINT OF BEGINNING, CONTAINING 0.315 ACRES, MORE OR LESS.

**VAC02-03.00**

*Close Up View*

# FAYETTEVILLE SCHOOL DISTRICT(LEVERETT)



'TE VILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

**TO:** Mayor Coody and City Council

**THRU:** Hugh Earnest, Urban Development Director

**FROM:** Connie Edmonston, Parks & Recreation Superintendent CE

**DATE:** May 25, 2002

**SUBJECT:** Award of Bid #02-33 and Approval of Contract for Salem Road at the Gary Hampton Softball Complex

**Background**

McClelland Engineers was hired to design and supervise the Large Scale Development of Gary Hampton Softball complex in the amount of $9,990. The proposed project will widen the existing street in front of the Gary Hampton Softball Complex, over a distance of approximately 675 feet, to match the street improvements to the north. Concrete curb and gutter and a 6-feet wide sidewalk will also be provided, with four separate handicap ramps. Additionally, approximately 965 feet of storm piping will be installed to take the place of open-ditch flow parallel to the street. Storm inlets, an energy dissipater, and other erosion control features will be a part of the work. Some utility relocation is anticipated, although it is expected to be relatively minor. Construction is intended to occur this summer in order to be completed before the start of the new school year in August so that it does not interfere with Holcomb Elementary School traffic.

**Current Status**

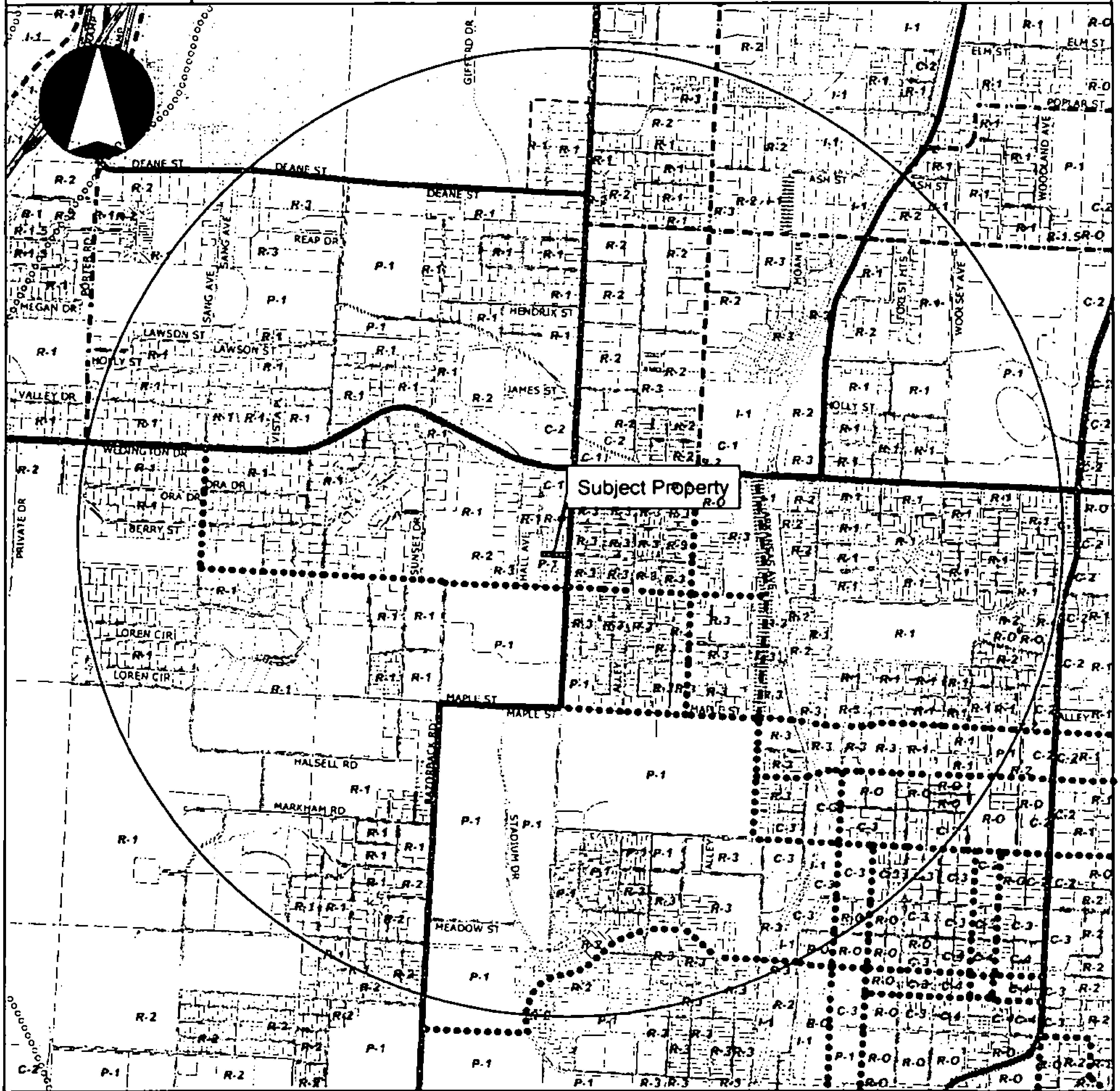
Bids were opened on Thursday, May 23, 2002 at 2 p.m. (#)__ bids were received. ___________ was the low bid.

**Recommendation**

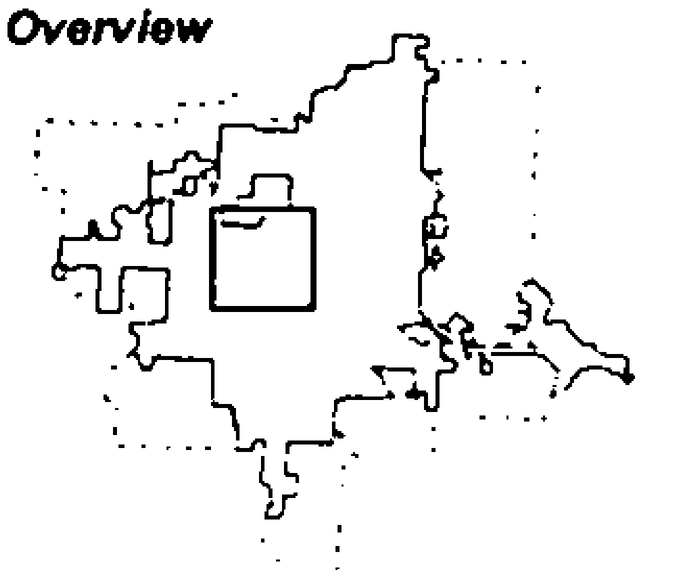
Park and Recreation Staff and McClelland Engineers reviewed the bids and recommend the contract be awarded to _______________in the amount of $____.

Attachments:
Site Map
Bid tabulation
Contract

| VAC02-03.00 | FAYETTEVILLE SCHOOL DISTRICT(LEVERETT) |
| --- | --- |
| *One Mile View* | |




*Overview*



*Legend*

**Subject Property**
VAC02-03.00

**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

Salem Road
C. 4. Page 1

**STAFF REVIEW FORM**

____ Agenda Request
xx Contract Review
____ Grant Review

For the Fayetteville City Council meeting of: June 4, 2002

**FROM:**

| | | |
|---|---|---|
| **Connie Edmonston** | **Parks & Recreation** | **Urban Development** |
| Name | Division | Department |

**ACTION REQUIRED:**
**Award of bid #02-33 and approval of contract with __________ in the amount of $_____ for construction of Salem Road at the Gary Hampton Softball Complex.**

**COST TO CITY:**

| | | |
|---|---|---|
| $ | $ 120,463 | **Parks Development** |
| Cost of this Request | Category/Project Budget | Category/Project Name |
| 2250-9250-5890.00 | $ 10,090 | Gary Hampton SoftballComplex |
| Account Number | Funds Used to Date | Program Name |
| 96093.1 | $ 110,373 | **Parks Development** |
| Project Number | Remaining Balance | Fund |

**BUDGET REVIEW:** x Budgeted Item √ Budget Adjustment Attached

Budget Manager

Administrative Services Director

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

Accounting Manager Date

ADA Coordinator Date

City Attorney Date

Internal Auditor Date

Purchasing Officer Date

* Complete packet will be distributed at Agenda Session. Bids are being reviewed by Engineers.

**STAFF RECOMMENDATION:** Award of Bid #02-33 and approval of contract.

Connie Edmonston 5-23-02
Division Head Date

Cross Reference

Hugh Earnest 5-24-02
Department Director Date

New Item: __Yes__ No

Administrative Services Director Date

Prev Ord/Res #:

Mayor Date

Orig Contract Date:

'TE●VILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

| | |
|---|---|
| **TO:** | Mayor Coody and City Council |
| **THRU:** | Hugh Earnest, Urban Development Director |
| **FROM:** | Connie Edmonston, Parks & Recreation Superintendent CE |
| **DATE:** | May 25, 2002 |
| **SUBJECT:** | Award of Bid #02-33 and Approval of Contract for Salem Road at the Gary Hampton Softball Complex |

**Background**

McClelland Engineers was hired to design and supervise the Large Scale Development of Gary Hampton Softball complex in the amount of $9,990. The proposed project will widen the existing street in front of the Gary Hampton Softball Complex, over a distance of approximately 675 feet, to match the street improvements to the north. Concrete curb and gutter and a 6-feet wide sidewalk will also be provided, with four separate handicap ramps. Additionally, approximately 965 feet of storm piping will be installed to take the place of open-ditch flow parallel to the street. Storm inlets, an energy dissipater, and other erosion control features will be a part of the work. Some utility relocation is anticipated, although it is expected to be relatively minor. Construction is intended to occur this summer in order to be completed before the start of the new school year in August so that it does not interfere with Holcomb Elementary School traffic.

**Current Status**

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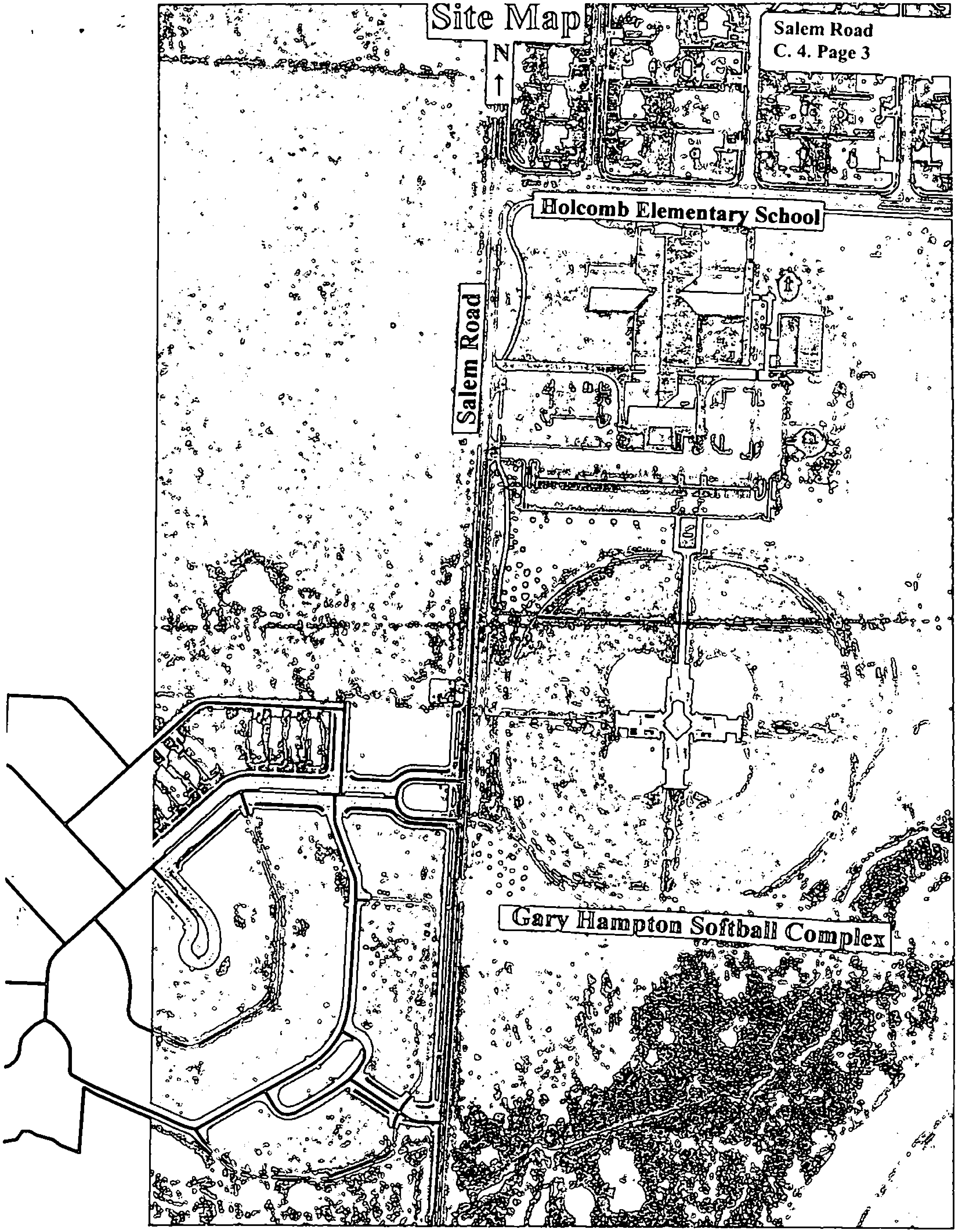
**Recommendation**

Park and Recreation Staff and McClelland Engineers reviewed the bids and recommend the contract be awarded to _______________ in the amount of $____.

Attachments:
Site Map
Bid tabulation
Contract


Site Map
N
Salem Road
C. 4. Page 3
Holcomb Elementary School
Salem Road
Gary Hampton Softball Complex

DOCUMENT 00500

CONTRACT

THIS AGREEMENT, made and entered into on the _____ day of __________________, 2002, by and between ______________________________________ herein called the Contractor, and the City of Fayetteville, Arkansas, hereinafter called the Owner:

WITNESSETH:

That the Contractor, for the consideration hereinafter fully set out, hereby agrees with the Owner as follows:

1. That the Contractor shall furnish all the materials, and perform all of the work in manner and form as provided by the following enumerated Specifications, and Documents, which are attached hereto and made a part hereof, as if fully contained herein and are Salem Road Improvements.

   Advertisement for Bids
   Instructions to Bidders
   Bid and acceptance thereof
   Performance Bond
   Payment Bond
   General Conditions
   Supplementary Conditions
   Specifications
   Drawings

2. That the Owner hereby agrees to pay to the Contractor for the faithful performance of this Agreement, subject to additions and deductions as provided in the Specifications or Bid, in lawful money of the United States, the amount of:

   ______________________________________________________________.

3. The Work will be completed and ready for final payment in accordance with the General Conditions within 60 calendar days after the date when the Contract Time commences to run, as provided in the Notice to Proceed.

4. Liquidated Damages: Owner and Contractor recognize that time is of the essence of this Agreement and the Owner will suffer financial loss if the Work is not completed within the times specified in above, plus any extensions thereof allowed in accordance with the General Conditions. They also recognize the delays, expense, and difficulties involved in proving the actual loss suffered by Owner if the Work is not completed on time. Accordingly, instead of requiring any such proof, Owner and Contractor agree that as liquidated damages for delay (but not as a penalty) Contractor shall pay Owner **Two Hundred Forty** Dollars (**$240.00**) for each day that expires after the time specified in Paragraph 3 for completion and readiness for final payment.

5. That within 30 days of receipt of an approved payment request, the Owner shall make partial payments to the Contractor on the basis of a duly certified and approved estimate of work performed during the preceding calendar month by the Contractor, LESS the retainage provided in the General Conditions, which is to be withheld by the Owner until all work within a particular part has been performed strictly in accordance with this Agreement and until such work has been accepted by the Owner.

6. That upon submission by the Contractor of evidence satisfactory to the Owner that all payrolls, material bills, and other costs incurred by the Contractor in connection with the construction of the work have been paid in full, final payment on account of this Agreement shall be made within 60 days after the completion by the Contractor of all work covered by this Agreement and the acceptance of such work by the Owner.

7. It is further mutually agreed between the parties hereto that if, at any time after the execution of this Agreement and the Surety Bond hereto attached for its faithful performance and payment, the Owner shall deem the Surety or Sureties upon such bond to be unsatisfactory or if, for any reason such bond ceases to be adequate to cover the performance of the work, the Contractor shall, at his expense, within 5 days after the receipt of notice from the Owner, furnish an additional bond or bonds in such form and amount and with such Surety or Sureties as shall be satisfactory to the Owner. In such event, no further payment to the Contractor shall be deemed to be due under this Agreement until such new or additional security for the faithful performance of the work shall be furnished in manner and form satisfactory to the Owner.

8. No additional work or extras shall be done unless the same shall be duly authorized by appropriate action by the Owner in writing.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and date first above written, in two (2) counterparts, each of which shall, without proof or accounting for the other counterpart be deemed an original Contract.

SEAL: ______________________________

CONTRACTOR

WITNESSES:

By______________________________

______________________________ ______________________________

Title

City of Fayetteville, Arkansas
OWNER

ATTEST:

______________________________ By______________________________

# 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: **June 5, 2002**

RE: **Passed Ordinances and Resolutions from City Council meeting of June 4, 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. 84-02 1. Bristol Park: Resolution accepting the recommendation of Fayetteville Parks and Recreation Advisory Board to Accept cash contribution of $102,000.00 for Park Land Dedication requirement for Briston Park.

RES. 85-02 2. Robinson Aviation: Resolution approving contract with FAA and with Robinson Aviation for Fayetteville municipal Airport tower services.

RES. 86-02 3. APAC: Resolution approving Change Order No. 2 to APAC-Arkansas Inc., McClinton Anchor Division.

ORD. 4397 4. Sales & Use Tax: Ordinance providing for the levy of a one percent sales and use tax and providing for an expiration date for such replacement Sale & Use Tax of June 30, 2013.

ORD. 4398 5. **Special Election**: Ordinance calling for special election on question of levying a 1% Sales and Use Tax within the City of Fayetteville, to replace the 1% Sales & Use Tax expiring on June 30, 2003 and providing for expiration date for such tax of June 30, 2013.

RES. 87-02 6. **Resolution of Intent for Sales Tax**: Resolution to identify City's intent to use tax collections if the current 1% city sales tax is extended for a second ten-year term by the voters.

RES. 88-02 7. **Solid Waste Cart Program**: Resolution authorizing the purchase of carts from Toter Inc. for automated residential waste collection program. Final cost will be determined by the individual customer choices.

RES. 89-02 8. **Arkansas Power Steering & Hydraulics**: Resolution awarding Bid 02-24, Item 1, to Arkansas Power Steering and Hydraulics for purchase of seven, 2003 Mack LE613 with mounted Labrie Automated Solid Waste Bodies for total purchase price of $1,375,416.00.

ORD. 4399 9. **Right-of-Way Dedication**: Ordinance accepting street right-of-way dedications in Bridgeport Subdivision Phase VI, Copper Creek Subdivision, and Crystal Springs Subdivision, Phase II as approved by City of Fayetteville Planning Commission.

ORD. 4400 10. **RZN 02-13.00**: Ordinance approving rezoning request as submitted by Mel Milholland on behalf of Marjorie Brooks, Nanchar, Inc., and Bristol Development Group, LLC for property known as Lots 1A of CMN Business Park II, Phase I. Property is zones C-2, Thoroughfare Commercial, and contains approximately 32.62 acres. Request is to rezone to RMF-12, Moderate Density Multi-family residential.

ORD. 4401 11. **VA 02-3.00**: Ordinance approving vacation request as submitted by Fayetteville School District for property located on Eagle Street west of Garland Avenue. Request is to vacate a 50-foot wide portion of the unimproved Eagle Street right-of-way.

RES. 90-02 12. **Salem Road**: Resolution awarding Bid 02-33 and approval of contract with Mobley Contractors in amount of $108,394.00 plus a project contingency of $10,000 for total cost of $118,394.00 for large scale development requirements of Salem Road at the Gary Hampton Softball Complex, and approval of budget adjustment.

RES. 91-02 13. CAT: Resolution to reinstate CAT funding for the remainder of 2002 at a rate of $34,500.00, and approval of a budget adjustment.

**DRAFT TENTATIVE AGENDA**
**CITY COUNCIL**
**JUNE 4, 2002**

A meeting of the Fayetteville City Council will be held on June 4, 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. **HOLLYBROOKE ESTATES:** A resolution to approve the offer and acceptance contract with Hollybrooke Esttes Phase III for Lots 6 and 7 of #36,000 for closing costs.
3. **BRISTOL PARK:** A resolution approving a waiver of Ordinance 3793 to accept money in lieu as the park land requirement of the Bristol Park Large Scale Development.
4. **ROBINSON AVIATION:** A resolution approving a contract with the FAA and with Robinson Aviation for Fayetteville Municipal Airport tower services.
5. **APAC:** A resolution approving Change Order No. 2 to APAC-Arkansas Inc. McClinton Anchor Division.

**B. OLD BUSINESS**

**C. NEW BUSINESS**

1. **BRIDGEPORT:** An ordinance accepting the street right-of-way dedicated with Bridgeport Subdivision Phase VI, Copper Creek Subdivision, and Crystal Springs Subdivision, Phase II as approved by the City of Fayetteville Planning Commission.
2. **RZN 02-13.00:** An ordinance approving rezoning request RZN 02-13.00 as submitted by Mel Milholland of Milholland Engineering on behalf of Marjorie Brooks, Nanchar, Inc., and Bristol Development Group, LLC for property know as Lot 1A of CMN Business Park II, Phase I. The property is zoned C-2, Thoroughfare Commercial, and contains approximately 32.62 acres. The request is to rezone to RMF-12, Moderate Density Multi-family residential.
3. **VA 02-3.00:** An ordinance approving vacation request VA 02-3 as submitted by the Fayetteville School District for property located on Eagle Street west of Garland Ave. The request is to vacate a 50' wide portion of the unimproved Eagle Street right-of-way.
4. **LOPFI**: A resolution moving the City of Fayetteville Police LOPFI retirement benefits from Plan 1 to Plan 2 as of August 1, 2002. ~~This resolution is requested contingent upon the passage of the renewal of the City 1% Sales Tax.~~ — ASK CHRIS ABOUT LOPFI

D. INFORMATIONAL (Wednesday)

1). I-540

2). YARD WASTE. PROGRAM.

FAYETTEVILLE

# City of Fayetteville


CITY CLERK'S OFFICE

113 W. Mountain St.
Phone: (501) 575-8323

Fayetteville, AR 72701
Fax #: (501) 718-7695


## Fax Cover Sheet

To: Doug Wallace, Display Ads

Company: Northwest Arkansas Times

Fax #: 442-5477

From: Joan S.

Date: 05-31-02

Number of Pages (including cover sheet): 3

Notes: 1. Please run in Monday's Paper, June 3rd.
2. Please fax back a Proof by 3:00 p.m.!

Thanks!

Final Agenda
June 4, 2002

If transmission cannot be read clearly, please call back as soon as possible.
Thank you.