

FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

FINAL AGENDA CITY COUNCIL AUGUST 15, 2000

A meeting of the Fayetteville City Council will be held on August 15, 2000 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:** Approval of the minutes from the July 18, and, July 25, 2000 meetings.

2. **SKATE PARK:** A resolution approving a contract with Purkiss-Rose-Rsi for the design and construction supervision of a Skate Park.

3. **WINGS AIR, INC:** A resolution approving a lease agreement with Wings Air, Inc. for an above ground facility which they will locate south of the terminal building ramp. This will allow self-service fueling by the pilot using a credit card. Annual compensation will be \$384.00 for the ground area with three three-year renewal options. Flowage fees will be remitted to the City as set forth in Section 91.16 of the Code of Fayetteville.

B. OLD BUSINESS

C. NEW BUSINESS

1. **ARKANSAS RESEARCH AND TECHNOLOGY PARK:** An ordinance approving a bid wavier and an agreement (Amendment No. 1) to a previous contract for additional professional services with EGIS Consulting Inc. regarding the USCOE 404 permit for the Arkansas Research and Technology Park. The total contract amount is \$164,050.00.

2. **BEKKA DEVELOPMENT:** Consideration of a claim by Bekka Development for legal expenses in conjunction with Town Center. A claim for parking rental revenue was approved at the June 20, 2000 meeting of the Fayetteville City Council. If the claim is approved, approval of a budget adjustment to fund the approved claim is also requested.

PASS
5-4-0
RES. 114-00

3. **FULTON PARKING LEASE:** A resolution approving a lease agreement with Fulton Enterprises, Inc. d/b/a Town and Country Shop, located at 9 South Block Street for the lease of four parking spaces.

PASS
5-4-0
RES. 115-00

4. **DAVID AND CATHY, INC.:** A resolution approving a lease agreement with David and Cathy, Inc. located at 21 S. Block Street for the lease of two parking spaces.

PASS
RES. 116-00

5. **AD 00-24:** A resolution approving Administrative Item AD 00-24.00 submitted by Jay Snider on behalf of Kappa Sigma Fraternity to change the name of West William Street behind the Kappa Sigma house (between University Ave. and the alley to the west) to Whiteside Street in honor of Charlie B. Whiteside III.

Deny

6. **CRAFTON, TULL AND ASSOCIATES:** A resolution censuring the Board of Directors of Crafton, Tull, and Associates for the firing of Fayetteville Alderman Cyrus Young.

PASS
RES. 117-00

RESOLUTION.

7. **CREDIT CARDS:** An ordinance establishing credit/debit card convenience fees.

PASS
RES. 118-00

8. **CREDIT CARDS:** A resolution accepting a proposal from the Bank of Fayetteville for credit/debit card processing services, approval of and authorizing the Mayor and City Clerk to sign a Visa/Mastercard Merchant Agreement and setting convenience fees associated with credit/debit card acceptance.

NO ACTION.

- SISTER CITIES:** A report on the Sister Cities Committee's status, program, and recent trip to the Dominican Republic.

REMOVED

TABLED 10. WINGS -

PASS 11. SKATE PARK - (see front page)
RES. 119-00

Sept. 5 2000 m.f.
NEED WAIVER FOR \$800 WING AV. FOR LSD FEES

Meeting of: AUGUST 15, 2000. CITY COUNCIL

	Roll		CY HD Consent.		
RUSSELL	✓		✓		
REYNOLDS	✓		✓		
AUSTIN	✓		✓		
DAVIS	✓		✓		
TRUMBO	✓		✓		
DANIEL	✓		✓		
SANTOS	✓		✓		
YOUNG	✓		✓		
HANNA	✓				
			8-0.		

	Park. ARL. Research	CS 2ND. BD.	TT. HD. 3RD	PASS.		
RUSSELL	✓	✓	✓	✓		
REYNOLDS	✓	✓	✓	✓		
AUSTIN	✓	✓	✓	✓		
DAVIS	✓	✓	✓	✓		
TRUMBO	✓	✓	✓	✓		
DANIEL	✓	✓	✓	✓		
SANTOS	✓	✓	✓	✓		
YOUNG	✓	✓	✓	✓		
HANNA						
	8-0.	8-0-0.	8-0.			

Meeting of: 8/15/00 CITY COUNCIL.

BEKKAPAV.	# RR.				
RUSSELL	N.				
REYNOLDS	✓				
AUSTIN	N.				
DAVIS	N.				
TRUMBO	✓				
DANIEL	✓				
SANTOS	N.				
YOUNG	N.				
HANNA					
	3-5-0.				

FULTON.	KR HD.	# BD.			
RUSSELL	✓	N.			
REYNOLDS	N.	✓			
AUSTIN	N.	✓			
DAVIS	N.	✓			
TRUMBO	N.	✓			
DANIEL	✓	N.			
SANTOS	✓	N.			
YOUNG	✓	N.			
HANNA	N.	✓			
	4-5-0.	5-4-0.			

FAILED.

Meeting of: 8/15/00 CITY COUNCIL.

DAVID/HANNA	H PR.				
RUSSELL	✓				
REYNOLDS	✓				
AUSTIN	✓				
DAVIS	✓				
TRUMBO	✓				
DANIEL	✓				
SANTOS	✓				
YOUNG	✓				
HANNA	✓				
	5-4-0.				

	CS PR. AD 00-24.				
RUSSELL	✓				
REYNOLDS	✓				
AUSTIN	✓				
DAVIS	✓				
TRUMBO	✓				
DANIEL	✓				
SANTOS	✓				
YOUNG	✓				
HANNA					
	2-0-1				

Meeting of: 8/15/00 CITY COUNCIL.

CRAFTON, TULL. KS KRAME # 22 ^{to deny}					
RUSSELL	✓	✓ ✓			
REYNOLDS	✓	✓			
AUSTIN	✓	✓			
DAVIS	✓	✓			
TRUMBO	✓	✓			
DANIEL	✓	✓			
SANTOS	✓	N			
YOUNG	A	A			
HANNA					
	7-0-1	6-1-1			

CRAFTON, TULL. RA HD.					
RUSSELL	✓				
REYNOLDS	✓				
AUSTIN	✓				
DAVIS	✓				
TRUMBO	✓				
DANIEL	✓				
SANTOS	✓				
YOUNG	✓				
HANNA					
	8-0-0				

Meeting of: 2/15/00

<i>BANK FAY. CREDIT.</i>	<i>H BD.</i>				
RUSSELL	✓				
REYNOLDS	✓				
AUSTIN	✓				
DAVIS	✓				
TRUMBO	✓				
DANIEL	✓				
SANTOS	✓				
YOUNG	✓				
HANNA					
	<i>8-0.</i>				

<i>SISTERS</i>					
RUSSELL					
REYNOLDS					
AUSTIN					
DAVIS					
TRUMBO					
DANIEL					
SANTOS					
YOUNG					
HANNA					

*NO ACTION
REQUIRED*

Meeting of:

8/15/00

CITY COUNCIL

WINTER SEATTLE	BD AD to table				
RUSSELL	✓				
REYNOLDS	✓				
AUSTIN	✓				
DAVIS	✓				
TRUMBO	✓				
DANIEL	✓				
SANTOS	✓				
YOUNG	✓				
HANNA					
	8-0.				

SICATE PARK SEATTLE	BD H				
RUSSELL	✓				
REYNOLDS	✓				
AUSTIN	✓				
DAVIS	✓				
TRUMBO	✓				
DANIEL	✓				
SANTOS	✓				
YOUNG	✓				
HANNA					
	7-0.				

adjourned.
10:05 pm

**MINUTES OF A MEETING
OF THE
FAYETTEVILLE CITY COUNCIL
JULY 18, 2000**

A meeting of the Fayetteville City Council was held on July 18, 2000 at 6:30 p.m. in Room 219 of the City Administration Building located at 113 West Mountain Street, Fayetteville, Arkansas.

PRESENT: Mayor Hanna, Aldermen Reynolds, Austin, Davis, Trumbo, Daniel, Santos, Young, Russell, City Attorney Jerry Rose, City Clerk Heather Woodruff, Staff, Audience, and Press.

NOMINATION COMMITTEE REPORT

Board of Adjustment-Joanne Olszewski and James Kunzelmann; Telecommunications Board-Kevin McDonald, Rowland McKinney, and Barbara Stripling. Construction Board of Appeals-Thomas Campbell and Stan Johnson. Juvenile Concerns-Marcella Mika; Walton Arts Center Council-James Stobaugh; Walton Arts Center Foundation-Katy Wade.

Alderman Daniel moved to appoint the following people. Alderman Davis seconded the motion. Upon roll call the motion carried unanimously.

CONSENT AGENDA

APPROVAL OF THE MINUTES

Approval of the minutes from the June 20, 2000 City Council meeting.

BID 00-13.00

A resolution awarding Bid 00-13.00 to Crash Rescue Equipment Service for the sale of the Airport's 1985 Oshkosh Fire Crash-Rescue Vehicle, Unit #20 in the amount of \$38,500.00.

RESOLUTION 95-00 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

ERNEST LANCASTER DRIVE

A resolution approving Amendment #1 to Task Order #1 (Extension of Ernest Lancaster Drive) to the basic agreement with McClelland Engineers, Inc. for engineering services in the amount of \$25,475.00.

RESOLUTION 96-00 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

PUBLIC TRANSIT

A resolution authorizing the mayor and his representative to help create and participate in a steering committee to study the feasibility of a publicly owned transit system in Northwest Arkansas.

RESOLUTION 97-00 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

SOLID WASTE RATE STUDY

A resolution approving a contract with DMG-Maximus, Inc. in the amount of \$34,600.00 for consulting services for the development of a solid waste cost of service rate study.

RESOLUTION 98-00 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

BUDGET ADJUSTMENT

A resolution approving a budget adjustment increasing the budget for fuel expense for various operating divisions, authorizing an additional position in Building Maintenance, increasing the Municipal Judge's salary and increasing overtime for the Police and Fire Departments.

RESOLUTION 99-00 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

Alderman Davis moved to approve the consent agenda. Alderman Daniel seconded the motion. Upon roll call the motion carried unanimously.

OLD BUSINESS

RZ 00-17.00

An ordinance approving rezoning request RZ 00-17.00 submitted by Northstar Engineering on behalf of Emad Damen for property located at 2323 Deane Street. The property is zoned R-1, Low Density Residential and contains approximately 1.47 acres. The request is to rezone to R-2, Medium Density. The ordinance was left on the first reading at the July 5, 2000 meeting.

Mr. Rose read the ordinance for the second time.

Alderman Daniel moved to suspend the rules and move to the third and final reading. Aldermen Russell seconded the motion. Upon roll call the motion carried unanimously.

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

Alderman Daniel stated she had not received any complaints about this rezoning.

Alderman Davis stated he had received several calls that had been in favor of this because of the bill of assurance, which limited the number of units. Without the bill of assurance they would have been opposed to the rezoning.

Mayor Hanna called for the vote. Upon roll call the motion carried unanimously.

ORDINANCE 4258 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

AD 98-8.00

An ordinance approving AD 98-8.00, Administrative Amendment to Chapter 172 "Parking and Loading" of the Unified Development Ordinance, Section 172.01 (D)(1) "Standards for the Number of Spaces by Use-Off Street Parking" to revise the required parking for eating places (restaurants). The ordinance was left on the first reading at the July 5, 2000 meeting.

Mr. Rose read the ordinance for the second time.

Alderman Austin moved to suspend the rules and move to the third and final reading.

Alderman Daniel seconded the motion. Upon roll call the motion carried by a vote of 7-1-0. Russell voting nay.

Alderman Santos stated he did not like the idea of raising the maximum. He stated he thought they should be lowering the maximum. He was not going to vote for this.

Mr. Tim Conklin, Planning Director, explained the city's current ordinance did not allow enough parking for restaurants. The Planning Commission had requested that the staff bring this forward, since they had to grant conditional uses for additional parking. The American Planning Association parking ratio minimums. What he had brought forward was a ratio that other cities have adopted as a minimum. He had brought this forward as a maximum. He was not trying to allow more parking than what they actually need. He was trying to raise the maximum to what many cities across the United States were using as a minimum. McDonalds on Mall Avenue was coming through the design process. Under our current ordinance they would be allowed to have thirty-nine parking spaces. Under the revised ordinances they would be allowed to have fifty-three. They were requesting to have sixty-three. In that situation, if the parking lot was full, you would have a situation where people could not park. They were trying to establish a maximum number of parking spaces. The ratio he had chosen was the ratio in the middle. From his experience looking at restaurants and the amount of parking they needed, they typically needed more parking over and beyond what the city's ordinance currently allowed.

In response to questions from Alderman Young, Mr. Conklin stated they were trying to allow the amount of the parking that restaurants needed in this community based on their experience. The amount they were trying to allow was not the most liberal amount that other communities required as their minimum.

Alderman Young stated he was concerned that the Planning Commission was going to continue giving variances.

Alderman Santos questioned if the granting of these variances discouraged the use of transit use, pedestrian traffic and destroyed greenspace. It was against about everything in the General Plan. The Planning Commission should not be granting those variances and the Council should not be changing the ordinance to encourage things they were trying to discourage.

Alderman Russell stated there were times when restaurants needed additional parking. He stated they should continue to have the Planning Commission look at this on a case by case basis. He thought in general that the Planning Commission should tighten up on the variances.

Alderman Trumbo stated he disagreed. The Planning Commission had taken a hard look at this. Increasing the maximum to him made sense. They would continue to grant the variances for increased parking. This was a medium, in between the most conservative and the most liberal. They were only meeting them half way. When a chain came into the area, they did their own demographics, studies and traffic counts. They were the ones that determined if it was a good growth area and that was where they wanted to invest their money. That was their decision to find the property. They could not control where they were going to locate. He thought it made a lot of common sense. He thought they should pass it.

Alderman Daniel stated with the change in the ordinance, businesses would be less likely to seek other solutions, like a shared parking lot.

Alderman Santos stated their typical style was to build the parking lot for the peak day of the year. They were going to have the biggest parking lot they could. What they were going to do was give a blanket allowance to double the size of every parking lot in Fayetteville. He did not think that was the right thing to do. There were other solutions. They had the authority to regulate development in town.

Alderman Russell stated by leaving the ordinance like it is they were encouraging people to locate downtown or near the center of town more than if they would be if they changed the ordinance. He thought that was fine for them to be encouraging them to develop in areas that were closer to the center of town to cut down on sprawl through their regular scheme. He knew it was within their authority.

Alderman Trumbo stated nine Planning Commissioners had recommended the increase.

Alderman Santos stated the Planning Commission should be encouraged to follow the policy adopted by the citizens and the City Council. They were working on another General Plan. He asked that the policy be more clear. He thought they would be seeing this ordinance again with lowering the maximum again soon.

Alderman Austin asked if they were to pass this, would all mom and pop operations have the right

to have the maximum amount of parking.

Mr. Conklin added when the parking lot expanded, so did their requirement for the landscaping and all the other ordinances.

Alderman Austin thought they were giving the false impression that they have super parking lots at all the restaurants. He did not see it happening. He would be supporting the ordinance.

Alderman Daniel stated it seemed to her that business would be less thoughtful on location. She thought that since they were getting so crowded that businesses should look at how they could improve parking without more square feet of asphalt and the only way to do that would be shared parking.

Alderman Santos thought they should encourage the location of businesses long existing parking lots and other transit lines rather than encouraging sprawl and double sized parking lots that were on the edge of town.

In response to questions, Mr. Conklin explained they could ask for additional parking. With McDonalds, which was going through the large scale development process now, they would be asking for more than what this ordinance would allow. They did have a play land and it had been their experience that peoples bring their kids to play land and then they stayed a while. They needed additional parking. They always do ask them to justify the need for additional parking. He thought what the Planning Commission was looking at was that since the ordinance had been passed, since they set the maximum on restaurants, they were asking for additional parking. The Planning Commission typically granted those requests. It has been shown and from experience that the parking was needed. He was not talking about the maximum number they need on the business day of the year. They were talking about the maximum in Fayetteville, Arkansas, based on the ratio he had looked at across the country that were the minimum in numerous communities. He added this was the only community he was aware of that has set a maximum in parking, most communities set a minimum.

Alderman Santos stated he did not like setting the standard on the number of chairs rather than the square footage. They could not change the area of the building, but they could haul in chairs and enlarge the number of seats.

Mr. Conklin stated he was bringing something forward to the Council that nine Planning Commissioners thought that they needed to consider. It was up to the City Council to determine what the ordinance should require for parking.

Mr. Bob Jordan, an area resident, stated there had been other progressive cities that were going

back and taking out parking to increase the green space and to reduce the heat buildup by reducing the amount of asphalt. He thought they needed to look at progressive cities around the country and to follow their lead. The idea of using pavers where they could grow grass, but yet they made a solid surface cars could park on.

Mr. Conklin stated it was allowed in the ordinance. They had someone use the grasscrete. If they parked on it, every day the grass would not grow. It was used primarily for overflow situations for once a week or once a month. It has been used in one application in Fayetteville, but they had to go back and put in mulch to park on.

Alderman Austin did not think this should be a divisive issue. He thought it was good to make their city available to people who wanted to go out and eat and not have to walk a long way to get there.

Alderman Davis agreed with them. It appeared to him that the Planning Commission was helping those people by granting the variances that were required for individual restaurants. He did not believe that this issue had to be divisive among the Council.

Mayor Hanna called for the vote. Upon roll call the ordinance failed by a vote of 1-7-0. Alderman Trumbo voting yes.

ORDINANCE FAILED.

SHILOH DRIVE

1) An ordinance approving a bid waiver with McClinton-Anchor, to allow the reconstruction of approximately 240 lf of Shiloh Drive from the existing AHTD right-of-way east to the new Shiloh Drive extension at the CMN property line, including the radius and intersection of Northwood Avenue; 2) Approval of a construction contract with McClinton-Anchor in the estimated amount of \$43,300.00 for the above described street reconstruction; 3) Approval of a 15% project contingency of \$46,495.00 for material/construction testing and variations in final quantities. The ordinance was left on the first reading at the July 5, 2000 meeting.

Mr. Rose read the ordinance.

In response to questions regarding the amount of money they had already spent in the area on off-site improvements, Mr. Venable stated CMN had contributed to Joyce Street was \$60,000.00. \$140,000.00 toward Gregg and the bridge. He explained this contractor was already at the site working for CMN.

Alderman Russell asked if it was true that the City would end up paying for this one way or the other, whether or not this was approved. He could not think of any grounds under the current

ordinances to have CMN pay for it. Under what circumstances would they be required to pay for it if any or would the city end up paying for it if they denied the request.

Mr. Venable replied the city would end up paying for this one way or another. It was an existing street which was in bad shape and did need to be redone. Sidewalks could be added, it would cost a little more money, but they could extend the sidewalk along the north side of Shiloh until they got to Northwood. The sidewalk extended along Northwood on the west side of the street to Sandpiper. They would extend the sidewalk to Sandpiper. He estimated \$4,000.00 would take care of the sidewalks. They might have enough in the project contingency to do that now. They could come back if they did not have enough.

Alderman Russell asked why if they were resurfacing would they need engineering. Was there anything in addition to the resurfacing?

Mr. Venable explained they have had some subgrade failures. It needed to be removed and redone. There was quite a bit more than resurfaces. The engineering with Milholland was for the engineering and the inspection while it was going on.

Alderman Davis stated this street had been put in during the mid 70's. It was below the standard that they accepted today. With the increase in traffic, they could do it now or wait a year or two. It was cheaper to do it now than later.

Alderman Young stated the street had been out a long time. The local traffic had not been tearing it up. It was breaking up, but not because of the local traffic. The development was causing it. If the development was causing the problem, it was their responsibility to fix it and to bare the cost.

Mr. Venable stated he did not think CMN was using the street to haul things in and out. He thought they were using their own system. They had that barricaded off.

Alderman Young stated he thought something was going in there because he had seen red dirt on the road and there was a new patch there, so something new was going in there. There had not been any problems there for years, now all of a sudden there were problems.

Mayor Hanna did not believe anyone was using the street other than the man living at the end of the street. There were concrete barriers at the end of the street. He did not see how they would move them to get in and out of there.

Alderman Young stated the major breakup was at the intersection where the local traffic was going in and out. If the breaking up was going to occur from the local traffic it would have done it long before now.

Mayor Hanna did not think there was any traffic from CMN going through there because of the barriers.

Alderman Daniel stated this was going to be an excellent connection. She was going to vote in favor of this.

Alderman Santos asked what the average daily traffic was for a local street.

Mr. Conklin replied it was approximately five hundred trips per day.

Alderman Santos stated the engineer for CMN thought the street would be handling ten thousand per day. It made it seem like they were building a street to serve CMN and that they should pay for it. However, if the street was broken up from local traffic now, they were surfacing and repaving streets all over town now.

Mr. Venable stated the ten thousand vehicles per day was also to include the traffic from the mall area which was already there. It was not necessarily all CMN traffic. He added that had it had been suggested that one of the ramps from the highway be moved. However, he did not think the Highway Department was going to approve it.

Alderman Russell stated this showed the need for an impact fee ordinance. He asked what the status was on that ordinance.

Alderman Young replied they were interviewing consultants on Thursday.

Alderman Reynolds stated that the neighborhood was approximately twenty-five years old. He thought it would be a mistake to not go ahead and do this with the equipment out there.

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

Mr. Rose read the ordinance.

Ms. Barbara Moorman, an area resident, questioned the ramp which they had mentioned. She had seen a letter from the highway department stating that the ramp was not needed, but she had also been told by the local street department that the ramp was going to go in and that it was going to be an exit ramp east of Gregg Street going into the shopping center.

Mr. Venable replied the proposed ramp that they had asked for would eliminate the off-bound ramp that was there now. Their proposal was to tie directly into Steele Boulevard where it comes

out on Shiloh. As far as he knew the Highway Department did not see any point in it being moved.

Nan Simmons, 404 N. Walnut, referred to the UDO large scale development section. She stated she felt that CMN needed to pay their portion of this cost for this improvement.

Mayor Hanna stated the lady had a point that was well taken. Those decisions were made at the Large Scale Development phase. Developers were required to do off-site improvements. This was not brought up at the time. They had used off-site development and rational nexus for twenty years in Fayetteville. If someone at that time had foreseen this, it would have been addressed. It had not been, now, and it was after the fact.

Alderman Russell asked Mr. Rose if the ordinances Ms. Simmons cited applied to the Large Scale Development process and gave the authority to levy the fees at that point, and not after.

Mr. Rose agreed.

Alderman Santos stated when they have an impact fee in place they would be better able to define what that rational nexus was and what the demand has created and what the cost of accommodating that demand is. For now it was too hard to him to see. This was such a small price for a local street which needed improvement. He could not see that they could blame this one on CMN when they had made other contributions, but the public had made a lot of contributions too. This was relatively small compared to some of the other contributions that the public had made.

Alderman Reynolds stated CMN had paid for the improvements at the Joyce Boulevard intersection and the lights at the top of the hill. If they had not spent their money the city would not be moving traffic out there now like they were.

Mayor Hanna called for the vote. Upon roll call the ordinance passed by a vote of 7-1-0. Young voting nay.

ORDINANCE 4259 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

SHILOH DRIVE

A resolution approving a letter contract in the amount of \$5,000 with Milholland Company for engineering design, construction staking, construction management, and as-built drawings for the reconstruction of approximately 240 lf of Shiloh Drive from the existing AHTD right-of-way east to CMN property line and the intersection with Northwood Avenue. The resolution was tabled at the last meeting.

Alderman Trumbo moved to approve the resolution. Alderman Reynolds seconded the motion. Upon roll call the motion carried by a vote of 7-1-0. Young voting nay.

RESOLUTION 100-00 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

NEW BUSINESS

LS 00-17.00

A resolution accepting a lesser dedication of right-of-way than required by the Master Street Plan for the western extension of Howard Nickell Road, a principal arterial, as requested by George Faucette on behalf of Jo Ann Gladden for property located at Howard Nickell Road and Salem Road.

Mr. Rose read the resolution.

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

Alderman Santos stated he did not believe fifty feet would give them enough room for a street and a sidewalk for a principle arterial. He stated the City had the authority to ask for this land rather than to buy it later.

Alderman Daniel noted this was a highly-developed area. She was worried about moving traffic on up Salem.

Mr. George Faucette, applicant representative, stated there was no road there now. They were requesting a lot split. This was at the far northwest corner of Fayetteville Growth area. There was no more growth area. He stated this lot split would split seventy acres into three lots, an average of twenty-three acres per lot. The rational nexus would not dictate one hundred and fifty-foot of right-of-way taking. The fifty feet were satisfactory for any residential street in city or county. The owners were offering the fifty-foot dedication with a guarantee that no structure would be built in the balance of the requested dedication. If the city had to buy the land later, they would not have to by improvements on the property. It was valuable land and to divide it into three parcel it did not seem to be fair. There was a precedent on the east side of town where a ninety-foot arterial that they accepted only a deed restriction and required no dedication. This was a requirement for fifty feet of dedication with the other in a deed restriction.

In response to questions, Mr. Faucette explained the dedication ran from Salem Road to a dead end part. There was no road on the other side of the property. He added this was only for this lot split.

Mr. Conklin added the staff would request that the right-of-way be dedicated for a subdivision on either of the tracts. They would like to split the north forty tract into another two lots. The planning commission had made the recommendation for approval with the understanding when they brought in a lot split application that they would have to come before the commission again and that they would request the dedication. Anything beyond that with regard to development would be required the dedication. Our ordinance required them to look at the master street plan every time they had a development proposal. Their request is to split the seventy-acre tract into three lots and that they only be required to dedicate fifty feet of right-of-way and give a deed restriction for the remainder to get it up to 110 feet plus provide twenty-five foot setbacks from the principle arterial. When the lot developed again the staff would look at the master street plan again. If it adjoined the master street plan, then they would require the full dedication of right-of-way.

Alderman Russell clarified that if the area developed to the degree that they actually did need a major arterial street that the city will not have to buy the land, but require it to be dedicated.

Mr. Conklin stated that was correct, if the development came first. If they needed the street first and they were not going to develop, then they would have to buy the property.

Upon roll call the motion carried unanimously.

RESOLUTION 101-00 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

FIRE STATION

A resolution approving the sale of the Old Harold Street Fire Station to Howell Trumbo in the amount of \$115,850.00.

Alderman Trumbo stated he would be abstaining from the vote.

Alderman Austin moved to approve the resolution. Alderman Davis seconded the motion. Upon roll call the motion carried by a vote of 7-0-1. Trumbo abstaining.

RESOLUTION 102-00 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

PARK LAND

An ordinance approving a waiver of Ordinance 3793 to accept money in lieu as the park land requirement of the Cornerstone Apartments Subdivision.

Ms. Brenda Theil, Parks and Recreation, state the board was recommending the waiver because the development will have some amenities like a swimming pool and basketball court. It was also located near Asbell School and Lewis Park Complex and Friendship Park. The Sidewalk and

Trial committee has developed a plan that would encompass some of this subdivision. They have a trail running along Hwy 540. It had not been adopted yet. Rather than ask for the land, the developer had agreed to indicate a fourteen-foot trail on the plat and a legal description for the future sidewalk and trail across their property.

Alderman Russell clarified they were getting all the money in-lieu plus an easement for sidewalk.

Alderman Austin asked how much park land they had that was not developed. And how much they had received in money in-lieu they had received.

Ms. Connie Edmonston, Parks and Recreation, stated over the last five years they had taken in more than one hundred and twenty to a hundred and thirty acres. They have increased their park land, about one-third of their park land was developed. The other was left in the natural state. Since the park land dedication fees have been increased, it has helped them. The money was growing.

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

Mr. Rose read the ordinance.

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

Mr. Rose read the ordinance.

Mayor Hanna called for the vote. Upon roll call the ordinance passed unanimously.

ORDINANCE 4260 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

RZ 00-19.00: An ordinance approving rezoning request RZ 00-19.00, submitted by the Community Development Division of behalf of the City of Fayetteville for property located west of Deane Solomon Road, north of Moore Land and south of West Salem Road. The property is zoned I-1, Heavy Commercial/Light Industrial and contains approximately 2.71 acres. The request is to rezone to R-2, Medium Density Residential.

Mr. Rose read the ordinance for the first time.

Mayor Hanna stated he had received a letter from Perry Butcher who was a neighbor expressing his opposition to the rezoning.

Alderman Reynolds stated Wilson Kimbrough was against the rezoning also.

Alderman Daniel asked for the ordinance to be left on the first reading.

Alderman Santos noted the back up material was I-1, but the ordinance had read A-1.

Mayor Hanna stated Mr. Butch had objected to the rezoning believing it would increase traffic volumes

Alderman Reynolds stated they needed to let it be known that the city was leasing this to the Sage House for a minimum fee. This was for the Sage House and the Children House.

Mr. Venable stated the children's house did not need to be rezoned, but the Sage House had to be rezoned. The traffic would be very minimal. With the industrial park across the road there were streets that would be built there too.

Ms. Hope Bradbury, Sage House, stated she was unaware that there was opposition to the zoning change. This was a down zoning. The low traffic in the area was good for both the children's house and sage house.

Alderman Russell moved to amend the ordinance to read I-1 rather than A-1. Alderman Davis seconded the motion. Upon roll call the motion carried unanimously.

THE ORDINANCE WAS LEFT ON THE FIRST READING.

AD 00-18.00

An ordinance for AD 00-18.00, administrative amendment to Chapter 166 "Development" of the Unified Development Ordinance, Section 166.04(A)(8) "Suburban Subdivision-Public Sanitary Sewer Not Accessible" to allow lots smaller than 1 1/2 acres that are on a septic system.

Mr. Rose read the ordinance for the first time.

Alderman Daniel requested that this ordinance be left on the first reading. She thought there might be some changes at the State level regarding septic tanks.

Mr. Conklin explained approximately two months ago Washington County and several towns had met and changed the way they processed subdivisions and lot splits. They now come to the city first. Typically the county was approving the lot splits and subdivisions first. Now he would be receiving those first. The city did have an ordinance that stated one and one half acres. In the past the county had been approving lots with less than one and one-half acres. In order to be consistent he brought his ordinance before the planning commission and the council. He would

like to see this to make sure that the alternate leach fields were not being jeopardized by future subdivisions.

Alderman Santos stated he was all for the Health department regulating the septic systems rather than them. If it was going to work and pass their regulations, why should they care or be involved.

Mr. Conklin stated there were areas in Arkansas where you could not get a septic system. He was requiring that they actually do the test and bring the actual permit to the planning office before they looked at it. He felt that it was the only way his staff could manage lot split and subdivisions less than an acre and half in the planning area.

Mr. Jeff Erf, an area resident, questioned what accessible meant. How was that determined?

Mayor Hanna replied there was not a city sewer within a reasonable distance.

Mr. Conklin explained by city ordinance they were not allowed to extend sewers beyond their city limits.

Mr. Erf stated that since they were going to be constructing a sewer treatment plant that they would want to encourage as many people to use it as possible. In help water quality. He did not want the city to discourage it in any way.

Alderman Reynolds added the city still had people within city limits that were on septic tanks. He was one of them.

Mr. Venable stated there were still several tanks that the sewer system did not serve all the areas. In some areas it was cost prohibitively to put them in. Their ordinances did not permit them to go outside the city limits.

THE ORDINANCE WAS LEFT ON THE FIRST READING.

RZA 00-2.00

An ordinance approving annexation request RZA 00-2.00 submitted by Candy R. Burton of Phillips Law firm on behalf of St. Joseph's Catholic Church for property located on Starr Drive. The property is in the Planning Area and contains approximately 18.59 acres. The request is to annex the subject property into the City of Fayetteville.

Mr. Rose read the ordinance for the first time.

Alderman Austin asked if it bring street improvements to Starr Drive.

Mr. Venable replied it would bring part of them to pass. The part that would be annexed would in a full city section. The part to the north and to south was still in the county. It was a weird way it was taken it. Part of it was still in the county. The section to the north was to be improved as a part of this. There would be no curb and gutter it would be just to county standards.

Mr. Conklin stated they were looking to have the developer to improve Starr Road to the north up to Madison Avenue at least up to county standards. There would be some areas that would be above county standards. The church on Starr Road would be required to improve one half of the street. Staff was going to look at the possibility of a cost share agreement to get the entire section of Starr road improved. With regard to north of the church they had discussed county standards, twenty feet in width. There would be areas twenty feet in width. It was going to improve the condition of the street. They would need a conditional use for the actual church and school in the A-1 zoning districts. They did need to make sure the street was adequate to handle the additional traffic.

Alderman Daniel asked what the sewer situation was out there.

In response to questions regarding the cost of street improvement along Starr Drive, Mr. Venable stated if they were to do the entire street it would not run that much. Part of Cherokee had curb and gutter. He had thought the center line of the road was the city limits, it wasn't. They had tried to improve the street, but could not because it was county property. They had several meetings with the county. They did not have any money to do any improvements they thought they would try and work something out with them with an overlay without much widening. They would continue to work with the county.

Alderman Trumbo stated he thought this needed to be a priority, like the bridge in Johnson, outside the city limits. Even if they could not get any money from the county. It was a very busy school and we had a lot of citizen who attended the school.

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

Mr. Rose read the ordinance.

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

Mr. Rose read the ordinance.

Mr. Ben Israel, 1501 Starr Drive, stated there were places along Starr Drive where the pavement

was fourteen feet wide. The street was half owned by the city and half by the county. The trees were extended over into the streets. There was a dangerous intersection coming out of Huntington Subdivision. They wanted the school to be built out there. In the last four years they had approved and built more than 240,000 commercial leaseable space and a new school. If they were to exit Starr Drive at 7:30 in the morning, it may take you fifteen or twenty minutes to get to HWY 45/HWY 265. They had done nothing for the east west traffic. He encouraged them to annex the property and to let them construct the school. The problem was they could not exist out there with the kind of streets they had.

Mayor Hanna stated all these issues would have to be addressed at the rezoning and the large scale development. They would have the opportunity to look at what really can be done. So much of that road was in the county. He thought it would serve them well to go to the county to see if they could share.

Mr. Venable stated the county had been willing to furnish the material for the overlay, but that would not widen the street. The area around Huntington was all County.

Mayor Hanna called for the vote. Upon roll call the motion carried unanimously.

ORDINANCE 4261 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

PLANNING COMMISSION APPEAL

An appeal of a Planning Commission decision which denied rezoning request RZ 00-2.00 for property located at 2416 E. Joyce Street. The request is to rezone from A-1 to R-O.

Mr. Rose explained what they had normally done in council past was to place this as if it were an ordinance and place it on the first reading and they would go through all three readings. The only way they could change a zoning was by an ordinance. If they agreed with the appellant then they would pass the ordinance and rezone the property. If they did not agree then they would deny the rezoning.

Mr. Rose read the ordinance.

Alderman Santos asked for this to be left on the first reading because it was moving so fast.

Alderman Daniel stated she had been following this for a long time. She thought what had happened was that there wasn't anyone at Planning Commissioners and there had been some confusion.

Alderman Young stated he had been at the Planning Commission the developer had not been there to answer some questions. The Planning Commissions had hoped to table the item. He thought

the Planning Commission would have passed it if the owners had been there.

Mr. Conklin stated the applicant would like to have the entire property rezoned to R-O. He had mentioned to him the concerns of the commission.

Alderman Santos noted some of the concerns had been the drainage and the easement along side the conservation area.

Mr. Ben Israel stated he had not been able to be in town at the Planning Commission. His desire was to rezone the property to R-O, which was in line with the city's recommendation. The staff had recommended it to the planning commission.

Mr. Gary Carnahan, Benham Group, stated it was important to say that they were asking to rezone the property which has a lot of frontage along Joyce Street to be used as office. They felt that this was an appropriate use of the property. The discussion had gotten away from the appropriate use and got caught up in other matters. He brought a map to answer questions on which way the water ran. Once the property was zoned there was a lot of additional work, city meetings, and permits which needed to be obtained before any particular use of the property could be approved. They still had to go through large scale development plans with specific buildings and layouts, and parking lots. They wanted to start the process by rezoning the property for a particular use, then they could begin. They felt this land was appropriate for offices, then they could move forward with more detailed plans. They had been pushed ahead by other interest by asking which way the water ran. The five-acre track had an existing home with an existing nature area just north of this property. Below it was a flat valley, which was a wetland type area. The concern was that the development of this property would damage the other property. He wanted to point out that everything from the house on the property drains toward Joyce Street. From the house to west drained into the swell then carried to Joyce Street. It would be very easy for them keep runoff off the other property. They wanted to build an office park. The future tenants would want as much exposure to Joyce Street as possible. So they believed a lot of the trees in the rear would remain natural. They did not want to be locked into saying that now. He did not feel like it was in appropriate to ask them to zone it for offices at this time.

Alderman Young thought that if the Planning Commission had this information they would have passed it.

Mr. Israel stated they could wait a couple of weeks. They wanted to do what was right. He had reassured the owners of the wet lands that they would do everything possible to preserve everything they had and not endanger it at all. There were a lot of nice trees on the property and it was going to be difficult to determine which ones they could not keep. If they were to preserve every tree in the back then they would have to cut down more trees in the front, which were the ones more visible to the public. There were some nice maple trees.

Dr. Lloyd Hudson, an area resident, stated there was a dedicated wet land and nature area which was being developed in conjunction with the Ozark Regional Land Trust. They were concerned about preserving the wet lands and the drainage involved. This was a small area. The corner of it drained into the wet lands. This was a very sensitive area. He did not object to rezoning, but thought they needed to resolve the drainage problem before too much planning was involved.

Alderman Austin asked what government agency managed the wet land.

Dr. Hudson stated when they set up the nature area, he gave the property to the nature area. The Army Corp. of Engineers had surveyed the property and made it a dedicated wet land. Then Ozark Regional Land Trust made a nature area out of their property. All of the land would be public in time. They were trying to preserve it. They had no objections to Dr. Israel, but there was some land that drained into this area. It needed to be settled before too much planning was involved.

Mr. Gary Galbraith, Ozark Regional Land Trust, stated they were a property owner. He presented a booklet explaining what they did. Their opposition to the rezoning at the planning commission had been because they were not aware of what the plans were for the property. It was his understanding that the purpose of rezoning was to create compatible uses within the city. Everything within the area needs to be taken into consideration. Prior to the application for rezoning they had started the Nature center. They did not see R-O as a threat, but they wanted it to be a compatible use. They felt it would be better to negotiate up front. They were wanting a win win situation. Their concern was contamination. A couple of concerns of theirs was the access to their property and the tree buffer it helped with run off and created a buffer visually. For them a compatible development would be to leave the trees to the rear of the property. He thought with minimal conservation of trees and natural area their desires would be protected.

Mr. Israel stated he would be willing to meet with them and asked if the city would also meet with them. He asked the city to help him. If they agreed not to change any trees along the hundred feet in the back and the Planning Commission wanted him to keep all the trees out front. All of a sudden he would have five acres of property that he could only build on one and half acres. He did not think it was fair for them to spend all that money without first getting an assurance that they had an R-O Zoning. They were talking about engineering fees, studies and delays. He was willing to offer his word that they would do every thing possible. They would not interfere with the wet land, but he could not say that he would give them a hundred feet off the back. He did not know if he could do that. How could anyone know that without proper engineering studies and surveys? He was more concerned with the trees along the front than he was about the ones along the back. He was willing to give on that. He thought it would be against the law to damage that wet land.

Alderman Trumbo suggested that he walk the property with Kim Hesse and Gary Galbraith.

Alderman Russell asked if he would be willing to preserve the trees along the back if he knew that would satisfy the tree preservation.

Mr. Israel stated he would be. He added he would like to preserve more trees along the front. He was more concerned about people coming into the center.

Mr. Randall Bailey, the property owner, stated they had rezoned all of the property east of him R-O or commercial. He was caught in the middle with his five acres.

THE ORDINANCE WAS LEFT ON THE FIRST READING.

Meeting adjourned at 8:45 p.m.

**MINUTES OF A MEETING
OF THE
FAYETTEVILLE CITY COUNCIL
JULY 25, 2000**

A special meeting of the Fayetteville City Council was held on July 25, 2000 at 5:30 p.m. in Room 326 of the City Administration Building located at 113 West Mountain Street, Fayetteville, Arkansas.

PRESENT: Mayor Hanna, Aldermen Austin, Davis, Trumbo, Daniel, Santos, Young, City Attorney Jerry Rose, City Clerk Heather Woodruff, Staff, Audience, and Press.

ABSENT: Aldermen Reynolds and Russell.

TRACT #44

A resolution authorizing the Mayor to sign a 20 foot easement across property designated at Tract #44 containing approximately 3,800 square feet for 16-inch high pressure gas line for the Arkansas Western Gas Company. This tract is located on Hwy 265, which is the physical location of the Fayetteville Fire Station No. 5.

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

RESOLUTION 103-00 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

Meeting adjourned at 5:32p.m.

FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

TENTATIVE AGENDA CITY COUNCIL AUGUST 15, 2000

A meeting of the Fayetteville City Council will be held on August 15, 2000 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:** Approval of the minutes from the July 18, July 25, and August 1, 2000 meetings.
2. **SKATE PARK:** A resolution approving a contract with Purkiss-Rose-Rsi for the design and construction supervision of a Skate Park. *Page 4 A:15*

B. OLD BUSINESS

C. NEW BUSINESS

1. **ARKANSAS RESEARCH AND TECHNOLOGY PARK:** An ordinance approving a bid wavier and an agreement (Amendment No. 1) to a previous contract for additional professional services with EGIS Consulting Inc. regarding the USCOE 404 permit for the Arkansas Research and Technology Park. The total contract amount is \$164,050.00.

2. **COMBS PARK:** A ordinance approving a bid wavier for a contract with Eastin Outdoors, Inc. to design/build a trail approximately 4200 ft. in length, in Combs Park as an access to the West Fork of the White River and to provide trail head, picnic areas, informational signs, tail benches, an observation terrace and other site furnishings. *forwarded to trails committee.*

3. **WINGS AIR, INC:** A resolution approving a lease agreement with Wings Air, Inc. for an above ground facility which they will located south of the terminal building ramp. This will allow self-service fueling by the pilot using a credit card. Annual compensation will be \$384.00 for the ground area with three three-year renewal options. Flowage fees will be remitted to the City as set forth in Section 91.16 of the Code of Fayetteville. *(NEED PACKET) FOR FINAL AGENDA.*

4. **BEKKA DEVELOPMENT:** Consideration of a claim by Bekka Development for legal expenses in conjunction with Town Center. A claim for parking rental revenue was approved at the June 20, 2000 meeting of the Fayetteville City Council. If the claim is approved, approval of a budget adjustment to fund the approved claim is also requested.
5. **FULTON PARKING LEASE:** A resolution approving a lease agreement with Fulton Enterprises, Inc. d/b/a Town and Country Shop, located at 9 South Block Street for the lease of four parking spaces.

Memorandum from agenda

6. ~~**GREENWOOD ASSOCIATES:** A resolution approving a lease agreement with Greenwood Associates, Inc. located at 25 East Meadow Street for the lease of nineteen parking spaces in the Fayetteville Municipal Parking Deck.~~

7. **DAVID AND CATHY, INC.:** A resolution approving a lease agreement with David and Cathy, Inc. located at 21 S. Block Street for the lease of two parking spaces.

8. ^{*OR Resolution*} **AD 00-24:** An ordinance approving Administrative Item AD 00-24.00 submitted by Jay Snider on behalf of Kappa Sigma Fraternity to change the name of West William Street behind the Kappa Sigma house (between University Ave. and the alley to the west) Whiteside Street in honor of Charlie B. Whiteside III. (A)

[Signature]

8. **SANTOS RESOLUTION.** - CYRUS YOUNG.
 need - memo from crafts hall.
 - getting started.

10. credit cards

Need complete packet for final agenda

11. sister city report - informational report.

*report on S.C. Gatorade program
 - want trip to Santiago Dr. regarding*

August 8, 2000

**AGENDA SESSION
FOR THE
CITY COUNCIL MEETING
AUGUST 15, 2000**

NEW ITEMS:

1. **CRAFTON, TULL AND ASSOCIATES:** A resolution censuring the Board of Directors of Crafton, Tull, and Associates for the firing of Fayetteville Alderman Cyrus Young.

ADDITIONAL INFORMATION:

1. **ARKANSAS RESEARCH AND TECHNOLOGY:** Replace information for item C. 1., Arkansas Research and Technology, with the attached information.
2. **WINGS AIR, INC:** Replace information for item C.3., Wing Air, with the attached information.

Consent.

MARSHA TALLEY BELL AND
N. CHRISTOPHER BARNER
SHERRY P. BARTLEY
STEVE BAUMAN
R. T. BEARS, III
CHARLES R. CAMP
FREDERICK H. CAMPBELL
DOAK FOSTER
BYRON FREELAND
ALLAN GATES*
JOSEPH W. GELZING
DONALD R. HENRY
HERMAUN HESTER**
ERNEST G. LAWRENCE
EVERETTE L. MARTIN
LANCE R. MILLER
ARX MONROE, III*
MARSHALL S. NEY
DEBBY THETPORD NYE
ANNE S. PARKER
LYN P. PRUITT
CHRISTOPHER T. ROBERTS
JOHN S. SELLS
STANLEY D. SMITH
MARCELLA J. TAYLOR
MARY ELLEN TERRY
JEFFREY THOMAS*
NICHOLAS THOMPSON

LAW OFFICES
**MITCHELL, WILLIAMS,
SELIG, GATES & WOODYARD, P.L.L.C.**

425 WEST CAPITOL AVENUE, SUITE 1800
LITTLE ROCK, ARKANSAS 72201-3525
TELEPHONE 501-688-8800
FAX 501-688-8807

120 WEST CENTRAL AVENUE
POST OFFICE BOX 658
BENTONVILLE, ARKANSAS 72712-0658
TELEPHONE 501-273-0551
FAX 501-273-0527

(501) 688-8810

CRAIG WESTBROOK
RICHARD A. WILLIAMS, P.A.
WILLIAM M.L. WOODWARD, III, P.A.
WALTER G. WRIGHT, JR.
ELIZABETH ANDREOLI
JOHN H. BAKER
MICHELLE D. CARNEY
KALA R. DEAN
***JACK D. SHUNKFEST
HAROLD W. HANSEN
L. KYLE HEFFLEY
JOHN G. MOORE, JR.
TRAVIS J. MOWBODEY
*JENNIFER A. RÖNNEL
ALBERT J. THOMAS II
LEIGH ANNE YEAGAN

COUNSEL
ROBERT M. SUBANSKI II, P.A.
TIM E. HOWELL
S. ROBERT HAYES, JR.
*M. MALABOE MITCHELL
JEAN D. STOCKBURGER

*ALSO ADMITTED IN DISTRICT OF COLUMBIA
**ALSO ADMITTED IN THE U.S. DISTRICT
AND TRADEMARK OF P.E.S.
***ALSO ADMITTED IN CALIFORNIA
ALL ADMITTED IN ARKANSAS

August 7, 2000

Fayetteville City Council
Fayetteville, Arkansas 72701

Re: Crafton, Tull & Associates, Inc.

Dear Council Members:

We represent Crafton, Tull & Associates, Inc., ("Crafton Tull"). I am in receipt of a proposed Resolution to censure the Board of Directors of Crafton Tull for terminating Alderman Cyrus Young. It is my understanding that this Resolution will be considered at the agenda meeting on Tuesday, August 8, 2000, and then perhaps voted on at the next regular meeting on Thursday. Crafton Tull has a long, very professional working relationship with Fayetteville City Government. It is with deep regret that Crafton Tull is being forced to respond to the proposed Resolution which interjects the City of Fayetteville into a personnel matter in a private business.

The proposed Resolution is illegal on its face and violates my client's Constitutional rights and at least one federal statute. In fact, I am of the opinion that the Resolution is so clearly illegal that the individual Council members may forfeit their immunity from personal liability by implementing the Resolution.

Crafton Tull does not want to get into a battle with the Fayetteville City Council. However, if the Resolution is implemented, Crafton Tull will take whatever action is necessary to protect its interest.

**MITCHELL, WILLIAMS,
SELIG, GATES & WOODYARD, P.L.L.C.**

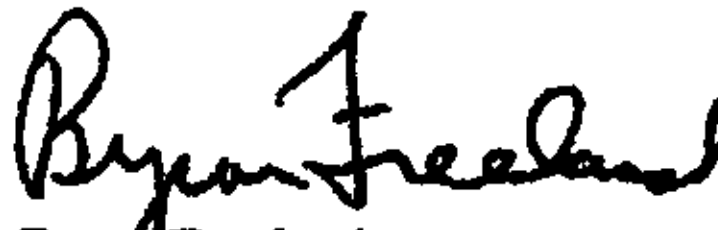
Fayetteville City Council
August 7, 2000
Page 2

Crafton Tull has at all times acted in good faith and in accordance with the law with respect to Mr. Young, and any issues regarding Mr. Young's employment should be resolved between Crafton Tull and Mr. Young. We request that the City Council not consider the proposed Resolution and this matter be resolved by the respective parties under the law.

Sincerely,

**MITCHELL, WILLIAMS, SELIG,
GATES & WOODYARD, P.L.L.C.**

by


Byron Freeland

BF/bh

cc: Mr. Jerry Rose, City Attorney
Via Telefax (501) 575-8315

Fayetteville

CHAMBER OF COMMERCE

August 14, 2000

Dear Alderman Young:

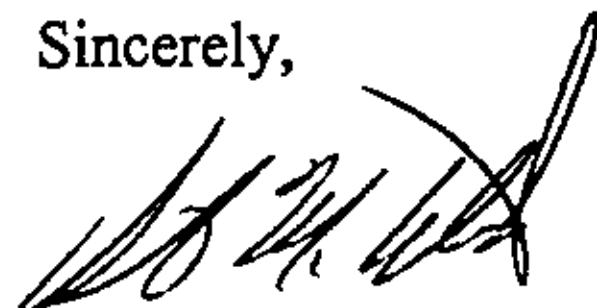
On behalf of the 1,000 members of the Fayetteville Chamber of Commerce, we feel compelled to take a strong position opposing the proposed black listing of Crafton, Tull and Associates as proposed by Alderman Santos.

The city is entering into a personnel issue of a private company, an area the city should not be involved and has no business. The issue of Alderman Young and Crafton, Tull and Associates are between the employee and employer and is not an issue the city of Fayetteville has a vested interest.

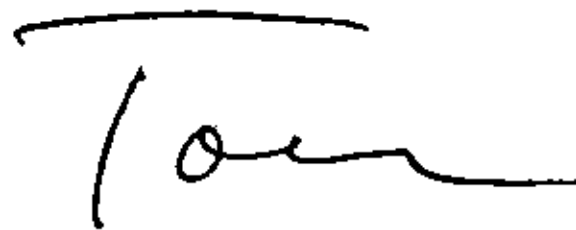
The challenges Fayetteville are facing are never ending, and the council needs very much to be focused on those challenges. The Chamber stands firm in the opinion that black listing of Crafton, Tull and Associates, or any firm, is not in the best interest of the city of Fayetteville, the citizens or the community as a whole.

The Chamber opposes the black list, censuring or any form of city involvement with the personnel issues of Crafton, Tull and Associates, or any other business.

Sincerely,



Steven M. Ward
President/CEO



Tom Suchecki
Chairman of the Board



FAYETTEVILLE CITY COUNCIL MEETING – AUGUST 15, 2000

I am Andrea Radwell, and I am here representing myself as a citizen of Fayetteville, as well as others who have expressed an interest in the preservation of the Wilson Springs wetlands. This includes the American Fisheries Society Student Subchapter, the Department of Biological Sciences including my advisor, Dr. Arthur Brown, and the Cooperative Fish and Wildlife Research Unit at the University, as well as individuals who have communicated their interest to me.

My comments tonight are intended to provide information to the City Council that may be helpful in making decisions regarding the development of the Arkansas Research and Technology Park. I would contend that it is in everyone's best interest that informed decisions be made. There are 2 issues that I would like to bring to the attention of the City Council. First, there has been considerable attention given to the Arkansas darter, a fish species found in Wilson Springs and Clabber Creek. As recently as last week, questions arose regarding the status of the species. I had thought the issue was clear, but recent questions suggest that may not be the case.

The Arkansas darter is a candidate species for endangered status. Because it was listed as a candidate late last year, inquiries early this year did not show the fish as a candidate. In fact, the Biology Department at the University was aware of its listing before the Corps of Engineers.

Communication with the US Fish and Wildlife Service confirmed that it is listed as a candidate species. The Fish and Wildlife Service has explained to me that their research on the fish is complete, and they are ready to list it as an endangered species. Since certain specific efforts are required once the species is listed, they can only list a limited number of species at any given time. Because the species may be listed at any time, they have suggested that it would be in the City's best interest to proceed as though it is fully listed. The Corps of Engineers concurs with this recommendation. It was my understanding that the City was aware of this; however, because of recent questions posed to me, I felt it best to go on record on the matter. If anyone needs verification or further clarification on the matter, the Fish and Wildlife Service in Little Rock or the Corps of Engineers can provide that. I would also like to point out that while the darter has received considerable attention, the Wilson Springs wetland is a very high quality wetland – we have identified over 300 species of living things there, and it should be kept in mind that our objective is the preservation of the wetland as a whole.

The other issue that is relevant to decisions regarding the development of the Arkansas Research and Technology Park is the proposed sewer line that is shown in preliminary plans along the eastern border of the Park. A 404 permit is required for each section of the line that crosses a stream or wetland. I talked with Ken Lyon at the Corps of Engineers last week posing the question of how this would be handled since the line is in area that

already requires a permit, namely the whole Arkansas Research and Technology Park. He said only one 404 permit will be required – but it needs to address how the sewer line will be designed to minimize impacts on Clabber Creek. It is a large line with a 100 foot easement. The Fish and Wildlife Service has expressed their concerns about the impact of the line because it crosses Clabber Creek near its confluence with Wilson Springs. The design of the line and considerations for protecting the stream during construction will need to meet the approval of the Corps and Fish and Wildlife before the 404 permit will be issued. In other words, a final plan to be submitted to the Corps needs to address this issue carefully.

Earlier this year, our concerns about the extent of the development planned for the Arkansas Research and Technology Park were presented to the Corps of Engineers during the comment period that was provided, and I will not reiterate those concerns at this time. My intent tonight was to inform you regarding the status of the Arkansas darter and the plan to include a sewer line in the mitigated area of the Park. Informed decisions are required to arrive at a plan that is acceptable to all interested parties.

**City Clerk's Office
Work Order**

Date: 8/7/00

Name John Masure Dept/Div. Adm

Description of Item 19 parking spaces for 25 E
Meadows St / Municipal Parking Deck

To be Done _____

Due date (if any) _____

Indexed _____ Copies sent to _____

of Originals returned to Originator: _____

Completed by: _____ Date _____

For Office Use Only

When brought to Clerk's Office, Packet included:

Number of Pages 12 Change Order _____

Staff Review Form 12 Purchase Req. _____ Ch. Req. _____

Budget Adjustment Form _____ Information Memo _____

Contracts (signed) _____ (Unsigned) _____ (How many) _____

Other Information: _____

agenda 8/15/00

STAFF REVIEW FORM

X AGENDA REQUEST
 _____ CONTRACT REVIEW
 _____ GRANT REVIEW

For the Fayetteville City Council meeting of August 15, 2000

FROM:

John Maguire Administration
 Name Division Department

ACTION REQUIRED: Approve attached lease for (19) parking spaces as set forth on Exhibit (A) attached hereto, located at 25 East Meadow St., in the Fayetteville Municipal Parking Deck, to M.A. Greenwood Associates, Inc..

COST TO CITY:

<u>N/A</u>		
Cost of this Request	Category/Project Budget	Category/Project Name
Account Number	Funds Used To Date	Program Name
Project Number	Remaining Balance	<u>Parking</u> Fund

BUDGET REVIEW: _____ Budgeted Item _____ Budget Adjustment Attached

Budget Coordinator

Administrative Services Director

CONTRACT/GRANT/LEASE REVIEW:

GRANTING AGENCY: _____

<u>Accounting Manager</u>	<u>8-2-00</u> Date	<u>ADA Coordinator</u>	<u>Date</u>
<u>City Attorney</u>	<u>Date</u>	<u>Internal Auditor</u>	<u>8/3/00</u> Date
<u>Purchasing Officer</u>	<u>Date</u>	<u>Grant Officer</u>	<u>Date</u>

STAFF RECOMMENDATION:

Division Head

Date

Cross Reference

Department Director

Date

New Item: **Yes No**

Admin. Svcs Director

Date

Prev Ord/Res #: _____

Mayor

Date

Orig Contract Date: _____

Description _____ Meeting Date _____

Comments:

Budget Coordinator

Reference Comments:

Accounting Manager

Reference Comments:

City Attorney

Reference Comments:

Purchasing Officer

Reference Comments:

ADA Coordinator

Reference Comments:

Internal Auditor

Reference Comments:

*Looks like a page is missing
in the lease agreement*

Grants Offcier

Reference Comments:

LEASE

This Agreement, made and entered into this 1st day of September, 2000, by and between the City of Fayetteville, Arkansas, a Municipal Corporation, 113 W. Mountain, Fayetteville, Arkansas, hereinafter called "Lessor", and M.A. Greenwood Associates, Inc., P.O. Box 4278, Fayetteville, AR 72701, hereinafter called "Lessee", Witnesseth:

1. Leased Premises. For and in consideration of the rents, covenants and agreements herein entered into and agreed upon by the Lessee as obligations to the Lessor, the Lessor lets, leases and demises unto Lessee, subject to the terms and conditions contained herein, the following described property situated in Washington County, Arkansas:

Nineteen (19) parking spaces, as set forth on Exhibit "A" attached hereto, located in the Fayetteville Municipal Parking Deck located at 25 East Meadow St., Fayetteville, AR 72701.

To have and to hold said premises unto the said Lessee for and during the term herein stated, subject to the covenants, terms, conditions and liens herein contained.

2. Term. This lease shall commence on September 1, 2000, and shall extend for a term of 1 year, ending at midnight on August 31, 2001. The Lessee shall have the option to renew this lease for 4 additional 1 year terms. The option may be exercised by providing written notice to Lessor at least 30 days prior to expiration of this lease.

3. Rent. Lessee agrees to pay to Lessor as rental for the first year of this lease the sum of \$35 per space per month. Beginning January 1, 2001, the rental shall be in the sum of \$45 per space per month. Thereafter, the rent shall be adjusted each year to an amount charged for comparable lease spaces in this lot. Each monthly payment is due and payable on or before the fifteen of each month. A late fee shall be imposed, at the highest rate allowable by law, on all payments which are not received by Lessor within 5 business days from the due date.

4. Use. Lessee agrees to use the lease premises only for the purpose of parking vans, autos, SUVs, motorcycles, or other automotive equipment that meets the height limitations on the middle or second level of the Municipal Parking Deck. However, it is understood that the City will not provide enforcement for restrictive parking.

5. Lessor Improvements. Lessee may make the following improvements: Install private parking signage in front of each space. Design for all improvements shall be approved by the City. Any such improvement shall be solely at the Lessee's expense. Upon termination or expiration of this lease, such improvements shall be considered affixed to the premises and shall remain unless Lessor requires removal.

6. Assignment. Lessee shall not assign this lease or sublet the leased premises without prior written consent of the Lessor. Consent for any assignment or subletting shall only be considered at the same rates as established in Paragraph 3. above. Any such assignment or subletting shall in no way relieve Lessee from liability for the obligation imposed by this lease.

7. Holdover. Lessee hereby agrees that upon the termination of this lease by expiration or by earlier termination for any reason whatsoever, Lessee will peaceably deliver possession of the leased premises to Lessor. In the event Lessee shall be permitted by Lessor to hold over after the expiration or termination of this lease, said holding over, in the absence of any written agreement to the contrary, shall be construed as a tenancy from calendar month to calendar month at a monthly rental equal to the rental for the last month paid under this lease, or as may be amended on the anniversary of the term set forth in Paragraph 2. above. A month-to-month tenancy arising by Lessee's holding over under this paragraph may be terminated by written notice from either party to the other party on or before the day on which any monthly rent is due with termination not becoming effective until the day on which the next following monthly rental would have otherwise become due. In the event it should become necessary for Lessor to institute any action at law to recover possession at the time of termination, whenever and however termination may occur, Lessee agrees that it will pay all costs and expenses of such action, including reasonable attorneys' fees.

8. Termination. Lessor hereby reserves the right to terminate this Lease at anytime during the term of this Lease if it is determined by the Fayetteville City Council that the leased premises is needed for a valid public purpose. If Lessor terminates the lease prior to expiration of the term in Paragraph 2., Lessor shall compensate Lessee on a prorated basis of the actual cost to make improvements to the premises.

9. Compliance with Laws. Lessee agrees not to violate any law, ordinance, rule or regulation of any governmental authority having jurisdiction of the leased premises.

10. Non-Waiver. It is agreed that the failure of Lessor to invoke any of the available remedies under this lease or under law in the event of one or more breaches or defaults by Lessee under the lease shall not be construed as a waiver of such provisions and conditions and shall not prevent Lessor from invoking such remedies in the event of any future breach or default.

11. Insurance. Lessee shall be solely responsible for maintaining insurance on any improvements made to the leased premises, as well as for general public liability insurance.

12. Succession. This lease agreement shall inure to the benefit of and be binding upon the parties hereto and their respective heirs, successors and assigns.

13. Severability. Each paragraph of this lease agreement is severable from all other paragraphs. In the event any court of competent jurisdiction determines that any paragraph or subparagraph is invalid or unenforceable for any reason, all remaining paragraphs and subparagraphs will remain in full force and effect.

14. Interpretation. This lease agreement shall be interpreted according to and enforced under the laws of the State of Arkansas.

15. Entire Agreement. This lease agreement contains the entire agreement of both parties hereto, and no other oral or written agreement shall be binding on the parties hereto. This lease agreement supersedes all prior agreements, contracts and understandings of any kind between the parties relating to the subject matter hereof. This agreement may be executed in all or more

hereto, and no other oral or written agreement shall be binding on the parties hereto. This lease agreement supersedes all prior agreements, contracts and understandings of any kind between the parties relating to the subject matter hereof. This agreement may be executed in all or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals on this ____ day of _____, _____.

LESSOR
City of Fayetteville, Arkansas

By: _____
Fred Hanna, Mayor

ATTEST:

By: _____
Heather Woodruff, City Clerk

LESSEE

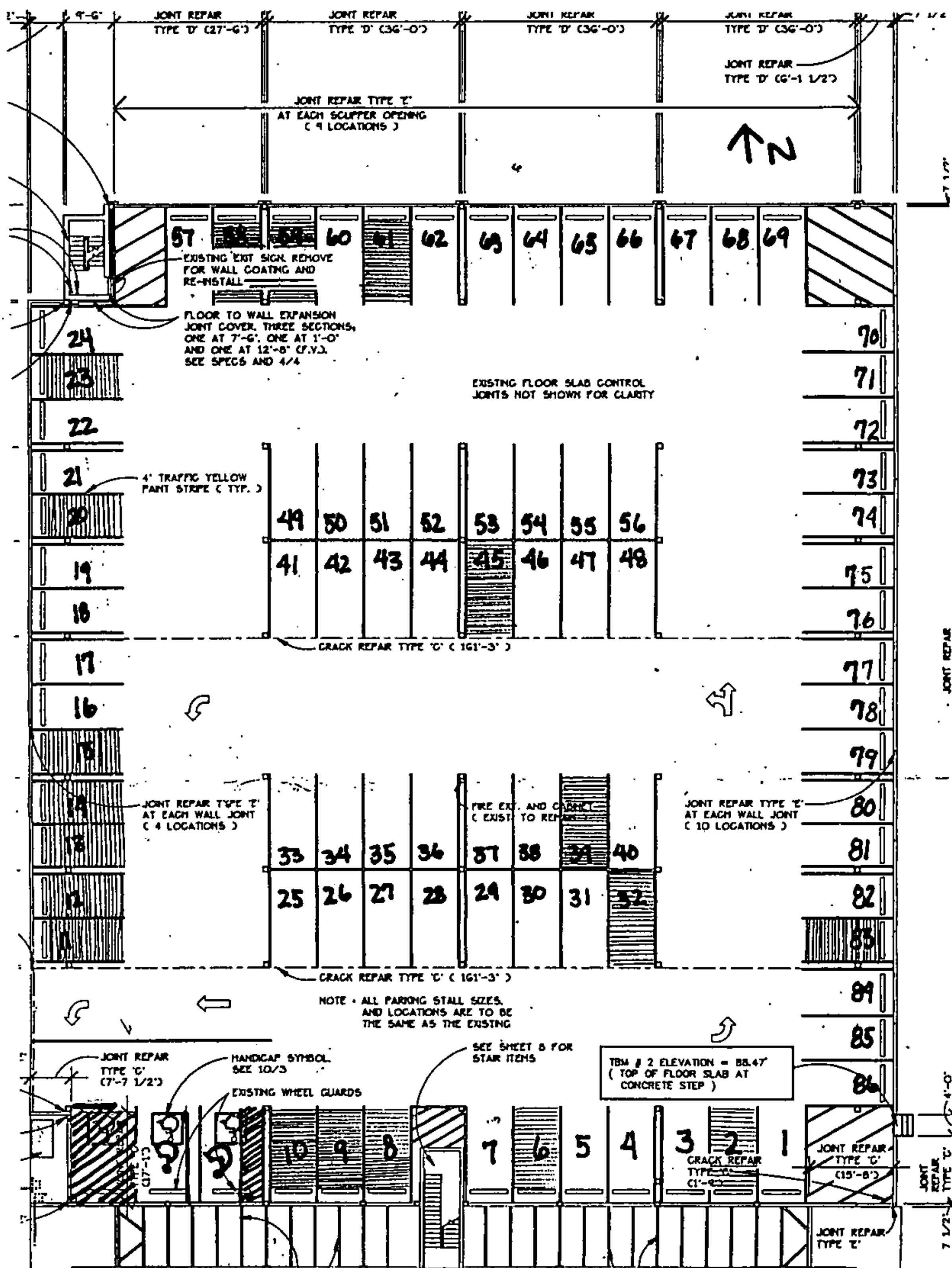
By: _____

Title: _____

ATTEST:

By: _____

Title: _____



STAFF REVIEW FORM

X AGENDA REQUEST
 _____ CONTRACT REVIEW
 _____ GRANT REVIEW

For the Fayetteville City Council meeting of August 15, 2000

FROM:

John Maquire Administration
 Name Division Department

ACTION REQUIRED: Approve attached lease for (19) parking spaces as set forth on Exhibit (A) attached hereto, located at 25 East Meadow St., in the Fayetteville Municipal Parking Deck, to M.A. Greenwood Associates, Inc..

COST TO CITY:

<u>N/A</u>		
Cost of this Request	Category/Project Budget	Category/Project Name
Account Number	Funds Used To Date	Program Name
Project Number	Remaining Balance	<u>Parking</u> Fund

BUDGET REVIEW: _____ Budgeted Item _____ Budget Adjustment Attached

 Budget Coordinator Administrative Services Director

CONTRACT/GRANT/LEASE REVIEW:

GRANTING AGENCY: _____

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

STAFF RECOMMENDATION:

Division Head	Date	<u>Cross Reference</u>
Department Director	Date	New Item: Yes No
Admin. Svcs Director	Date	Prev Ord/Res #: _____
Mayor	Date	Orig Contract Date: _____

Description _____ Meeting Date _____

Comments:

Budget Coordinator

Reference Comments:

Accounting Manager

Reference Comments:

City Attorney

Reference Comments:

Purchasing Officer

Reference Comments:

ADA Coordinator

Reference Comments:

Internal Auditor

Reference Comments:

Grants Offcier

Reference Comments:

LEASE

This Agreement, made and entered into this 1st day of September, 2000, by and between the City of Fayetteville, Arkansas, a Municipal Corporation, 113 W. Mountain, Fayetteville, Arkansas, hereinafter called "Lessor", and M.A. Greenwood Associates, Inc., P.O. Box 4278, Fayetteville, AR 72701, hereinafter called "Lessee", Witnesseth:

1. Leased Premises. For and in consideration of the rents, covenants and agreements herein entered into and agreed upon by the Lessee as obligations to the Lessor, the Lessor lets, leases and demises unto Lessee, subject to the terms and conditions contained herein, the following described property situated in Washington County, Arkansas:

Nineteen (19) parking spaces, as set forth on Exhibit "A" attached hereto, located in the Fayetteville Municipal Parking Deck located at 25 East Meadow St., Fayetteville, AR 72701.

To have and to hold said premises unto the said Lessee for and during the term herein stated, subject to the covenants, terms, conditions and liens herein contained.

2. Term. This lease shall commence on September 1, 2000, and shall extend for a term of 1 year, ending at midnight on August 31, 2001. The Lessee shall have the option to renew this lease for 4 additional 1 year terms. The option may be exercised by providing written notice to Lessor at least 30 days prior to expiration of this lease.

3. Rent. Lessee agrees to pay to Lessor as rental for the first year of this lease the sum of \$35 per space per month. Beginning January 1, 2001, the rental shall be in the sum of \$45 per space per month. Thereafter, the rent shall be adjusted each year to an amount charged for comparable lease spaces in this lot. Each monthly payment is due and payable on or before the fifteen of each month. A late fee shall be imposed, at the highest rate allowable by law, on all payments which are not received by Lessor within 5 business days from the due date.

4. Use. Lessee agrees to use the lease premises only for the purpose of parking vans, autos, SUVs, motorcycles, or other automotive equipment that meets the height limitations on the middle or second level of the Municipal Parking Deck. However, it is understood that the City will not provide enforcement for restrictive parking.

5. Lessor Improvements. Lessee may make the following improvements: Install private parking signage in front of each space. Design for all improvements shall be approved by the City. Any such improvement shall be solely at the Lessee's expense. Upon termination or expiration of this lease, such improvements shall be considered affixed to the premises and shall remain unless Lessor requires removal.

6. Assignment. Lessee shall not assign this lease or sublet the leased premises without prior written consent of the Lessor. Consent for any assignment or subletting shall only be considered at the same rates as established in Paragraph 3. above. Any such assignment or subletting shall in no way relieve Lessee from liability for the obligation imposed by this lease.

hereto, and no other oral or written agreement shall be binding on the parties hereto. This lease agreement supersedes all prior agreements, contracts and understandings of any kind between the parties relating to the subject matter hereof. This agreement may be executed in all or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals on this ____ day of _____, _____.

LESSOR
City of Fayetteville, Arkansas

By: _____
Fred Hanna, Mayor

ATTEST:

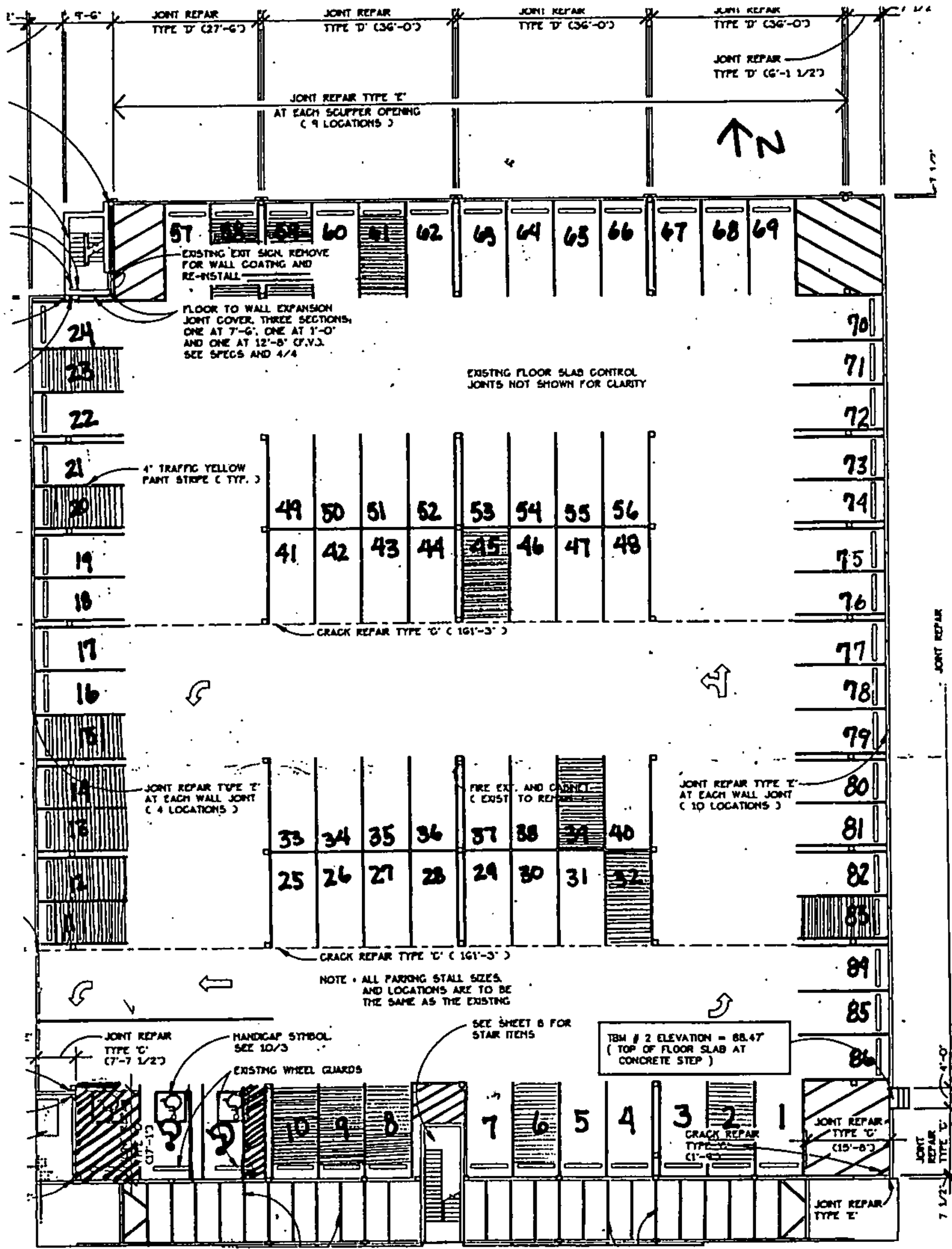
By: _____
Heather Woodruff, City Clerk

LESSEE

By: _____
Title: _____

ATTEST:

By: _____
Title: _____



City Clerk's Office
Work Order

Date: 8/1/00

Name John Maguire Dept/Div. Adm.

Description of Item Services and Charge

faulock

To be Done Claim by Bekka Development for
Legal Expenses.

Due date (if any) _____

Indexed _____ Copies sent to _____

of Originals returned to Originator: _____

Completed by: _____ Date _____

For Office Use Only

When brought to Clerk's Office, Packet included:
Number of Pages 11 Change Order _____
Staff Review Form ✓ Purchase Req. _____ Ch. Req. _____
Budget Adjustment Form _____ Information Memo _____
Contracts (signed) ✓ (Unsigned) _____ (How many) _____
Other Information: _____

Agenda - 8/15/00

<u>X</u>	AGENDA REQUEST
	CONTRACT REVIEW
	GRANT REVIEW

FROM:

ACTION REQUIRED: Consideration of a claim by Bekka Development for legal expenses in conjunction with the Town Center. A claim for parking rental revenue was approved at the June 20, 2000 meeting of the Fayetteville City Council. If the claim is approved, approval of a budget adjustment to fund the approved claim is also requested.

<u>\$8,545.35</u>	<u>\$8,545.35</u>	<u>Services and Charge</u>
Cost of this Request	Category/Project Budget	Category/Project Name
<u>5600-9600-5314-01</u>		<u>Town Center</u>
Account Number	Funds Used To Date	Program Name
<u> </u>	<u> </u>	<u> </u>
Project Number	Remaining Balance	Fund

Budget Coordinator

Administrative Services Director

GRANTING AGENCY: _____

Accounting Manager _____ Date _____

ADA Coordinator

Date _____

City Attorney _____ Date _____

Internal Auditor

Date _____

Purchasing Officer	Date
--------------------	------

Grant Officer

Date _____

STAFF RECOMMENDATION:

Division Head

Date _____

Cross Reference

Department Director

Date/

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

Admin. Svcs Director/

Date

Prev Ord/Res #:

Mayor _____ Date _____

Orig Contract Date:

Description _____ Meeting Date _____

Comments:

Budget Coordinator

Reference Comments:

Accounting Manager

Reference Comments:

City Attorney

Reference Comments:

Purchasing Officer

Reference Comments:

ADA Coordinator

Reference Comments:

Internal Auditor

Reference Comments:

Grants Officer

Reference Comments:

BDC

BEKKA DEVELOPMENT

RECEIVED
JUL 28 2000
CITY OF FAYETTEVILLE
MAYOR'S OFFICE

EXECUTIVE SQUARE, ONE WEST MOUNTAIN, FAYETTEVILLE, AR 72701
(501) 442-7672 FAX (501) 442-4580

June 27, 2000

City of Fayetteville
Attn: Hon. Fred Hanna, Mayor
113 W. Mountain
Fayetteville, AR 72701

Dear Mayor Hanna:

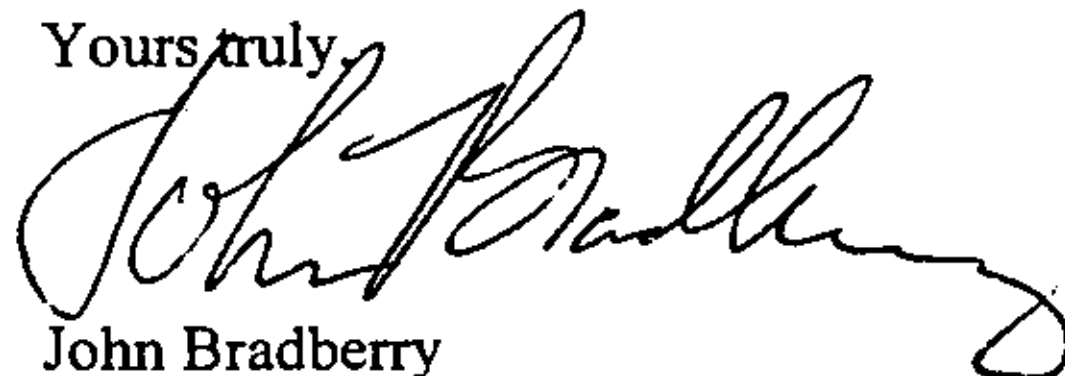
In accordance with our lease agreement and further to my letter of May 25, 2000, we are submitting an updated invoice for legal fees related to the leased premises. As you may have heard, Judge Gunn denied our motion for the plaintiff in the Town Center Lawsuit to pay defendant legal fees.

Please remit promptly to:

Bekka Development Company
One West Mountain
Fayetteville, AR 72701

Thank you for your attention to this matter.

Yours truly,



John Bradberry
Vice President-Bekka Development Co.

cc: Mr. E.G. Bradberry, President Bekka Development Co.
Mrs. Dianne Boyd, Secretary Bekka Development Co.

BEKKA DEVELOPMENT CO.

**One West Mountain Street
Fayetteville, AR 72701**

Invoice

DATE	INVOICE NO.
7/27/2000	2561

BILL TO
City of Fayetteville 113 W. Mountain Fayetteville, AR 72701

P.O. NO.	TERMS	MONTH
	Net on receipt	

DESCRIPTION	AMOUNT
Legal Costs-Davis,Cox & Wright 8/99-5/00	8,545.35
Total	\$8,545.35

Davis, Cox & Wright PLC

Customer Balance Detail

<u>Type</u>	<u>Date</u>	<u>Num</u>	<u>Account</u>	<u>Class</u>	<u>Amount</u>
Bekka Corp.					
Williams, et al v city of Fayettev & Bekka					
Invoice	8/31/99	1474	2021-A/R	WJB	811.50
Invoice	9/30/99	1655	2021-A/R	WJB	836.00
Invoice	10/26/99	1813	2021-A/R	WJB	1,012.40
Invoice	11/29/99	1998	2021-A/R	WJB	480.00
Invoice	12/30/99	2212	2021-A/R	WJB	2,670.25
Invoice	1/31/00	2361	2021-A/R	WJB	1,220.20
Invoice	2/29/00	2525	2021-A/R	WJB	450.00
Invoice	3/30/00	2722	2021-A/R	WJB	345.00
Invoice	4/27/00	2892	2021-A/R	WJB	585.00
Invoice	5/31/00				<u>135.00</u>
					<u>\$8,545.35</u>

LEASE AGREEMENT

Agreement made this 22nd day of October, 1998, by and between BEKKA Development Company, an Arkansas Corporation, with offices at One West Mountain Street, Fayetteville, Arkansas 72701, (hereinafter called "Lessor"), and the City of Fayetteville, Arkansas, a municipal corporation, with offices at 113 West Mountain Street, Fayetteville, Arkansas 72701, (hereinafter called "Lessee").

WHEREAS, the City of Fayetteville desires to revitalize its Downtown by building a Town Center with a Plaza connected to the Fayetteville Square; and,

WHEREAS, BEKKA Development Company is also interested in revitalizing Downtown Fayetteville; and,

WHEREAS, BEKKA Development Company recognizes that its property is much more valuable than indicated by the terms of this Lease Agreement; nevertheless, is willing to lease the hereinafter described property, under the terms and conditions specified herein; and,

WHEREAS, the plans contemplate the conversion of an entire tract of Lessor's property to use as an entrance plaza to the Town Center, which may materially and adversely impact Lessor's adjacent developed lots to the east and west of the intended plaza, and will preclude integrated development of Lessor's combined tracts fronting the Fayetteville Square; and,

WHEREAS, while the City could exercise its power of eminent domain to acquire Lessor's property, both parties wish to avoid the uncertainties and potential expense of condemnation proceedings, as well as the threat such proceedings could hold for either the project itself or the value to Lessor of this and its adjacent lots.

NOW, THEREFORE, IN CONSIDERATION of the rents, promises, recitals and mutual covenants contained herein, the Lessor and Lessee hereby agree as follows:

1. **LEASED PREMISES.** Lessor hereby lets, leases and demises unto Lessee, without representations as to physical condition or suitability, subject to the terms and conditions contained herein, the following described property situated in Washington County, Arkansas:

Lots Two (2) and Three (3) in Block Thirty (30) in the Original Plat of the Town (now City) of Fayetteville, Arkansas, and part of Lot 4 West of Lot 3 to the existing walkway edge, a distance of approximately 15'.

To have and hold said premises unto the said Lessee for and during the term herein stated, subject to the covenants, terms and conditions contained herein.

2. **TERM.** This lease shall commence upon the effective date hereof and shall extend for a term of twenty-five (25) years. Lessee shall have the option to extend said lease in five (5) year increments, on an Evergreen basis, rent to continue as set forth in paragraph 7, if Lessee is not in default. It is the specific intent of the parties that this lease be one of perpetual renewal at the option of the Lessee so long as Lessee is not in default.

AS
[Signature]

3. **DESIGN.** Lessor agrees to allow Lessee to construct a Town Plaza in substantially the same design as shown in the architectural drawing attached hereto as Exhibit "A". Before and after initial construction, any substantial changes to the design as shown in Exhibit "A", must be approved by the Lessor in writing prior to construction. Lessor shall not unreasonably withhold such approval.

4. **ASSIGNMENT.** Lessee shall not assign this lease or sublet the leased premises or any part thereof without prior written consent of the Lessor.

5. **POSSESSION.** Lessee may take possession of the leased premises when Lessor has given final approval of Lessee's plans for the improvements to be made to the Leased Premises as set forth in paragraph 3 above and, when a construction contract for the Town Center Project, which will be located south of the Leased Premises, has been entered into.

6. **COSTS, UTILITIES AND LIABILITY.** All costs, utilities, and liability of and for the plaza and connecting areas, steps, and tie ins shall be borne by the Lessee.

7. **RENT.** As partial consideration, in addition to the terms, conditions and covenants hereof, Lessee agrees to pay Lessor the sum of one hundred twenty thousand dollars (\$120,000.00) upon possession and one dollar (\$1.00) per year during the term or any extended terms, hereof.

8. **TAXES.** Lessee shall pay any and all ad valorem taxes, fees and assessments levied against said premises during the term of this lease; including, but not limited to, real estate taxes, personal property taxes, sales taxes and off-street parking district taxes.

9. **PARKING.** Lessee shall at no cost to the Lessor provide and maintain a paved area adjacent to the Executive Square Office Building, underneath the Town Plaza, sufficient to accommodate 32 parking spaces. Said area shall be for the exclusive use of the Lessor and/or Lessor's Tenants and guests; however, when not in use by Lessor, said spaces may be utilized by the Lessee for public purposes. Lessee shall provide and maintain reasonable access which is satisfactory to the Lessor from the parking area provided to Lessor hereunder, to the premises to the east and west of the Leased Premises; and shall provide and maintain lighting, ventilation and upkeep of said parking area in a manner which is satisfactory to Lessor.

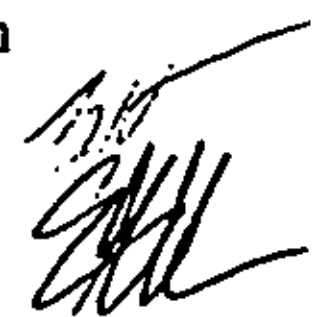
10. **USE.** Lessee shall use the Leased Premises for the purpose of building and operating a Town Plaza, which shall be the entrance from the south side of the Fayetteville Square to the Town Center, and for no other purpose or purposes without the written consent of Lessor.

11. **DEFAULT.** Lessor may declare a default by Lessee upon the following:

A. Lessee failing to pay any installment of rent and the failure continues for a period of 60 days after written notice to the Lessee.

B. Failure to comply with any other terms of this Lease Agreement, and not curing such failure within 60 days after written notice to the Lessee.

12. **REMEDIES.** Upon the occurrence of any default by the Lessee, which is not timely cured after written notice, Lessor may terminate this Lease Agreement and immediately enter upon



and take possession of the leased premises. Pursuit of said remedy shall not preclude pursuit of any other remedies herein provided, or provided by law. No waiver by Lessor or any violation or breach of any portion hereof shall be deemed or construed to constitute a waiver of any other violation or breach of the same or otherwise. Lessee shall pay any and all costs and expenses resulting from an event of default hereunder or incurred in the collection of any past due balances hereunder, including reasonable attorney fees, whether said attorney is in-house or not, and whether or not suit is brought.

13. CONTINUING OBLIGATIONS. Lessee shall bear all cost and expenses, directly or indirectly associated with the Leased Premises, including, but not limited to, any and all improvements, maintenance, up-keep, lighting, utilities, insurance, accidents, taxes, fees, assessments, cleaning, snow removal and trash removal, and shall defend, indemnify and hold Lessor harmless therefore. Lessee shall maintain the Leased Premises in a clean, attractive, healthful condition, and in accordance with all laws and ordinances. Lessee's obligations under this agreement shall continue and shall survive the expiration or termination hereof, until all obligations of the Lessee incurred hereunder have been met. Nothing herein is to be interpreted or intended as a waiver of the tort immunity granted Lessee under the law of the State of Arkansas.

14. MISCELLANEOUS PROVISIONS.

A. Lessee shall pay any and all costs and expenses associated with, directly or indirectly, the removing, relocating, replacing, providing, etc., any and all utilities, electrical service, heating and air-conditioning, water, sewer, steps, entrances, driveways, parking, etc., to or for the Leased Premises. Said removal, relocations, etc., shall be subject to Lessor's prior approval and shall be done with minimum disruption of services.

B. Lessee shall provide and maintain reasonable access from the Leased Premises (plaza and parking) to the premises east and west of the Leased Premises, to Lessor's satisfaction, including at least three (3) walkways from the plaza to the premises located to the west of the Leased Premises.

C. The rent provided in this lease shall not be used directly or indirectly in determining fair market value in any subsequent condemnation action regarding this property.

D. All risk and loss to the Leased Premises during the term or any extended terms hereof shall be borne by Lessee.

E. Upon termination of the lease, Lessee shall continue to provide Lessor reasonable ingress and egress to and from the Leased Premises across Lessee's property lying south of the Leased Premises. Said access is currently being afforded by a driveway/alley along the south edge of the Leased Premises from both East and Block Streets.

F. Lessee shall provide, at no cost to Lessor, during the term and any extended term hereof, reasonable space for trash/garbage disposal and pickup for use by Lessor and the occupants of the premises lying east and west of the Leased Premises.

15. SUCCESSION. This lease agreement shall inure to the benefit of and be binding upon the parties hereto and their respective heirs, successors and permitted assigns.

A handwritten signature in black ink, appearing to be "B. H. H.", is located in the bottom right corner of the page.

16. **SEVERABILITY.** Each provision of this lease agreement is severable from all other provisions. In the event any court of competent jurisdiction determines that any provision is invalid or unenforceable for any reason, all remaining provisions shall remain in full force and effect and shall be construed to best effectuate the intent of the parties.

17. **INTERPRETATION.** This Lease Agreement shall be deemed to have been made under and shall be governed by the laws of the State of Arkansas in all respects, including without limitation, matters of construction, validity, performance and venue. Venue of any legal actions shall be in Washington County, Arkansas and the parties specifically waive any and all other.

18. **AUTHORIZATION.** The persons executing this agreement covenant and represent that they are duly authorized and empowered to do so on behalf of the party they purport to represent.

19. **LIABILITY.** Lessor shall not be liable to Lessee or any other party, person, or entity for damage, injury or loss of any kind arising from or associated with the Leased Premises, directly or indirectly, and Lessee shall defend, indemnify and hold Lessor and its officers, agents, employees, directors, and shareholders harmless therefrom. The Lessee shall be liable for any and all damages from their construction, development, and use of the Leased Premises. Nothing herein is to be interpreted or intended as a waiver of the tort immunity granted Lessee under the Law of the State of Arkansas.

20. **TIME OF ESSENCE.** Time shall be of the essence in this Lease Agreement.

21. **ALL RIGHTS NOT SPECIFIED.** All rights not specifically granted under this Lease shall remain with the Lessor.

22. **ENTIRE AGREEMENT.** This Lease Agreement including Exhibit "A" contains the entire agreement of both parties hereto, and no other oral or written agreement shall be binding on the parties hereto. This Lease Agreement supersedes all prior agreements, contracts, and understanding of any kind between the parties relating to the subject matter hereof.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals on this 22nd day of October, 1998.

LESSOR:

BEKKA DEVELOPMENT CO.
An Arkansas Corporation

By: [Signature]

President

ATTEST:

By: [Signature]

Asst. Secretary

LESSEE:

CITY OF FAYETTEVILLE, ARKANSAS
A Municipal Corporation

By: [Signature]

Fred Hanna, Mayor

ATTEST:

By: [Signature]

Heather Woodruff, City Clerk

[Signature]



FAYETTEVILLE

LEGAL DEPARTMENT
CITY ATTORNEY DIVISION

JERRY E. ROSE, CITY ATTORNEY

LAGAYLE D. MCCARTY, ASST. CITY ATTORNEY

DEPARTMENTAL CORRESPONDENCE

To: Fred Hanna, Mayor
Fayetteville City Council

From: Jerry E. Rose, City Attorney *J.E.R.*

Date: June 9, 2000

Re: **Bekka claims for legal expenses and lost parking**

John Bradberry's letter dated May 25, 2000 asks for the City to pay attorney fees and lost parking revenue under the terms of Bekka's lease dated October 22, 1998 which is attached as part of the agenda packet. I thought these comments may be of some assistance to you in your decision.

1. Attorney fees: Since the filing of what is commonly referred to as the Town Center lawsuit in mid-1999, I have been asked by Bekka on a number of occasions as to what my position was on paying Bekka's attorney fees incurred as a result of their being named a party to the suit. I can recall two conversations with Dianne Boyd and one with Jack Butt. On every occasion I expressed my belief that the City was not legally obligated under the terms of the lease to pay Bekka's attorney fees, but that I thought that the City Council may well feel that in fairness they should pay some or all of those fees and I encouraged them to make a claim.

I do not believe that attorney fees for Bekka's defense of the Town Center suit are covered under the lease agreement. Bekka is accused in the suit of entering into an illegal contract with the City and the suit seeks to void Bekka's lease and requests Bekka refund the money paid under the terms of the lease. I don't think that fits under the lease provisions which are cited by Bekka because I don't believe the defense of the suit is directly or indirectly associated with the leased premises. Instead I believe it is associated with the money Bekka received for the lease which has no relationship whatever with the leased premises. For what it's worth, I readily concede that reasonable legal minds may differ. I also readily concede that Bekka's defense assisted the City in its position and that Jack Butt's able and highly competent legal skills were welcomed by all who supported the City's position. Accordingly, I would have no objections to the City resolving this matter by paying this claim. I just want you to know that I don't believe you are legally obligated to. Remember that this case is likely to be appealed and I assume more attorney fees may be incurred by Bekka as a result.

2. Lost Parking Revenues: I recall talking to Dianne Boyd and John Bradberry about the City providing alternate parking to Bekka without any additional clause in the lease. I also recall that we were not sure we could find such alternate parking and told Bekka that if they could find alternate parking that the City may compensate them for that cost. I have no memory of nor do I believe there was a discussion of any compensation that was to be made to Bekka under any circumstances for loss of parking revenue. Section 14A of the lease provides that the City pay for relocating and providing parking. We've done that by providing Bekka alternate parking. The lease does not say nor was it intended to say that if Bekka couldn't convince its tenants that they should pay for the use of the alternate parking that the City would compensate Bekka for a loss of revenue. Again, if you wish to settle this claim you're more than welcome to but I can't think of any legal obligation to do so on this one.

If I can provide anything further, just let me know.

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

Budget Year 2000	Department: General Government	Date Requested August 15, 2000	Adjustment #
	Division: Town Center Construction		
	Program: Town Center Construction		

Project or Item Requested: \$8,546 in the Legal Services Account of the Town Center Construction Fund.	Project or Item Deleted: None. To recognize \$8,546 in additional interest revenue.
--	---

Justification of this Increase: The budget is needed to fund a claim by Bekka Development for the reimbursement of legal expenses associated with the construction of the Town Center.	Justification of this Decrease: Sufficient cash and investments exist to fund the request.
--	--

Increase Expense (Decrease Revenue)

Account Name	Amount	Account Number				Project Number
Legal Services	8,546	5600	9600	5314	01	

Decrease Expense (Increase Revenue)

Account Name	Amount	Account Number				Project Number
Interest-CMT-A&P Transfer	8,546	5600	0960	6708	98	

Approval Signatures

Requested By 	Date 8-2-00
Budget Manager	Date
Department Director 	Date 8/14/00
Admin. Services Director	Date
Mayor 	Date 8/15/00
	Date

Budget Office Use Only

Type:	A	B	C	<u>(D)</u>	E
Date of Approval	_____				
Posted to General Ledger	_____				
Posted to Project Accounting	_____				
Entered in Category Log	_____				

STAFF REVIEW FORM

FAILED

☒ AGENDA REQUEST
☐ CONTRACT REVIEW
☐ GRANT REVIEW

For the Fayetteville City Council meeting of August 15, 2000

FROM:

John Maquire

Administration

Name John Maquire Division Administration Department Administration
ACTION REQUIRED: Consideration of a claim by Bekka Development for legal expenses in conjunction with the Town Center. A claim for parking rental revenue was approved at the June 20, 2000 meeting of the Fayetteville City Council. If the claim is approved, approval of a budget adjustment to fund the approved claim is also requested.

COST TO CITY:

<u>\$8,545.35</u>	<u>\$8,545.35</u>	<u>Services and Charge</u>
Cost of this Request	Category/Project Budget	Category/Project Name
<u>5600-9600-5314-01</u>		<u>Town Center</u>
Account Number	Funds Used To Date	Program Name
<u></u>	<u></u>	<u></u>
Project Number	Remaining Balance	Fund

BUDGET REVIEW: Budgeted Item x Budget Adjustment Attached

Budget Coordinator

Administrative Services Director

CONTRACT/GRANT/LEASE REVIEW:

GRANTING AGENCY:

<u> </u> Accounting Manager	<u> </u> Date	<u> </u> ADA Coordinator	<u> </u> Date
<u> </u> City Attorney	<u> </u> Date	<u> </u> Internal Auditor	<u> </u> Date
<u> </u> Purchasing Officer	<u> </u> Date	<u> </u> Grant Officer	<u> </u> Date

STAFF RECOMMENDATION:

Division Head

Date

Cross Reference

Department Director

Date

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

Admin. Svcs Director

Date

Prev Ord/Res #:

Mayor

Date

Orig Contract Date:

Description _____ Meeting Date _____

Comments:

Budget Coordinator

Reference Comments:

Accounting Manager

Reference Comments:

City Attorney

Reference Comments:

Purchasing Officer

Reference Comments:

ADA Coordinator

Reference Comments:

Internal Auditor

Reference Comments:

Grants Offcier

Reference Comments:

BDC

BEKKA DEVELOPMENT

EXECUTIVE SQUARE, ONE WEST MOUNTAIN, FAYETTEVILLE, AR 72701
(501) 442-7672 FAX (501) 442-4580

RECEIVED

JUL 28 2000

CITY OF FAYETTEVILLE
MAYOR'S OFFICE

June 27, 2000

City of Fayetteville
Attn: Hon. Fred Hanna, Mayor
113 W. Mountain
Fayetteville, AR 72701

Dear Mayor Hanna:

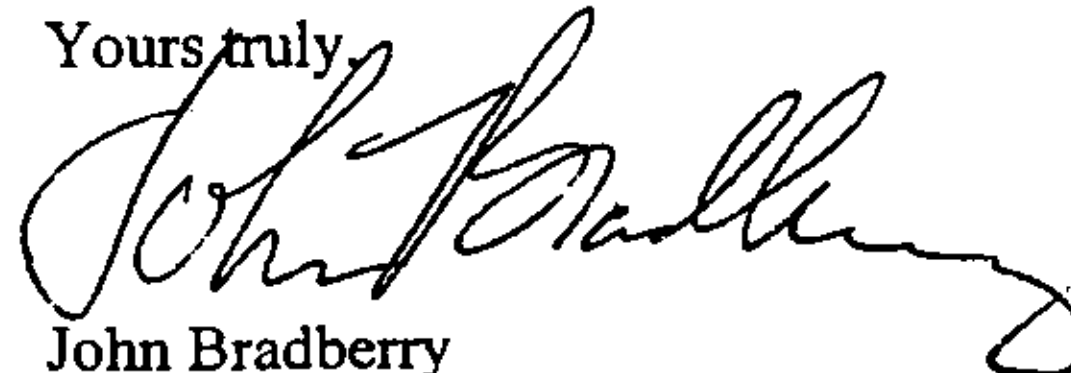
In accordance with our lease agreement and further to my letter of May 25, 2000, we are submitting an updated invoice for legal fees related to the leased premises. As you may have heard, Judge Gunn denied our motion for the plaintiff in the Town Center Lawsuit to pay defendant legal fees.

Please remit promptly to:

Bekka Development Company
One West Mountain
Fayetteville, AR 72701

Thank you for your attention to this matter.

Yours truly,



John Bradberry
Vice President-Bekka Development Co.

cc: Mr. E.G. Bradberry, President Bekka Development Co.
Mrs. Dianne Boyd, Secretary Bekka Development Co.

**One West Mountain Street
Fayetteville, AR 72701**

DATE	INVOICE NO.
7/27/2000	2561

City of Fayetteville
113 W. Mountain
Fayetteville, AR 72701

P.O. NO.	TERMS	MONTH
	Net on receipt	

DESCRIPTION	AMOUNT
Legal Costs-Davis,Cox & Wright 8/99-5/00	8,545.35
Total	\$8,545.35

Davis, Cox & Wright PLC

Customer Balance Detail

<u>Type</u>	<u>Date</u>	<u>Num</u>	<u>Account</u>	<u>Class</u>	<u>Amount</u>
Bekka Corp.					
Williams, et al v city of Fayettev & Bekka					
Invoice	8/31/99	1474	2021-A/R	WJB	811.50
Invoice	9/30/99	1655	2021-A/R	WJB	836.00
Invoice	10/26/99	1813	2021-A/R	WJB	1,012.40
Invoice	11/29/99	1998	2021-A/R	WJB	480.00
Invoice	12/30/99	2212	2021-A/R	WJB	2,670.25
Invoice	1/31/00	2361	2021-A/R	WJB	1,220.20
Invoice	2/29/00	2525	2021-A/R	WJB	450.00
Invoice	3/30/00	2722	2021-A/R	WJB	345.00
Invoice	4/27/00	2892	2021-A/R	WJB	585.00
Invoice	5/31/00				<u>135.00</u>
					<u>\$8,545.35</u>

LEASE AGREEMENT

Agreement made this 22nd day of October, 1998, by and between BEKKA Development Company, an Arkansas Corporation, with offices at One West Mountain Street, Fayetteville, Arkansas 72701, (hereinafter called "Lessor"), and the City of Fayetteville, Arkansas, a municipal corporation, with offices at 113 West Mountain Street, Fayetteville, Arkansas 72701, (hereinafter called "Lessee").

WHEREAS, the City of Fayetteville desires to revitalize its Downtown by building a Town Center with a Plaza connected to the Fayetteville Square; and,

WHEREAS, BEKKA Development Company is also interested in revitalizing Downtown Fayetteville; and,

WHEREAS, BEKKA Development Company recognizes that its property is much more valuable than indicated by the terms of this Lease Agreement; nevertheless, is willing to lease the hereinafter described property, under the terms and conditions specified herein; and,

WHEREAS, the plans contemplate the conversion of an entire tract of Lessor's property to use as an entrance plaza to the Town Center, which may materially and adversely impact Lessor's adjacent developed lots to the east and west of the intended plaza, and will preclude integrated development of Lessor's combined tracts fronting the Fayetteville Square; and,

WHEREAS, while the City could exercise its power of eminent domain to acquire Lessor's property, both parties wish to avoid the uncertainties and potential expense of condemnation proceedings, as well as the threat such proceedings could hold for either the project itself or the value to Lessor of this and its adjacent lots.

NOW, THEREFORE, IN CONSIDERATION of the rents, promises, recitals and mutual covenants contained herein, the Lessor and Lessee hereby agree as follows:

1. LEASED PREMISES. Lessor hereby lets, leases and demises unto Lessee, without representations as to physical condition or suitability, subject to the terms and conditions contained herein, the following described property situated in Washington County, Arkansas:

Lots Two (2) and Three (3) in Block Thirty (30) in the Original Plat of the Town (now City) of Fayetteville, Arkansas, and part of Lot 4 West of Lot 3 to the existing walkway edge, a distance of approximately 15'.

To have and hold said premises unto the said Lessee for and during the term herein stated, subject to the covenants, terms and conditions contained herein.

2. TERM. This lease shall commence upon the effective date hereof and shall extend for a term of twenty-five (25) years. Lessee shall have the option to extend said lease in five (5) year increments, on an Evergreen basis, rent to continue as set forth in paragraph 7, if Lessee is not in default. It is the specific intent of the parties that this lease be one of perpetual renewal at the option of the Lessee so long as Lessee is not in default.

BA
[Signature]

and take possession of the leased premises. Pursuit of said remedy shall not preclude pursuit of any other remedies herein provided, or provided by law. No waiver by Lessor or any violation or breach of any portion hereof shall be deemed or construed to constitute a waiver of any other violation or breach of the same or otherwise. Lessee shall pay any and all costs and expenses resulting from an event of default hereunder or incurred in the collection of any past due balances hereunder, including reasonable attorney fees, whether said attorney is in-house or not, and whether or not suit is brought.

13. CONTINUING OBLIGATIONS. Lessee shall bear all cost and expenses, directly or indirectly associated with the Leased Premises, including, but not limited to, any and all improvements, maintenance, up-keep, lighting, utilities, insurance, accidents, taxes, fees, assessments, cleaning, snow removal and trash removal, and shall defend, indemnify and hold Lessor harmless therefore. Lessee shall maintain the Leased Premises in a clean, attractive, healthful condition, and in accordance with all laws and ordinances. Lessee's obligations under this agreement shall continue and shall survive the expiration or termination hereof, until all obligations of the Lessee incurred hereunder have been met. Nothing herein is to be interpreted or intended as a waiver of the tort immunity granted Lessee under the law of the State of Arkansas.

14. MISCELLANEOUS PROVISIONS.

A. Lessee shall pay any and all costs and expenses associated with, directly or indirectly, the removing, relocating, replacing, providing, etc., any and all utilities, electrical service, heating and air-conditioning, water, sewer, steps, entrances, driveways, parking, etc., to or for the Leased Premises. Said removal, relocations, etc., shall be subject to Lessor's prior approval and shall be done with minimum disruption of services.

B. Lessee shall provide and maintain reasonable access from the Leased Premises (plaza and parking) to the premises east and west of the Leased Premises, to Lessor's satisfaction, including at least three (3) walkways from the plaza to the premises located to the west of the Leased Premises.

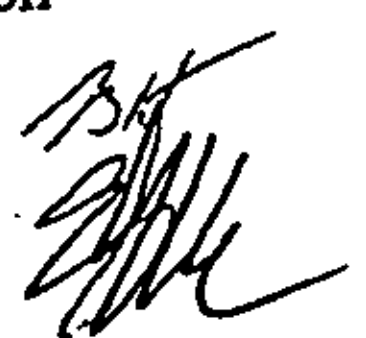
C. The rent provided in this lease shall not be used directly or indirectly in determining fair market value in any subsequent condemnation action regarding this property.

D. All risk and loss to the Leased Premises during the term or any extended terms hereof shall be borne by Lessee.

E. Upon termination of the lease, Lessee shall continue to provide Lessor reasonable ingress and egress to and from the Leased Premises across Lessee's property lying south of the Leased Premises. Said access is currently being afforded by a driveway/alley along the south edge of the Leased Premises from both East and Block Streets.

F. Lessee shall provide, at no cost to Lessor, during the term and any extended term hereof, reasonable space for trash/garbage disposal and pickup for use by Lessor and the occupants of the premises lying east and west of the Leased Premises.

15. SUCCESSION. This lease agreement shall inure to the benefit of and be binding upon the parties hereto and their respective heirs, successors and permitted assigns.

A handwritten signature in black ink, appearing to be "B. H. H.", is located in the bottom right corner of the document.

16. **SEVERABILITY.** Each provision of this lease agreement is severable from all other provisions. In the event any court of competent jurisdiction determines that any provision is invalid or unenforceable for any reason, all remaining provisions shall remain in full force and effect and shall be construed to best effectuate the intent of the parties.

17. **INTERPRETATION.** This Lease Agreement shall be deemed to have been made under and shall be governed by the laws of the State of Arkansas in all respects, including without limitation, matters of construction, validity, performance and venue. Venue of any legal actions shall be in Washington County, Arkansas and the parties specifically waive any and all other.

18. **AUTHORIZATION.** The persons executing this agreement covenant and represent that they are duly authorized and empowered to do so on behalf of the party they purport to represent.

19. **LIABILITY.** Lessor shall not be liable to Lessee or any other party, person, or entity for damage, injury or loss of any kind arising from or associated with the Leased Premises, directly or indirectly, and Lessee shall defend, indemnify and hold Lessor and its officers, agents, employees, directors, and shareholders harmless therefrom. The Lessee shall be liable for any and all damages from their construction, development, and use of the Leased Premises. Nothing herein is to be interpreted or intended as a waiver of the tort immunity granted Lessee under the Law of the State of Arkansas.

20. **TIME OF ESSENCE.** Time shall be of the essence in this Lease Agreement.

21. **ALL RIGHTS NOT SPECIFIED.** All rights not specifically granted under this Lease shall remain with the Lessor.

22. **ENTIRE AGREEMENT.** This Lease Agreement including Exhibit "A" contains the entire agreement of both parties hereto, and no other oral or written agreement shall be binding on the parties hereto. This Lease Agreement supersedes all prior agreements, contracts, and understanding of any kind between the parties relating to the subject matter hereof.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals on this 27 day of October, 1998.

LESSOR:

BEKKA DEVELOPMENT CO.
An Arkansas Corporation

By: [Signature]

President

ATTEST:

By: [Signature]

Asst. Secretary

LESSEE:

CITY OF FAYETTEVILLE, ARKANSAS
A Municipal Corporation

By: [Signature]

Fred Hanna, Mayor

ATTEST:

By: [Signature]

Heather Woodruff, City Clerk

[Signature]

3. **DESIGN.** Lessor agrees to allow Lessee to construct a Town Plaza in substantially the same design as shown in the architectural drawing attached hereto as Exhibit "A". Before and after initial construction, any substantial changes to the design as shown in Exhibit "A", must be approved by the Lessor in writing prior to construction. Lessor shall not unreasonably withhold such approval.

4. **ASSIGNMENT.** Lessee shall not assign this lease or sublet the leased premises or any part thereof without prior written consent of the Lessor.

5. **POSSESSION.** Lessee may take possession of the leased premises when Lessor has given final approval of Lessee's plans for the improvements to be made to the Leased Premises as set forth in paragraph 3 above and, when a construction contract for the Town Center Project, which will be located south of the Leased Premises, has been entered into.

6. **COSTS, UTILITIES AND LIABILITY.** All costs, utilities, and liability of and for the plaza and connecting areas, steps, and tie ins shall be borne by the Lessee.

7. **RENT.** As partial consideration, in addition to the terms, conditions and covenants hereof, Lessee agrees to pay Lessor the sum of one hundred twenty thousand dollars (\$120,000.00) upon possession and one dollar (\$1.00) per year during the term or any extended terms, hereof.

8. **TAXES.** Lessee shall pay any and all ad valorem taxes, fees and assessments levied against said premises during the term of this lease; including, but not limited to, real estate taxes, personal property taxes, sales taxes and off-street parking district taxes.

9. **PARKING.** Lessee shall at no cost to the Lessor provide and maintain a paved area adjacent to the Executive Square Office Building, underneath the Town Plaza, sufficient to accommodate 32 parking spaces. Said area shall be for the exclusive use of the Lessor and/or Lessor's Tenants and guests; however, when not in use by Lessor, said spaces may be utilized by the Lessee for public purposes. Lessee shall provide and maintain reasonable access which is satisfactory to the Lessor from the parking area provided to Lessor hereunder, to the premises to the east and west of the Leased Premises; and shall provide and maintain lighting, ventilation and upkeep of said parking area in a manner which is satisfactory to Lessor.

10. **USE.** Lessee shall use the Leased Premises for the purpose of building and operating a Town Plaza, which shall be the entrance from the south side of the Fayetteville Square to the Town Center, and for no other purpose or purposes without the written consent of Lessor.

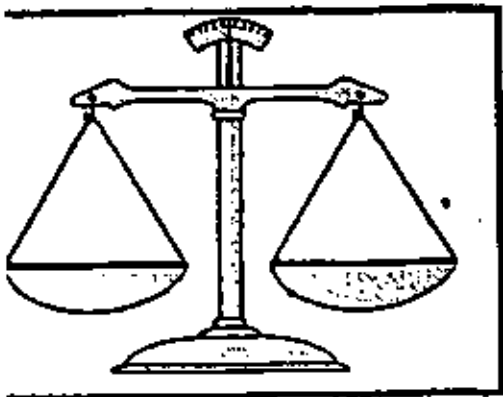
11. **DEFAULT.** Lessor may declare a default by Lessee upon the following:

A. Lessee failing to pay any installment of rent and the failure continues for a period of 60 days after written notice to the Lessee.

B. Failure to comply with any other terms of this Lease Agreement, and not curing such failure within 60 days after written notice to the Lessee.

12. **REMEDIES.** Upon the occurrence of any default by the Lessee, which is not timely cured after written notice, Lessor may terminate this Lease Agreement and immediately enter upon





FAYETTEVILLE

LEGAL DEPARTMENT
CITY ATTORNEY DIVISION

JERRY E. ROSE, CITY ATTORNEY

LAGAYLE D. MCCARTY, ASST. CITY ATTORNEY

DEPARTMENTAL CORRESPONDENCE

To: Fred Hanna, Mayor
Fayetteville City Council

From: Jerry E. Rose, City Attorney *J.E.R.*

Date: June 9, 2000

Re: **Bekka claims for legal expenses and lost parking**

John Bradberry's letter dated May 25, 2000 asks for the City to pay attorney fees and lost parking revenue under the terms of Bekka's lease dated October 22, 1998 which is attached as part of the agenda packet. I thought these comments may be of some assistance to you in your decision.

1. Attorney fees: Since the filing of what is commonly referred to as the Town Center lawsuit in mid-1999, I have been asked by Bekka on a number of occasions as to what my position was on paying Bekka's attorney fees incurred as a result of their being named a party to the suit. I can recall two conversations with Dianne Boyd and one with Jack Butt. On every occasion I expressed my belief that the City was not legally obligated under the terms of the lease to pay Bekka's attorney fees, but that I thought that the City Council may well feel that in fairness they should pay some or all of those fees and I encouraged them to make a claim.

I do not believe that attorney fees for Bekka's defense of the Town Center suit are covered under the lease agreement. Bekka is accused in the suit of entering into an illegal contract with the City and the suit seeks to void Bekka's lease and requests Bekka refund the money paid under the terms of the lease. I don't think that fits under the lease provisions which are cited by Bekka because I don't believe the defense of the suit is directly or indirectly associated with the leased premises. Instead I believe it is associated with the money Bekka received for the lease which has no relationship whatever with the leased premises. For what it's worth, I readily concede that reasonable legal minds may differ. I also readily concede that Bekka's defense assisted the City in its position and that Jack Butt's able and highly competent legal skills were welcomed by all who supported the City's position. Accordingly, I would have no objections to the City resolving this matter by paying this claim. I just want you to know that I don't believe you are legally obligated to. Remember that this case is likely to be appealed and I assume more attorney fees may be incurred by Bekka as a result.

2. Lost Parking Revenues: I recall talking to Dianne Boyd and John Bradberry about the City providing alternate parking to Bekka without any additional clause in the lease. I also recall that we were not sure we could find such alternate parking and told Bekka that if they could find alternate parking that the City may compensate them for that cost. I have no memory of nor do I believe there was a discussion of any compensation that was to be made to Bekka under any circumstances for loss of parking revenue. Section 14A of the lease provides that the City pay for relocating and providing parking. We've done that by providing Bekka alternate parking. The lease does not say nor was it intended to say that if Bekka couldn't convince its tenants that they should pay for the use of the alternate parking that the City would compensate Bekka for a loss of revenue. Again, if you wish to settle this claim you're more than welcome to but I can't think of any legal obligation to do so on this one.

If I can provide anything further, just let me know.

FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS
FRED B. HANNA, MAYOR

CC. 8/15/00

4500 S. School Ave., Ste. A
Fayetteville, AR 72701
Telephone: 501-575-8301
Fax: 501-575-8304
e-mail: alittle@ci.fayetteville.ar.us

Economic Development Department
Alett S. Little, Director

TO: City Council

FROM: Alett Little, Economic Development Director

DATE: August 15, 2000

SUBJECT: Wings Air - Ground Lease; Contingencies to Lease; & Waiver of \$800 Fee

The ground lease for the self-serve fueling facility was approved by unanimous vote of the four members present at the August 3, 2000 Airport Board meeting. Wings Air, Inc. proposes a ground lease for land just south of terminal on the air side for the installation of a credit card self-fueling system for 5000 gallon 100 level low lead fuel tank. The proposed land area is detailed as attachment A to the lease. I have agreed to provide a letter commitment which will allow the Lessee to paint the apron in front of the fueling facility to warn against blocking access to the nozzle and card reader.

CONTINGENCIES: I have also agreed that if all approvals are not received by the time the City Council receives the lease for action that language will be inserted which will allow the lease to be null and void if those contingencies are not met. **There are two contingencies as of this date - Project receive Large Scale Development Approval and Approval of a License with Air British Petroleum.** Currently, the project is scheduled for Plat Review tomorrow, August 16, 2000 and for Subdivision Committee on Thursday, August 17, 2000. There is discussion about the fee which is being charged for the Large Scale Development Approval (see paragraph below). Air British Petroleum will not grant a license until the lease has been approved by the City, so City Council action should clear the way for the required license to be granted.

WAIVER OF \$800 FEE: Since the August 3, Airport Board meeting, Mr. Schossov has applied for Large Scale Development. While Large Scale Developments for 10 or less residential units are \$200.00, non-residential Large Scale Developments are \$800.00. Review of above ground fuel storage tanks is largely for the convenience of the Fayetteville Fire Department so that they have the opportunity to review placements of these types of above ground tanks. Approximate land area including the catch basin for the tank is a width of 14' and a length of 32' 8". The small amount of area involved causes the \$800.00 to seem high; however neither the fire chief, the planning director, nor the economic development director have the ability to waive the fee and Mr. Schossov has requested consideration by the Council for fee waiver. All parties are in agreement that the project should follow the ordinance and go through the review process; however, **the Council will have to make any decisions regarding fee waivers.**

FEE WAIVER ISSUES:

Against fee waiver:

1. Setting a precedent - Airport is in an expansion mode. We will have several new tenants who will not own the land, but who will erect buildings which will need to be reviewed through the process. If we exempt this facility because we own the land, we will set a precedent for those that follow, unless we make it clear that we would be exempting only fuel facilities which consume only a small portion of land and are largely reviewed for the convenience of the Fire Department.
2. Competition. This facility will compete with a Fixed Base Operator currently on the field. It is not known whether a fee waiver could be construed as unfairly encouraging competition.

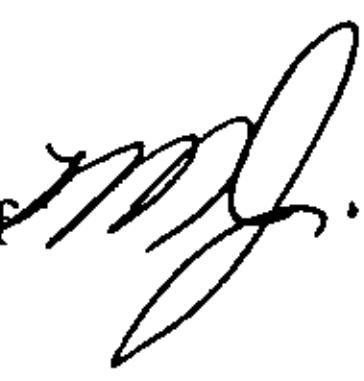
In favor of fee waiver are the following:

1. The City is the owner of the land. City projects are exempt from paying the review fees.
2. The review is the mainly for the convenience of our Fire Department. Applicant is willing to go through the process, he just objects to paying the fee.

DEPARTMENTAL CORRESPONDENCE

To: Fayetteville City Council

Thru: Fred Hanna, Mayor

From: Mickey Jackson, Fire Chief 

Date: August 11, 2000

Re: Mr. Schossow's Fuel Tank Project

I have reviewed this project and it appears to comply with our ordinance pertaining to above ground fuel tanks. The ordinance requires these projects to go through the plat review process for review by all parties who might have an interest or concern. I have discussed with Planning, at Mr. Schossow's request, the possibility of waiving this part of the ordinance (plat review requirement) for this project, and we are both uncomfortable about doing that.

If it is the council's desire that going through that process is unnecessary in this case, I will not object. I just didn't feel like I could declare that on my own, and Tim Conklin doesn't either.

If you have questions or need other information about this, feel free to give me a call.
Thank you.

MJ/ca

cc: Tim Conklin, Planning Director
Alett Little, Airport Manager

FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

TENTATIVE AGENDA CITY COUNCIL AUGUST 15, 2000

A meeting of the Fayetteville City Council will be held on August 15, 2000 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:** Approval of the minutes from the July 18, July 25, and August 1, 2000 meetings.
2. **SKATE PARK:** A resolution approving a contract with Purkiss-Rose-Rsi for the design and construction supervision of a Skate Park.

B. OLD BUSINESS

C. NEW BUSINESS

1. **ARKANSAS RESEARCH AND TECHNOLOGY PARK:** An ordinance approving a bid wavier and an agreement (Amendment No. 1) to a previous contract for additional professional services with EGIS Consulting Inc. regarding the USCOE 404 permit for the Arkansas Research and Technology Park. The total contract amount is \$164,050.00.
2. **COMBS PARK:** A ordinance approving a bid wavier for a contract with Eastin Outdoors, Inc. to design/build a trail approximately 4200 ft. in length, in Combs Park as an access to the West Fork of the White River and to provide trail head, picnic areas, informational signs, tail benches, an observation terrace and other site furnishings.
3. **WINGS AIR, INC:** A resolution approving a lease agreement with Wings Air, Inc. for an above ground facility which they will located south of the terminal building ramp. This will allow self-service fueling by the pilot using a credit card. Annual compensation will be \$384.00 for the ground area with three three-year renewal options. Flowage fees will be remitted to the City as set forth in Section 91.16 of the Code of Fayetteville.

4. **BEKKA DEVELOPMENT:** Consideration of a claim by Bekka Development for legal expenses in conjunction with Town Center. A claim for parking rental revenue was approved at the June 20, 2000 meeting of the Fayetteville City Council. If the claim is approved, approval of a budget adjustment to fund the approved claim is also requested.
5. **FULTON PARKING LEASE:** A resolution approving a lease agreement with Fulton Enterprises, Inc. d/b/a Town and Country Shop, located at 9 South Block Street for the lease of four parking spaces.
6. **GREENWOOD ASSOCIATES:** A resolution approving a lease agreement with Greenwood Associates, Inc. located at 25 East Meadow Street for the lease of nineteen parking spaces in the Fayetteville Municipal Parking Deck.
7. **DAVID AND CATHY, INC.:** A resolution approving a lease agreement with David and Cathy, Inc. located at 21 S. Block Street for the lease of two parking spaces.
8. **AD 00-24:** An ordinance approving Administrative Item AD 00-24.00 submitted by Jay Snider on behalf of Kappa Sigma Fraternity to change the name of West William Street behind the Kappa Sigma house (between University Ave. And the alley to the west) Whiteside Street in honor of Charlie B. Whiteside III.

**DRAFT TENTATIVE AGENDA
CITY COUNCIL
AUGUST 15, 2000**

A meeting of the Fayetteville City Council will be held on August 15, 2000 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:** Approval of the City Council minutes.
2. **SKATE PARK:** A resolution approving a contract with Purkiss-Rose-Rsi for the design and construction supervision of a Skate Park.
3. **ARKANSAS RESEARCH AND TECHNOLOGY PARK:** A resolution approving an agreement to a previous contract for additional professional services with EGIS Consulting Inc. regarding the USCOE 404 permit for the Arkansas Research and Technology Park. The total contract amount is \$164,050.00.

B. OLD BUSINESS

*GRADING ORD. (not on Paper) Billing by not a paid
Sewer.*

C. NEW BUSINESS

*CHARLIE - ORD BID WAIVER TRAIL
COMBS PARK. / EASTON*

**TENTATIVE AGENDA
CITY COUNCIL
AUGUST 15, 2000**

A meeting of the Fayetteville City Council will be held on August 15, 2000 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:** Approval of the minutes from the July 18, July 25, and August 1, 2000 meetings.
2. **SKATE PARK:** A resolution approving a contract with Purkiss-Rose-Rsi for the design and construction supervision of a Skate Park.

A. OLD BUSINESS

B. NEW BUSINESS

1. **ARKANSAS RESEARCH AND TECHNOLOGY PARK:** An ordinance approving a bid wavier and an agreement (Amendment No. 1) to a previous contract for additional professional services with EGIS Consulting Inc. regarding the USCOE 404 permit for the Arkansas Research and Technology Park. The total contract amount is \$164,050.00.
2. **COMBS PARK:** A ordinance approving a bid wavier for a contract with Eastin Outdoors, Inc. to design/build a trail approximately 4200 ft. in length, in Combs Park as an access to the West Fork of the White River and to provide trail head, picnic areas, informational signs, tail benches, an observation terrace and other site furnishings.
3. **WINGS AIR, INC:** A resolution approving a lease agreement with Wings Air, Inc. for an above ground facility which they will located south of the terminal building ramp. This will allow self-service fueling by the pilot using a credit card. Annual compensation will be \$384.00 for the ground area with three three-year renewal options. Flowage fees will be remitted to the City as set forth in Section 91.16 of the Code of Fayetteville.
4. **BEKKA DEVELOPMENT:** Consideration of a claim by Bekka Development for legal expenses in conjunction with Town Center. A claim for parking rental revenue was approved at the June 20, 2000 meeting of the Fayetteville City Council. If the claim is approved, approval of a budget adjustment to fund the approved claim is also requested.

5. **FULTON PARKING LEASE:** A resolution approving a lease agreement with Fulton Enterprises, Inc. d/b/a Town and Country Shop, located at 9 South Block Street for the lease of four parking spaces.
6. **GREENWOOD ASSOCIATES:** A resolution approving a lease agreement with Greenwood Associates, Inc. located at 25 East Meadow Street for the lease of nineteen parking spaces in the Fayetteville Municipal Parking Deck.
7. **DAVID AND CATHY INC.:** A resolution approving a lease agreement with David and Cathy Inc. located at 21 S. Block Street for the lease of two parking spaces.

IN THE CIRCUIT COURT WASHINGTON COUNTY, ARKANSAS**JEANNE M. HICKS, et al,****PLAINTIFFS****vs.****Consolidated No. CIV 97-500****CITY OF FAYETTEVILLE, et al,****DEFENDANTS****STIPULATION OF SETTLEMENT**
SUBJECT TO COURT APPROVAL
OF CITY OF FAYETTEVILLE, ARKANSAS

WHEREAS, Jeanne M. Hicks and Tammy Lewis, for themselves and all others similarly situated, are the Class Plaintiff for the City of Fayetteville ad valorem property taxpayers in the captioned civil action; and,

WHEREAS, this litigation was certified as a Class Action pursuant to Rule 23 of the A.R.C.P. by order of this court; and,

WHEREAS, Plaintiff (as hereinafter defined) and the Defendant City of Fayetteville, Arkansas, desire to terminate all complex and protracted litigation regarding the issues of millage rollbacks damages and attorneys' fees between themselves as parties to this litigation; and

WHEREAS, Plaintiff (as hereinafter defined) and the City of Fayetteville desire to terminate all complex and protracted litigation regarding the rollback of millage, amount and method of refund to taxpayers (as hereinafter defined) of the amounts found to have been illegally exacted in violation of ARK. CONST. art. XIV §14 (Amendment 59), and attorneys' fees, and,

WHEREAS, the Plaintiff (as hereinafter defined) and the Defendant City of Fayetteville have agreed to settle, resolve and compromise their several claims and disputes on the terms and conditions set forth herein.

NOW, THEREFORE, it is hereby stipulated and agreed as follows:

1. DEFINITIONS.

As used herein, the following terms shall have the following meanings unless the context otherwise requires:

- 1.1 "Class" shall mean all ad valorem taxpayers for which Jeanne M. Hicks and Tammy Lewis were certified to represent as Class Action Representatives pursuant to Rule 23 of the A.R.C.P. by order of this court, i.e., the ad valorem taxpayers of the City of Fayetteville, Arkansas.
- 1.2 "City of Fayetteville" (hereinafter referred to as the "City") shall mean the City of Fayetteville as a municipal corporation existing under the laws of the State of Arkansas and its past, present, or future directors, aldermen, council members, officers, controlling persons, employees, agents, representatives, attorneys of record in this litigation, assigns, beneficiaries, predecessors and/or successors in interest.
- 1.3 "Plaintiff" shall mean Jeanne M. Hicks and Tammy Lewis, individually and on behalf of the Class and Class Members they represent.
- 1.4 "Person" shall mean an individual, corporation, partnership, association or other entity.

1.5 "Taxpayers" shall mean any person who paid real or personal property taxes for property within the City of Fayetteville for any of the tax years 1994 through 1999.

1.6 "Illegally Exacted Ad Valorem Property Taxes" shall mean all real and personal property taxes from the taxpayers in excess of the amount allowed by ARK. CONST. art. XIV, §14 (Amendment 59).

2. ORDER AND JUDGMENT.

The Plaintiff and the City stipulate and agree to be bound by and will jointly request that the court enter an order and judgment that will contain the following substance and matter:

2.1 Illegally Exacted Ad Valorem Property Tax Refunds.

a. Taxpayers who file a claim shall have the opportunity to receive a pro-rata refund of all illegally exacted ad valorem taxes paid less the award of attorneys' fees set forth below.

b. The court shall appoint Special Master (name) or other person mutually agreed upon by the Plaintiff and the City to serve as special master to supervise, as approved by the court, the method and procedure of the refund process.

c. The expenses of administering the refund, including notice, and the Special Master shall be borne by the City.

d. The refund process shall be administered by the County with a claims process whereby Class Members may personally present a claim form. Out-of-county taxpayers and those taxpayers that are physically unable to present the form may have another person present the claim form. The Court shall appoint

George B. Morton, P.O. Box 399, Fayetteville, Arkansas, 72702, to so act if necessary.

2.2 Attorneys' Fees of Plaintiff's Attorneys.

a. Attorneys for the Plaintiff shall request an award of attorneys' fees and costs for representing the Class an amount of 33-1/3% of the illegally exacted ad valorem property taxes, subject to court approval, which shall be payable directly to The Evans Law Firm, P.A., and Hirsch Law Firm, P.A., within 14 days of entry of Order Approving Settlement. Defendant shall not object to the requested attorneys' fee of 33-1/3% of the fund. Attorneys for Plaintiff waive any claim for attorney's fees from the refunds to be paid to Intervenor, William Jackson Butt, II, Butt-n-Butt Hardwood Plantation, L.L.C., and John R. Hudson.

2.3 Undistributed or Unclaimed Funds Paid Into General Fund of City.

a. All illegally exacted ad valorem property taxes which remain after reasonable effort, approved by the court, have been made to refund such monies to the taxpayers shall be paid into the general fund of the City and may be used by the City in any manner as its council may approve, including but not limited to, any payments made by the City pursuant to this Stipulation or any order of this court.

2.4 Stipulated and Agreed Amounts.

a. The Plaintiff and the City stipulate and agree that \$213,469.50 is the agreed total amount to be paid by the City; which amount is to be to the Class of taxpayers (less court-approved legal fees) to all Class Members who file a claim for refund. Refunds are to be paid 1/2 in June 2001 and 1/2 in June 2002.

2.5 Rollback of Millage.

a. The millage rate of the City has been 1.0 for both real and personal property taxes. Upon court approval of this settlement, the City's millage shall roll back to 0.8 for both real and personal property subject to lawful adjustment.

2.6 Full and Complete Discharge of all Class Claims Against the City.

a. Any claims, demands, and causes of action of the Class, and each and every member thereof, and/or their attorneys of any kind or nature in connection with, directly or indirectly, any subject matter decided in this litigation concerning ad valorem property tax for the years 1994 through 1999. A separate claim filed in the Circuit Court of Washington County by the same Plaintiff against the City for refund of property taxes for the tax year 1998 and thereafter shall be dismissed as to the City with prejudice immediately after entry of the order approving the settlement.

b. Washington County claims certain monies from the City for reimbursement from road tax millage. Plaintiff assigns whatever rights they have thereto to Washington County and are not settling that claim which the County may now have against the City.

3. PROCEDURES AND CONDITIONS TO EFFECT STIPULATION OF SETTLEMENT.

3.1 The Plaintiff, Plaintiff's counsel and the City will jointly request that the court take the following actions and order the following events:

a. Conduct a telephone conference on July 25, 2000 for the purposes of:

i. Preliminary approval of this Stipulation and Settlement.

ii. Appointment of a Special Master for resolution of any refund disputes as specified herein.

iii. Approving a Notice of Stipulation of Settlement and Hearing.

iv. Find that notice by publication is the best notice practicable under the circumstances and that Notice of Settlement should be published twice in the Legal Notices Section of the Northwest Arkansas Times.

v. Set the date of August 31, 2000 as the cutoff date by which any and all objections to this Stipulation of Settlement must be filed with the Circuit Clerk, Washington County; and

vi. Set and conduct a hearing on September 5, 2000, at 9:30 a.m., in the Washington County Courthouse to consider final approval of the Stipulation of Settlement.

b. At the final approval hearing, consider and approve the amount of the refund, the method and procedure of the refund process, approve the attorneys' fees and expense award; and enter the court's Order Approving Settlement.

4. MISCELLANEOUS.

4.1 The undersigned attorneys of record for Jeanne M. Hicks and Tammy Lewis, for themselves and all others similarly situated, warrant to the City that they have the authority to settle the issue of attorneys' fees for all attorneys who represent or represented said Plaintiff during the course of said litigation and that any and all claims or liens of any nature regarding the payment of attorneys' fees, costs and/or expenses are the sole responsibility of the undersigned attorneys of record for Jeanne M. Hicks and Tammy Lewis, for themselves and all others similarly

situated, and said attorneys agree to indemnify and hold harmless the City from any such claims, including but not limited to, the attorneys' fees, if any required in the City's defense of any action seeking additional attorneys' fees other than as stipulated and agreed herein.

- 4.2 This Stipulation of Settlement shall be governed by and interpreted in accordance with the laws of the State of Arkansas.
- 4.3 This Stipulation of Settlement constitutes the whole agreement between the Plaintiff, Plaintiff's counsel and the City and supersedes all earlier agreements, oral or written, if any. The parties hereto state and acknowledge that they have not given or relied upon any representations, warranties, or promises that are not set forth herein.
- 4.4 This Stipulation of Settlement may be modified, but such modification must be in writing and approved by the parties hereto, or may be modified by court order.
- 4.5 The parties agree and stipulate that the damages to Plaintiff and Plaintiff's attorneys in the event of appeals shall be the time value of money on any amounts which are due for payment and shall become due for payment under the terms of this stipulation and settlement agreement. That the parties agree and stipulate that any appeal bond should be sufficient to cover the value of any payments due or to become due hereunder.

IN WITNESS WHEREOF, this Stipulation of Settlement has been executed and entered into as of this _____ day of July, 2000 by the undersigned parties and counsel of record for the parties hereto.

Parties:

Jeanne M. Hicks, for herself and all others
similarly situated taxpayers within the
City of Fayetteville, Arkansas

Tammy Lewis, for herself and all others
Similarly situated taxpayers within the
City of Fayetteville, Arkansas
Attorneys at Law of Record:

Marshall Dale Evans, Attorney for
Jeanne M. Hicks and Tammy Lewis,
for themselves and all others similarly situated

E. Kent Hirsch, Attorney for
Jeanne M. Hicks and Tammy Lewis,
for themselves and all others similarly situated

Jerry Rose, Attorney for
City of Fayetteville, Arkansas

Fred Hannah, Mayor,
City of Fayetteville, Arkansas

CERTIFICATE OF SERVICE

I, E. Kent Hirsch, hereby certify that a true and correct copy of the foregoing pleading was deposited in the U.S. Mail, postage prepaid, addressed to:

Mr. Rudy Moore, Jr.
Mr. Thomas Olmstead
P.O. Box 290
Fayetteville, AR 72702-0290

Mr. Jeff Harper
City Attorney of Springdale
P.O. Box 1208
Springdale, AR 72765-1208

Mr. Charles Harwell
Mr. Marcus Van Pelt
Cypert, Crouch, Clark & Harwell
P.O. Box 1400
Springdale, AR 72764

Mr. George Butler
Attorney at Law
280 N. College Ave., Suite 145
Fayetteville, AR 72701

Mr. Boyce R. Davis
Prairie Grove City Attorney
P.O. Box 999
Lincoln, AR 72744

Mr. Jerry Rose
City of Fayetteville Admin. Building
113 W. Mountain
Fayetteville, AR 72701

Mr. David G. Nixon
The Nixon Law Firm
2340 Green Acres Road, Suite 12
Fayetteville, AR 72701

Mr. Danny Wright
Elkins City Attorney
130-C North College
Fayetteville, AR 72701

Mr. William Jackson Butt, II
Davis, Cox & Wright, PLC
P.O. Drawer 1688
Fayetteville, Arkansas 72702-1688

Mr. John R. Hudson
Attorney at Law
16 E. Spring
Fayetteville, AR 72701

Brian Brooks, Deputy Attorney General
200 Catlett-Prien Tower Bldg.
323 Center Street
Little Rock, AR 72201-2610

Honorable Paul Danielson
Circuit Judge
P.O. Box 188
Morrilton, AR 72110

this _____ day of July, 2000.

E. Kent Hirsch

C:\Amendment59\Hick97.wc\settlement - stipulation - Fayetteville.doc

STAFF REVIEW FORM

Skate Park
A. 2. Page 1

X AGENDA REQUEST
X CONTRACT REVIEW
 GRANT REVIEW

For the Fayetteville City Council meeting of August 15, 2000

FROM:

Connie Edmonston
 Name

Parks & Recreation
 Division

Public Works
 Department

ACTION REQUIRED:

Approval of contract with Purkiss-Rose-Rsi for the design and construction supervision of a Skate Park.

COST TO CITY

\$ 38,940
 Cost of this Req

2250-9250
 Account Number

00006
 Project Number

\$ 75,000
 Category/Project Budget

\$ 0
 Funds Used To Date

\$ 75,000
 Remaining Balance

Skate Park
 Category/Project Name

Park Improvements
 Program Name

Parks Development
 Fund

BUDGET REVIEW

udgeted Item _____ Budget Adjustment Attached

Steph Davis
 Budget Manager

Administrative Services Director

CONTRACT/GRANT/LEASE REVIEW:

GRANTING AGENCY:

Marilyn J. Cramer
 Accounting Manager

7-28-00
 Date

Nancy Smith
 Internal Auditor

7/28/00
 Date

Russell J. [Signature]
 City Attorney

7-28-00
 Date

ADA Coordinator

Date

P. Hice
 Purchasing Officer

7-28-00
 Date

STAFF RECOMMENDATION:

Approval of contract.

Connie Edmonston
 Division Head

7-25-00
 Date

Carol [Signature]
 Department Director

7-28-00
 Date

John [Signature]
 Administrative Services Director

7/31/00
 Date

Mayor

Date

Cross Reference

New Item: Yes No

Prev Ord/Res #: _____

Orig Contract Date: _____

Orig Contract Number: _____

DEPARTMENTAL CORRESPONDENCE

To: Mayor Fred Hanna and City Council

Thru: Charles Venable, Public Works Director

From: ^{ESS} Eric J. Schuldt, Parks Development Coordinator

Date: August 2, 2000

Re: Skate Park Contract

The Parks and Recreation Division requests the approval of a contract with Purkiss Rose-RSI in the amount of \$37,885 for the design of a Skate Park at Walker Park. The current funding for this project is \$75,000 and was approved in the 2000 Capital Improvement Fund.

Thirteen design firms expressed an interest in the Skate Park project. A selection committee, that included a representative from City Council, two citizen representatives from the Skate Park Sub-Committee, and City staff evaluated applications and decided that Purkiss Rose-RSI was the most qualified firm for our project. Purkiss Rose-RSI has worked on more than one hundred skate park projects during the last nine years.

Purkiss Rose-RSI will be responsible for providing the Parks and Recreation Division with the following information and services:

- Data collection and analysis
- Base map/site analysis
- Public meeting workshops (2)
- Public meeting presentation (1)
- Conceptual plans
- Construction cost estimates
- Construction plans, specifications, and documents, including the following: drainage/grading plan, skate park layout, storm water management plan, large scale development, and site amenities plan.
- Review bidding and contractor submittals
- Construction site visits (4)

For a complete listing of the services that will be provided by Purkiss Rose-RSI please see the attached contract. If you have any questions, please call Connie Edmonston at 444-3473 or Eric J. Schuldt at 444-3472.

Attachments: *Contract with Purkiss Rose-RSI*
Letter of Proposal from McClelland Consulting Engineers, Inc., Subcontractor

Purchase Requisition

Page 3

Skate Park
A. 2. Page 3
801 N. Harbor Boulevard

Vendor Name:

Purkis Rose-RSI

FOB Point:

Mail:	
Yes	No ☒
Taxable:	
Yes	No

Requisition No.:

P.O. Number:

Requisition No.:

Date: 7/26/00

Expected Delivery Date:

city.

Fullerton

State: CA

Zip:

92832

Ship To Code:

***Requester's Employee#:**

1467

472

Extension:

Division Head Approval:

W. T. Schuler

Requester:

Er
Schuldt[illegible]

Special instructions:

Subtotal: \$37,885

Tax:

TOTAL:	\$37,885
--------	----------

Approvals:

Mayor:

Admin. Services Director:

recharging office use only.)

Department Director:

Budget Coordinator:

Purchasing Manager:

Data Processing Mgr.



AIA Document B727

Standard Form of Agreement Between Owner and Architect

for Special Services

1988 EDITION

*THIS DOCUMENT HAS IMPORTANT LEGAL CONSEQUENCES; CONSULTATION WITH
AN ATTORNEY IS ENCOURAGED WITH RESPECT TO ITS COMPLETION OR MODIFICATION.*

AGREEMENT

made as of the twenty-sixth day of July in the year of
Nineteen Hundred and Two Thousand

BETWEEN the Owner:
(Name and address)

City of Fayetteville
113 West Mountain Street
Fayetteville, AR 72701

and the Architect:
(Name and address)

Purkiss Rose-RSI
801 N. Harbor Blvd.
Fullerton, CA 92832

For the following Project:

(Include detailed description of Project, location, address and scope.)

Fayetteville Skate Park

Job Number:

The Owner and the Architect agree as set forth below.

Copyright 1972, 1979, ©1988 by The American Institute of Architects, 1735 New York Avenue, N.W., Washington, D.C. 20006.
Reproduction of the material herein or substantial quotation of its provisions without written permission of the AIA violates
the copyright laws of the United States and will be subject to legal prosecution.

ARTICLE 1
ARCHITECT'S SERVICES

(Here list those services to be provided by the Architect under the Terms and Conditions of this Agreement. Note under each service listed the method and means of compensation to be used, if applicable, as provided in Article 8.)

See Attachment "A" for Scope of Services.

TERMS AND CONDITIONS OF AGREEMENT BETWEEN OWNER AND ARCHITECT

ARTICLE 2

OWNER'S RESPONSIBILITIES

2.1 The Owner shall provide full information regarding requirements for the Project. The Owner shall furnish required information as expeditiously as necessary for the orderly progress of the Work, and the Architect shall be entitled to rely on the accuracy and completeness thereof.

2.2 The Owner shall designate a representative authorized to act on the Owner's behalf with respect to the Project. The Owner or such authorized representative shall render decisions in a timely manner pertaining to documents submitted by the Architect in order to avoid unreasonable delay in the orderly and sequential progress of the Architect's services.

ARTICLE 3

USE OF ARCHITECT'S DOCUMENTS

3.1 The documents prepared by the Architect for this Project are instruments of the Architect's service for use solely with respect to this Project and, unless otherwise provided, the Architect shall be deemed the author of these documents and shall retain all common law, statutory and other reserved rights, including the copyright. The Owner shall be permitted to retain copies, including reproducible copies, of the Architect's documents for the Owner's information, reference and use in connection with the Project. The Architect's documents shall not be used by the Owner or others on other projects, for additions to this Project or for completion of this Project by others, unless the Architect is adjudged to be in default under this Agreement, except by agreement in writing and with appropriate compensation to the Architect.

ARTICLE 4

ARBITRATION

4.1 Claims, disputes, ~~or other matters in question~~ ^{NOT APPLICABLE} between the parties to this Agreement arising out of or relating to this Agreement or breach thereof shall be subject to and decided by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association currently in effect unless the parties mutually agree otherwise.

4.2 A demand for arbitration shall be made within a reasonable time after the claim, dispute or other matter in question has arisen. In no event shall the demand for arbitration be made after the date when institution of legal or equitable proceedings based on such claim, dispute or other matter in question would be barred by the applicable statutes of limitations.

4.3 No arbitration arising out of or relating to this Agreement shall include, by consolidation, joinder or in any other manner, an additional person or entity not a party to this Agreement, except by written consent containing a specific reference to this Agreement signed by the Owner, Architect and any other person or entity sought to be joined. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other

matter in question not described in the written consent or with a person or entity not named or described therein. The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by the parties to this Agreement shall be specifically enforceable in accordance with applicable law in any court having jurisdiction thereof.

4.4 The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

ARTICLE 5

TERMINATION OR SUSPENSION

5.1 This Agreement may be terminated by either party upon not less than seven days' written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.

5.2 If the Owner fails to make payment when due the Architect for services and expenses, the Architect may, upon seven days' written notice to the Owner, suspend performance of services under this Agreement. Unless payment in full is received by the Architect within seven days of the date of the notice, the suspension shall take effect without further notice. In the event of a suspension of services, the Architect shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services.

5.3 In the event of termination not the fault of the Architect, the Architect shall be compensated for services performed prior to termination, together with Reimbursable Expenses then due and all Termination Expenses as defined in Paragraph 5.4.

5.4 Termination Expenses shall be computed as a percentage of the compensation earned to the time of termination, as follows:

- 1** For services provided on the basis of a multiple of Direct Personnel Expense, 20 percent of the total Direct Personnel Expense incurred to the time of termination; and
- 2** For services provided on the basis of a stipulated sum, 10 percent of the stipulated sum earned to the time of termination.

ARTICLE 6

MISCELLANEOUS PROVISIONS

6.1 Unless otherwise provided, this Agreement shall be governed by the law of the principal place of business of the Architect.

6.2 Causes of action between the parties to this Agreement pertaining to acts or failures to act shall be deemed to have accrued and the applicable statute of limitations shall commence to run not later than the date payment is due the Architect pursuant to Paragraph 8.4.

8.3 FOR REIMBURSABLE EXPENSES, as described in Article 7, and any other items included in Article 9 as Reimbursable Expenses, a multiple of (at Cost) times the expenses incurred by the Architect, the Architect's employees and consultants in the interest of the Project.

8.4 Payments are due and payable (thirty) days from the date of the Architect's invoice. Amounts unpaid (n/a) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof, at the legal rate prevailing from time to time at the principal place of business of the Architect.

(Insert rate of interest agreed upon.)

n/a

(Usury laws and requirements under the Federal Truth in Lending Act, similar state and local consumer credit laws and other regulations at the Owner's and Architect's principal places of business, the location of the Project and elsewhere may affect the validity of this provision. Specific legal advice should be obtained with respect to deletions or modifications, and also regarding other requirements such as written disclosures or waivers.)

8.5 IF THE SCOPE of the Project or of the Architect's services is changed materially, the amounts of compensation shall be equitably adjusted.

ARTICLE 9 OTHER CONDITIONS

- A. In this contract, all references to Architect shall refer to Landscape Architect.
- B. If additional services are required and authorized in writing, we shall bill according to the following hourly fee schedule:

Principal	\$115/hr
Project Manager	\$ 85/hr
Project Captain	\$ 70/hr
Draftsman	\$ 65/hr
Clerical/Word Processing Staff	\$ 35/hr

This Agreement entered into as of the day and year first written above.

OWNER

ARCHITECT

(Signature)

(Signature)

City of Fayetteville, Arkansas
(Printed name and title)

Stephan D. Rose, Executive Vice President
(Printed name and title)



CAUTION: You should sign an original AIA document which has this caution printed in red. An original assures that changes will not be obscured as may occur when documents are reproduced.

ATTACHMENT A SCOPE OF SERVICES

Agreement between *Purkiss Rose-RSI* and City of Fayetteville

Contract Date: July 26, 2000

Project Name: Fayetteville Skate Park
Job Number

PHASE I - PROJECT DEVELOPMENT

Task 1 - *Project Definition*

All parties must agree on the project approach, scope, and schedule of work. We will present an outline of our agenda for the workshops that we have successfully utilized in the past for input and refinement. We will review budgets, size of the facility, and any phasing programs.

Task 2 - *Data Collection*

We will collect available data regarding the proposed site, any as-built drawings, existing design plans, infrastructure, public input, and other information relevant to existing conditions. We will conduct a scoping session with Staff and the Committee to review key issues which include: development program, budget, operations, management, maintenance, liability, neighborhood concerns and impacts, access, etc.

Task 3 - *Base Map / Site Analysis*

A topographic survey, utility and easement research will be scheduled. Preparation of a base map will be developed based on the survey, research, and information supplied by the City. The Design Team will visit the site and develop a site analysis and inventory by looking at existing activities in the area, access, existing site conditions, surrounding land use, drop-off and pick up area, parking, grading and drainage, landscape buffering opportunities, and constraints etc.

At this time, the geotechnical services will be scheduled. The geotechnical report will determine the engineering properties of the soils encountered at the site.

Task 4 - *Site Assessment*

We will develop an assessment based on our past experience that addresses trends in skate park development (such as usage impacts, access, noise, parking, litter, fencing vs. non-fencing, maintenance, etc.), past experience on existing projects, our site analysis, specific site opportunities, and constraints.

ATTACHMENT A SCOPE OF SERVICES

Agreement between *Purkiss Rose-RSI* and City of Fayetteville

Contract Date: July 26, 2000

Project Name: Fayetteville, Skate Park

Project #: Job Number

The report will also address the impact on the neighborhood as well as mitigation measures that can be utilized to lessen these impacts. We will also make recommendation regarding policies, operations, management, maintenance, security, and development.

Task 5 - *Public Input Meeting #1*

The Design Team will facilitate an input workshop with local skaters, committee members, concerned neighbors, and City staff. The scope of work, design process, and timeline will be explained. The site analysis and site assessment will be presented as well as site opportunities and constraints reviewed. The Design Team will guide the participants through an input session in order to first review the impact and mitigation measures for the site and to develop a vocabulary of design ideas and possible components (elements) of the park. Existing examples of similar projects will be displayed to help visualize elements of the park. A design layout will be formulated from this input.

Task 6 - *Conceptual Plans*

Based on the information obtained at the first workshop the Design Team will explore functional and visual relationships of the proposed site by looking at such components as layout and orientation, safety zones, security, grading concepts, circulation of pedestrians and traffic, etc. A skate park layout or alternatives will be designed to address the proposed program. Comments and recommendations will be reviewed with staff for their acceptability, strengths, and weaknesses. Construction components, drainage devices, materials, and site amenities will be presented for review and input. Based on this input, the alternatives will be refined for the presentation at a second workshop.

Task 7 - *Construction Cost Estimate*

A complete cost analysis will be developed.

Task 8 - *Public Input Meeting #2*

At a second workshop, the Design Team will present the conceptual plan or design alternatives with support sketches to help visualize the proposed improvements. Using a "Hands-On" format, each element will be

ATTACHMENT A SCOPE OF SERVICES

Agreement between *Purkiss Rose-RSI* and City of Fayetteville

Contract Date: July 26, 2000

Project Name: Fayetteville, Skate Park

Project #: Job Number

reviewed and approved. We will strive to get a consensus on one layout or a combination of ideas.

Task 9 - Refinement of the Conceptual Plan

Based on all the information obtained to date, we will finalize the design layout and budget. The plan will be rendered for presentation.

Task 10 - Presentation - Public Meeting

The Final Conceptual Plan and construction cost estimates will be presented to the user group and Committee for final input. As part of this meeting, we will meet with the Parks and Recreation Advisory Board and general public. All comments will be reviewed and incorporated into the final Plan.

PHASE II - CONSTRUCTION PLANS AND SPECIFICATIONS

Once the final plan and budget have been approved by all the agencies, the team will develop construction documents, cost estimates, and specifications for implementation of the project.

Task 1 - Construction Plans and Specifications

The construction documents will include the following:

- Drainage/Grading Plan
- Skate Park Layout Plan
- Storm Water Management Plan
- Large Scale Development Plan
- Site Amenity Plan (fencing, walkways, drinking fountains, etc.)
- Details and Specifications

If the facility is to be lighted, we can provide the electrical engineering plan.

ATTACHMENT A SCOPE OF SERVICES

Agreement between *Purkiss Rose-RSI* and City of Fayetteville

Contract Date: July 26, 2000

Project Name: Fayetteville, Skate Park

Project #: Job Number

Task 2 - *Cost Estimates*

Detailed construction cost estimates will be provided.

Task 3 - *Plan Review*

The plans will be submitted for plan check and all comments addressed.

Task 4 - *Bidding Process*

The design team will be available during the bid process to assist, review, clarify, and comment on the bids and attend the pre-bid Conference.

PHASE III - CONSTRUCTION PHASE

The design team will be available during the bid process to assist, review, clarify, comment, and make recommendations on the bids. We will answer any questions that could affect bid results.

We will review and approve the contractor's submittals including material submittals, shop drawings, and change orders; review contractors' pay requests, clarifications to plans and specifications; provide site visits and report on construction process. We will attend a preconstruction meeting with the awarded contractor and the Client. We will meet at the job site and review the installation. Four (4) site meetings are included.

If desired, we can offer extended services during the installation to have an experienced skate park builder on the site to work directly with the awarded contractor.

ITEMS TO BE SUPPLIED BY THE CLIENT

1. Any As-built Drawings

ATTACHMENT B

FEE PROPOSAL BREAKDOWN

Agreement between *Purkiss Rose-RSI* and City of Fayetteville

Contract Date: July 26, 2000

Project Name: Fayetteville Skate Park
 Job Number

Phase/Task	Labor Allocation (Hours)					Not-to-Exceed Costs (Dollars)		
	Principal (\$115/hr)	Project Manager (\$85/hr)	Sk&Pk Designer (\$75/hr)	CadDraf. (\$65/hr)	Clerical (\$35/hr)	Subconsult.	Other Direct Costs	Subtotal
Phase I - Conceptual Design								
Task 1. Project Definition	8							\$ 920.00
Task 2. Information Gathering		6						\$ 510.00
Task 3. Base Map		2		6		\$4,673.00 Topo /Utility/ Geotechnical	\$ 100.00	\$ 5,333.00
Task 4. Site Analysis		2		6		\$ 0.00		\$ 560.00
Task 5. Workshop # 1			4			\$ 0.00		\$ 300.00
Task 6. Design Concepts	4	6	6				\$ 200.00	\$ 1,620.00
Task 7. Const. Cost Estimates		2			4	\$ 0.00		\$ 310.00
Task 8. Workshop # 2			4			\$ 0.00		\$ 300.00
Task 9. Final Plan		6	6			\$ 0.00	\$ 200.00	\$ 1,160.00
Task 10. Presentations	4		4		2			\$ 830.00
Phase I - Totals	16	24	24	12	6	\$ 4,673.00	\$ 500.00	\$ 11,843.00
Phase II - Construction Documents								
Task 1. Construction Drawings*	2	10	6	72	2	\$6,352.00 Civil/Struct.	\$ 1,500.00	\$ 14,132.00
Task 2. Final Cost Estimate		2			2	\$ 0.00	\$ 0.00	\$ 240.00
Task 3. Approvals	6		6			\$ 0.00	\$ 0.00	\$ 1,140.00
Phase II - Totals	8	12	12	72	4	\$ 6,352.00	\$ 1,500.00	\$ 15,512.00
Phase III -Bidding and Construction								
Task 1 Bidding and Cost Administration	4	30	12		2	\$ 0.00	\$ 500.00	\$ 4,480.00
Phase IV - Totals	4	30	12	0	2	\$ 0.00	\$ 500.00	\$ 4,480.00
Grand Total	28	66	48	84	12	\$ 11,025.00	\$ 2,500.00	\$ 31,835.00

ATTACHMENT B

FEE PROPOSAL BREAKDOWN

Agreement between *Purkiss Rose-RSI* and City of Fayetteville

Contract Date: July 26, 2000
Project Name: Fayetteville Skate Park
Job Number:

Electrical Engineering

Electrical engineering is required to develop plans to light the facility, add an allowance of \$3,000 to provide for service.

Our Scope of Services indicates seven site visits, three in the design phase and four in the construction administration phase. Two representatives will be present during the design phase site visits and one representative will be present during the construction administration phase site visits. Travel and accommodations will be billed at cost, for a two representative site visit we estimate \$1,150 per trip and for a one person representative we estimate \$650 per trip or site visit.

☐ 3 - two person site visits	\$3,450.00
☐ 4 - one person site visits	<u>\$2,600.00</u>
Total	\$6,050.00

Our fee includes \$2,500 for reproduction up to time of bid. Civil engineering cost includes a storm water plan and a large scape development plan. If additional services are requested we shall utilize the following fee schedule.

Purkiss Rose-RSI Landscape Architecture, Recreation & Park Planning

Principal	\$115.00/hr.
Project Manager	\$ 85.00/hr.
Skate Park Designer	\$ 75.00/hr.
Draftsperson	\$ 65.00/hr.
Clerical/Word Processing	\$ 35.00/hr.

McClelland Consulting Engineers, Inc.

Principal Engineer/Project Manager	\$ 98.50/hr.
Senior Project Engineer	\$ 71.65/hr.
Junior Project Engineer	\$ 46.25/hr.
Electrical Engineer	\$ 75.00/hr.
Mechanical Engineer	\$ 65.00/hr.
Structural Engineer	\$ 70.95/hr.
Senior Engineering Technician	\$ 50.70/hr.
Senior Construction Observer	\$ 57.35/hr.
Junior Construction Observer	\$ 36.40/hr.
Chief Draftsman/Designer	\$ 58.55/hr.
Draftsman	\$ 45.60/hr.

ATTACHMENT B

FEE PROPOSAL BREAKDOWN

Agreement between *Purkiss Rose-RSI* and City of Fayetteville

Contract Date: July 26, 2000
 Project Name: Fayetteville Skate Park
 Job Number

Junior Draftsman	\$ 28.35/hr.
Computer Technician	\$ 50.50/hr.
Registered Land Surveyor	\$ 47.16/hr.
Survey Crew (2-Man)	\$ 65.00/hr.
Survey Crew (3-Man)	\$ 90.00/hr.
Party Chief	\$ 30.00/hr.
Soils Lab Supervisor	\$ 44.75/hr.
Soils Lab Technician	\$ 27.80/hr.
Water Lab Supervisor	\$ 44.85/hr.
Water Lab Technician	\$ 23.95/hr.
Clerk/Typist	\$ 31.10/hr.
Mileage	\$ 0.32/hr.

July 20, 2000

Mr. Steve Rose
Purkiss - Rose - RSI
801 N. Harbor Blvd.
Fullerton, CA 92832

RE: Civil, Structural & Geotechnical Services
Fayetteville Skate Park
Fayetteville, Arkansas

Dear Mr. Rose:

We are pleased to present a proposal for the Civil, Structural and Geotechnical Services for the Fayetteville Skate Park.

We propose to provide the services requested as follows for the fees stated:

• Topographic Survey	\$ 1,800.00
• Utility & Easement Research & Plan	\$ 750.00
• Grading & Drainage Plan	\$ 1,800.00
• Storm Water Management Plan	\$ 500.00
• Large Scale Development Plan	\$ 3,250.00
• Structural Plan Review & Comment	\$ 500.00
• Geotechnical Investigation	\$ 1,900.00

The geotechnical investigation is to consist of 3 - 12 foot borings within the proposed skate park area; sampling of surface and subsurface materials; determine the engineering properties of the soils encountered; perform engineering analyses of soil strata based on laboratory data; and develop a written geotechnical report to include foundation recommendations and bearing capacity recommendations.

The drawings for the topographic survey and civil plans will be provided in AutoCAD R14 format. We will make a diligent effort to determine the location of the utilities from the Fayetteville Parks Maintenance Staff and coordinate with other Utilities Companies to show the location of the facilities.

We are ready to proceed with this work upon your written notice of acceptance.

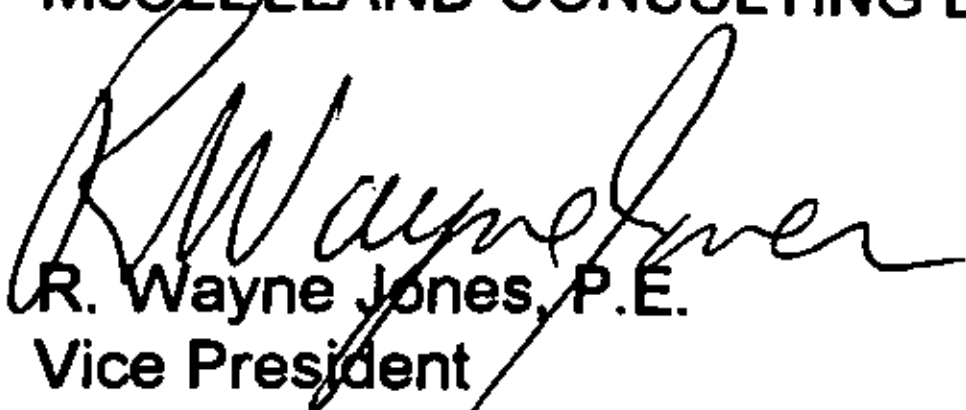
Mr. Rose
Purkiss - Rose - RSI

July 20, 2000
Page.....2

We appreciate the opportunity to provide this Proposal to your firm and look forward to working on this project. If this Proposal is acceptable, please sign and return a copy to our office, upon your contract approval by the City. If there are any questions regarding this Proposal, please contact us.

Sincerely,

McCLELLAND CONSULTING ENGINEERS, INC.


R. Wayne Jones, P.E.
Vice President

Enclosure: Geotechnical Scope of Services and Fee Schedule

McClelland Consulting Engineers, Inc., is authorized to proceed in accordance with this Letter of Proposal, consisting of two pages.

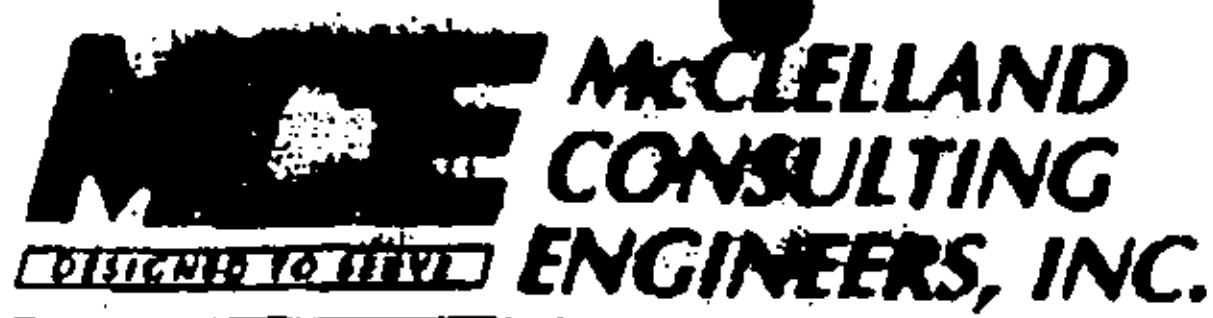
Signature	Title	Date
-----------	-------	------

BILLING RATES

COPY
***HOURLY**
RATE

CATEGORY	
Principal Engineer/Project Manager	\$ 98.50
Senior Project Engineer	\$ 71.65
Junior Project Engineer	\$ 46.25
Electrical Engineer	\$ 75.00
Mechanical Engineer	\$ 65.00
Structural Engineer	\$ 70.95
Senior Engineering Technician	\$ 50.70
Senior Construction Observer	\$ 57.35
Junior Construction Observer	\$ 36.40
Chief Draftsman/Designer	\$ 58.55
Senior Draftsman	\$ 45.60
Junior Draftsman	\$ 28.35
Computer Technician	\$ 50.50
Registered Land Surveyor	\$ 47.16
Survey Crew (2-Man)	\$ 65.00
Survey Crew (3-Man)	\$ 90.00
Party Chief	\$ 30.00
Soils Lab Supervisor	\$ 48.75
Soils Lab Technician	\$ 27.80
Water Lab Supervisor	\$ 44.85
Water Lab Technician	\$ 23.95
Clerk/Typist	\$ 31.10
Mileage	\$ 0.32

* Subject to adjustment annually, on/about July 1st.



P.O. Box 1229
Fayetteville, Arkansas 72702-1229
501-587-1303
FAX 501-443-9241

GEOTECHNICAL INVESTIGATION SCOPE AND FEE SCHEDULE
SKATE PARK
FAYETTEVILLE, ARKANSAS
for
PURKISS - ROSE
FULLERTON, CALIFORNIA
JULY 18, 2000

COPY

Item No.	Item Description / ASTM Designation	Quantity	Units	Unit Price	Extended
1	Equipment Mobilization and Demobilization (\$2.10/ml each w	1	LS	\$75.00	\$75.00
				Subtotal	\$75.00
2	Boring Setup Charges	2	EA	\$35.00	\$70.00
	Boring Layout	0.5	HR	\$60.00	\$30.00
				Subtotal	\$100.00
3	Soil Drilling and Sampling, ASTM D-1586 & ASTM D-1587				
	Soil Drilling in Building Area (3 Borings - 12 feet max.)	36	LF	\$8.50	\$306.00
				Subtotal	\$306.00
4	Soil and Rock Laboratory Testing				
	ASTM D-2216, Moisture Content Determination	12	EA	\$12.00	\$144.00
	ASTM D-4318, Liquid and Plastic Limit of Soils	3	EA	\$55.00	\$165.00
	ASTM D-422, Gradation Analysis of Soils (6 Sieves)	3	EA	\$50.00	\$150.00
	ASTM D-2166, Unconfined Compressive Strength of Soils	3	EA	\$40.00	\$120.00
	ASTM D-2166, Dry Unit Weight of Soil Specimens	6	EA	\$12.00	\$72.00
				Subtotal	\$651.00
5	Geotechnical Engineering Report and Recommendations				
	Engineering Supervision (Project Manager)	2	HR	\$95.00	\$190.00
	Engineering Analysis & Recommendations (Project Engr.)	5	HR	\$70.00	\$350.00
	Boring Plot Log Preparation (Senior Draftman)	2	HR	\$55.00	\$110.00
	Boring Plot Plan Preparation (Draftman)	2	HR	\$40.00	\$80.00
	Report Preparation (Clerical)	1	HR	\$35.00	\$35.00
				Subtotal	\$765.00

ESTIMATED GEOTECHNICAL INVESTIGATION AND ENGINEERING **\$1,897.00**

QUOTE Not to exceed \$1,900.00

SUBMITTED BY: 
R. WAYNE JONES, P.E.
Vice President

COPY

C:\DATA\GEOTECH\SKATEPARK.WEB.m

AASHTO Accredited - Inspected by AMRL & CCRL

STAFF REVIEW FORM

☒ AGENDA REQUEST
☒ CONTRACT REVIEW
☐ GRANT REVIEW

Wings Air, Inc. Lease Agreement

For the Fayetteville City Council meeting of August 15, 2000

FROM:

Alett Little
Name

Airport
Division

Economic Development
Department

ACTION REQUIRED: Request City Council approval of a Lease Agreement with Wings Air, Inc. for an above ground fueling facility which they will locate south of the terminal bldg. ramp. This will allow self-service fueling by the pilot using a credit card. Annual compensation will be \$384 for the ground area with three 3-year renewal options. Flowage fees will be remitted to the City as set forth in Sec. 91.16 of the Code of Fayetteville.

COST TO CITY:

\$ n/a
Cost of this Request
5550 0955 4457 00
Account Number
n/a
Project Number

\$ n/a
Category/Project Budget
\$ n/a
Funds used to date
\$ n/a
Remaining Balance

n/a
Category/Project Name
n/a
Program Name
Airport
Fund

BUDGET REVIEW:

Budgeted Item

Budget Adjustment Attached

Budget Manager Date

Administrative Services Dir. Date

CONTRACT/GRANT/LEASE REVIEW:

Accounting Manager Date

Denny Smith 8/8/00
Internal Auditor Date

City Attorney Date

ADA Coordinator Date

Purchasing Officer Date

Grants Coordinator Date

STAFF RECOMMENDATION:

The Airport Board will meet August 3rd and their recommendation will be available at the August 8th agenda meeting.

Division Head
Alett Little
Department Director

Date
8.3.00
Date

Administrative Services Director

Date

Mayor

Date

Cross Reference

New Item: Yes No

Prev. Ord/Res#:

Orig Cont. Date:

Orig Cont #:

FAYETTEVILLE

AIRPORT DEPARTMENT
THE CITY OF FAYETTEVILLE, ARKANSAS

TO: FAYETTEVILLE CITY COUNCIL

THRU: FRED HANNA, MAYOR

FROM: ALETT LITTLE, ECONOMIC DEVELOPMENT DIRECTOR *al*

DATE: AUGUST 2, 2000

**SUBJECT: ABOVE GROUND FUELING FACILITY LEASE AGREEMENT
WITH WINGS AIR, INC.**

The Economic Development Department requests approval of a Lease Agreement with Wings Air, Inc. for an above ground fueling facility. Lease is for one year with three three-year renewal options. Wings Air, Inc. will be responsible for the installation of the self-service fueling equipment. This will allow the pilot to fuel his own aircraft using a credit card.

Monthly rental is \$32.00 and the annual compensation will be \$384.00

The Airport Board will consider this at their regular Airport Board Meeting on August 3, 2000.

AL/lp

Attachment: Original Lease

LEASE AGREEMENT
Above Ground Fueling Facility

This Agreement made and entered into at Fayetteville, Arkansas, the _____ day of _____, 2000, by and between the City of Fayetteville, Arkansas, 113 W. Mountain, Fayetteville, Arkansas, 72701, hereinafter referred to as the "Lessor," and Wings Air, Inc. Attn.: R.M. Schossow, P.O. Box 064, Lowell, Arkansas, 72745, hereinafter referred to as "Lessee,"
WITNESSETH:

1. **Leased Premises.** For and in consideration of the rents, covenants and agreements herein entered into and agreed upon by the Lessee as obligations to the Lessor, the Lessor lets, leases and demises unto Lessee, subject to the terms and conditions contained herein, the following described property situated in Washington County, Arkansas:

A certain tract of land 108.7 feet by 130 feet located at the Fayetteville Municipal Airport/Drake Field and more particularly set forth and shown on Exhibit "A" attached hereto and made a part hereof.

Lessor reserves the right to take such action as may be necessary to protect the aerial approaches of the Fayetteville Municipal Airport/Drake Field, hereinafter referred to as "Airport", against obstruction in accordance with the applicable standards and/or requirements.

Lessor also reserves for itself and its licensees, an Avigation easement in, over and across the airspace above the Leased Premises and the unrestricted right to subject the leased Premises to such Airport noise and vibration as may result from the flight of aircraft, warm up of engines, testing of motors and other aviation related activities.

Lessee, its representatives, agents, invitees and licensees, shall have the right of ingress and egress to and from the leased Premises. Lessor reserves the right to close any means of ingress and egress, so long as other reasonable means of ingress and egress to the Leased Premises are available to Lessee.

2. **Use.** Lessee shall have use of the Leased Premises as follows:

A. Lessee shall be entitled only to use the Leased Premises for lawful purposes related to the activities of a fueling facility.

- Aviation Fuel shall not be sold for non-aeronautical purposes.

B. Subject to Federal Aviation Administration, hereinafter referred to as "FAA" and Airport Security and Airport Operational Rules, Airport Minimum Standards, Regulations and Procedures, Lessee shall be entitled to use, on a nonexclusive basis, public areas of the Airport and runways, taxiways, aprons, lighting navigation aids, and other facilities necessary for

the operation of aircraft and activities related to Lessee's business as a fueling facility.

C. Lessee shall require all of its agents, employees, contractors and invitees entering the Leased Premises to comply with the Airport Rules and Regulations established by the Airport and the FAA as they currently exist, and as may be amended.

D. Lessee shall conduct its operations in an orderly and proper manner so as not to annoy, disturb, or be offensive to others at or surrounding the Airport.

E. Lessee shall take all reasonable measures to keep the sound level of its operations as low as reasonably possible.

F. Lessee shall not permit the accumulation of any rubbish, trash or other waste material on the Lease premises.

G. Except in tanks and in the manner approved by appropriate governmental authorities, Lessee shall not store any gasoline or other material likely to give off fumes or gases or any material likely to constitute a fire, safety or security hazard on the Leased Premises.

H. Lessee shall not cause or permit any hazardous material or hazardous substance to be disposed of on the Leased Premises by Lessee, Lessee's agents, employees, contractors or invitees.

3. Term of Agreement. The term of this Agreement shall be:

A. Initial Term. A period of **one year** commencing on the date of this Agreement, and expiring at midnight on _____, _____ unless otherwise terminated, canceled or extended as set forth herein below.

B. Option to Extend. Lessee shall have the option to extend the Lease Term for three (3) consecutive three (3) year terms, under the same terms and conditions of this Agreement, provided:

(1) Lessee has complied with and performed all conditions, covenants, and terms of this Agreement without any uncorrected defaults if known to Lessee, or any defaults that are not otherwise in the process of being resolved in the manner provided in this Agreement.

(2) Notice of Lessee's intent to renew has been made in writing to Lessor at least one hundred twenty (120) days prior to the expiration of the term.

(3) A recommendation of renewal has been made by the Airport Board after completion of a performance review made in accordance with the Performance standards set forth in Paragraph 5 of this Agreement.

4. Rental Charges, Fees and Utilities. The following rentals charges and utilities shall be

paid by Lessor:

A. Rental Charges. Lessee shall pay an annual rental charge in the sum of three hundred eighty-four dollars (\$384). Such sum may be paid monthly on or before the first day of each month at the rate of thirty-two dollars (\$32), with the first payment due upon taking possession. Rental charges shall increase each anniversary year in the amount of three and one-half percent (3 1/2%), until expiration or termination of this Agreement. A delinquency charge will be imposed on all payments not received by the close of business on the tenth day after the due date. Such delinquency charge shall be the maximum amount allowable under Arkansas law. All payments shall be delivered to: Fayetteville Municipal Airport, 4500 S. School Ave., Fayetteville, AR 72701.

B. Fees. Lessee shall pay flowage fees as set forth in Section 91.16, of the Code of Fayetteville, and as may from time to time hereafter be amended.

C. Utilities. Lessee shall be responsible for the installation, relocation, modification and maintenance of all utility services to or on the Leased Premises. This shall include any janitor services, power, gas, telephone, electricity, heating, water, sewer, storm water and all other utility services not enumerated specifically. Lessee shall pay as the same become due, all utility and other charges incurred in the operation, maintenance, use, occupancy, repair and upkeep of the Leased Premises and the improvements located thereon.

5. Performance Standards. Lessee shall meet the following performance standards:

A. Minimum Standards. Minimum Standards pursuant to Section 91.15, of the Code of Fayetteville, made a part hereof as if set forth word for word herein.

B. Emergency Number Posted. Post a toll-free phone number at the fueling site for 24 hour emergency service for the facility.

C. Response Time. Provide assistance within one hour of receiving a call.

D. Customer Service Training. Provide instruction and training to employees in generally accepted courtesy and proactive customer response methods.

E. Customer Service. Employees shall treat customers with generally accepted courtesy and proactive customer response methods.

6. Grievance Committee/Complaints

A. A three-person committee is established to hear customer complaints. This committee meets on an as needed basis. Complaints will be considered by this committee and every effort will be made to resolve the problem. If a resolution cannot be found, then the

complaint will be forwarded to the Airport Board, and then to the Fayetteville City Council if necessary.

B. Lessee will keep a record of all complaints from customers concerning any aspect of the fuel facility. If a complaint is received by the Airport, the Airport will notify the Lessee in writing and provide a copy of the notice to the Chairman of the Grievance Committee.

On a monthly basis the lessee will submit a report to the Airport that will include records of any complaints, and what action was taken to mitigate the problem.

7. Signage. All signage shall require prior written approval from Lessor.

8. Improvements. All improvements to the Leased Premises, whether by addition or by removal, shall require prior written approval from Lessor.

9. Inspection. Lessor shall have the right to inspect the Leased Premises during all reasonable hours.

10. Maintenance. Lessee at all times shall keep in a clean and orderly condition and appearance all of the Leased Premises and any improvements. Such maintenance shall include but not be limited to mowing and nuisance abatement.

11. Fuel Ledgers and Audits.

A. Ledger. A fuel ledger will be submitted on a monthly basis. This ledger will include the date fuel was delivered, the fueling agent, the total gallons delivered and a copy of the bill of lading or other documentation which confirms the total gallons delivered.

B. Audit. Lessee agrees to furnish Airport, annually, certified statements which show the total fuel delivered to the Leased Premises for the preceding calendar year. Should the Lessee fail to furnish the Airport with the certified statements within three (3) months, Lessee agrees to pay the Airport the sum of \$100 per day until the certified statements are received.

12. Surrender of Possession: Holding Over. At the expiration or termination of this Agreement, Lessee agrees to surrender possession of the Leased Premises peacefully and promptly to the Lessor in as good condition as existed at the effective date of this Agreement, normal wear and tear excepted. Lessee shall, at its own expense, remove all pumps, tanks, equipment or other property installed by Lessee.

If Lessee shall hold over after the termination of this Agreement, the Lessor may allow Lessee to remain on the premises as a month-to-month tenant at will. During such tenancy, Lessee shall pay to the Lessor the rentals, fees and charges set by the Airport, or such amount as the parties may otherwise agree to in writing, and Lessee shall be bound by all of the additional

provisions of the Agreement insofar as they may be pertinent.

13. Indemnity. Lessee shall indemnify, protect, defend and hold completely harmless, the City, the Airport, and its trustees, councilors, officers, agents and employees from and against all liability, losses, suits, claims, judgements, fines or demands arising from injury or death of any person or damage to any property, including all reasonable costs for investigation and defense thereof (including attorney fees, court costs, and expert fees), of any nature whatsoever arising out of or incident to this Agreement, including but not limited to hazardous substances, Lessee's use or occupancy of the Airport premises, the rights, licenses, or privileges granted Lessee herein, or the acts of omissions of lessee's officer, agents, employees, contractors, subcontractors or licensees, regardless of where the injury, death or damage may occur. The Lessor shall give notice to Lessee of any such liability, loss, suit, claim or demand, and Lessee shall defend same using counsel reasonably acceptable to the Lessor. No word, sentence, paragraph or phrase shall be construed to waive that tort immunity as set for under Arkansas Law. The provisions of this section shall survive the expiration or early termination of this Agreement.

14. Insurance. Lessee shall maintain in force during the Term and any extended term public liability and property damage insurance in comprehensive form as reasonably may be required by the Lessor and outlined in the Airport Minimum Standards. The insurance shall be issued by an insurer licensed to do business in the State of Arkansas. Proof of insurance shall be provided to the Airport. Further, no change or cancellation of the insurance shall be made without 30 days notice to the Airport.

15. Governmental Requirements

A. Governmental Requirements - General. Lessee shall comply with all Governmental Requirements applicable to Lessee's use and operation of the Leased Premises. Without limiting the generality of the foregoing, Lessee shall at all times use and occupy the Airport in strict accordance with all laws, rules, regulations, minimum standards, and security plans that may be imposed by the FAA, the Airport, the state, federal or city government with respect to the Airport and operations thereof, including but not limited to procuring all licenses, franchises, certificates, permits, and authorizations necessary to conduct business.

B. No Liability for Exercise of Powers. The Lessor shall not be liable to Lessee for any diminution or deprivation of its rights which may result from the proper exercise of any power reserved to the Lessor in this Agreement or by reason of governmental requirements; Lessee shall not be entitled to terminate this Agreement by reason thereof, unless the exercise of such power shall interfere with Lessee's rights hereunder so as to constitute a termination of this Agreement by operation of law.

C. Nondiscrimination. Lessee, and its successors in interest, and assignees, as part of the consideration hereof, hereby do covenant and agree, as a covenant running with the land, that in the event facilities are constructed, maintained or otherwise operated on property

described in this Agreement for a purpose for which a Department of Transportation program or activity is extended or for another purpose involving the provisions of similar services or benefits, Lessee shall remain and operate such facilities and service in compliance with all other requirements imposed pursuant to Title 49 CFR Part 21, Nondiscrimination in Federally-Assisted Programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, as said regulations may be amended.

Lessee, and its successors in interest, and assignees, as a part of the consideration hereof, do covenant and agree hereby, as a covenant running with the land, that: (1) no person shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination in the use of said facilities on the grounds of race, color, creed, national origin, sex or disability; (2) in the construction of any improvements on, over or under such land, and the furnishings of services thereon, no person shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination in the use of said facilities on the grounds of race, color, creed, national origin, sex or disability; (3) Lessee shall be responsible for maintaining the Leased Premises and services in a manner which complies with the parties' respective obligations under 14 CFR Part 382, NONDISCRIMINATION ON THE BASIS OF HANDICAP IN AIR TRAVEL, under the Uniform Federal Accessibility Standards (UFAS), or substantially equivalent standards; under 49 CFR part 27, NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS AND ACTIVITIES RECEIVING OR BENEFITTING FROM FEDERAL FINANCIAL ASSISTANCE; and under 42 U.S.C.S. §§ 12101, et seq., THE AMERICANS WITH DISABILITIES ACT of 1990, or a substantially equivalent standard; and (4) Lessee will be responsible for any alterations and/or construction made during the initial lease period or any extensions or renewal within the demised space, the subject of this Lease, which may be mandated by or necessary to meet the requirements of the statutes and regulations cited above and other relevant Federal, State or local laws, statutes and regulations cited above and other relevant Federal, State or local laws, statutes and ordinances that relate to disabled accessibility standards.

To the extent applicable, Lessee assures that it will undertake an Affirmative Action Program as required by 14 CFR Part 152, Subpart E to ensure that, on the grounds of race, color, creed, national origin or sex, no person shall be excluded from participating in any employment activities covered in 14 CFR Part 152, Subpart E. Lessee assures that it will require that its covered suborganizations provide assurances to the Airport that they similarly will undertake Affirmative Action Programs and that they will require assurances from their suborganizations as required by 14 CFR Part 152, Subpart E to this same effect.

16. Assigning, Subletting and Encumbering. Lessee shall not assign this Agreement in whole or in part, nor sublease all or any part of the Leased Premises, nor permit other persons to occupy said Leased Premises or any part thereof, nor grant any license or concession for all or any part of said Leased Premises, without the prior written consent of the Lessor, which consent shall not be unreasonably withheld.

17. Independent Contractor. This Agreement shall not be deemed or construed to create

any relationship or joint venture or partnership between the parties, to give the Lessor any interest in the business of Lessee, or to grant to Lessee any powers as an agent or representative of the City or Airport for any purpose or to bind the City or the Airport. Lessee shall be an independent contractor owning and operating its business as herein described.

18. Termination for Airport Purposes. Lessee agrees and understands that, by reason of the broad public interest in the efficient maintenance, operation and development of the Airport, the lessor hereby expressly reserves the right to modify or to terminate this Agreement upon a determination by the Airport that the Leased Premises are needed for Airport construction or development.

In the event the Lessor elects to modify or terminate the Agreement, Lessee shall surrender the Leased Premises, or any portion thereof designated, to the Lessor within ninety (90) days from receipt of notice. The Lessor shall use its best efforts to provide Lessee with comparable replacement premises at the Airport and at a comparable rate not to exceed those rates set forth in this Agreement. All other terms and conditions of this Agreement shall apply to the replacement premises.

Lessor shall pay the reasonable expenses incurred by Lessee in relocating and/or removal of equipment and slab and foundation improvements upon modification or termination for airport purposes as set forth herein above. Reasonable expenses are those expenses that are necessary to physically move and relocate the Lessee to a new location on the Airport.

19. Miscellaneous

A. Severability. In the event any provisions of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof, unless such holding shall materially affect the rights of either party as set forth herein.

B. Entire Agreement; Modification. This Agreement expresses the entire understanding of the Lessor and Lessee concerning the Leased Premises. Neither the Lessor nor Lessee has made or shall be bound by any agreement or any representation to the other concerning the Leased Premises or the subject matter hereof which is not set forth expressly in this Agreement. This Agreement may be modified only by a written agreement of subsequent date hereto signed by the Lessor and Lessee.

C. Non-Waiver. Neither the waiver nor any forbearance of remedy by the Lessor of any breach of Lessee of any provision hereof shall operate as a waiver for any other breach by Lessee.

D. Execution of Counterparts. This Agreement simultaneously may be executed in

several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

E. Choice of Law. This Agreement shall be construed and enforced in accordance with the laws of the State of Arkansas.

F. Force Majeure. Neither the Lessor nor Lessee shall be deemed in violation of this Agreement if it is prevented from performing any of the obligations hereunder by reason of embargoes, shortages of material, acts of God, acts of the public enemy, acts of superior governmental authority, weather conditions, floods, riots, rebellions, sabotage, or any other circumstances for which it is not responsible or which are not within its control, and the time for performance automatically shall be extended by the period the party is prevented from performing its obligations hereunder.

G. Binding Effect. This Agreement shall be to the benefit of and shall be binding upon the Lessor, Lessee and their respective successors and assignees, if such assignment shall have been made in conformity with the provisions of this Agreement.

IN WITNESS WHEREOF, the Lessor and Lessee have executed this Agreement on the ____ day of _____, 2000.

City of Fayetteville

By _____
Fred Hanna, Mayor

ATTEST:

Heather Woodruff, City Clerk

Wings Air, Inc.

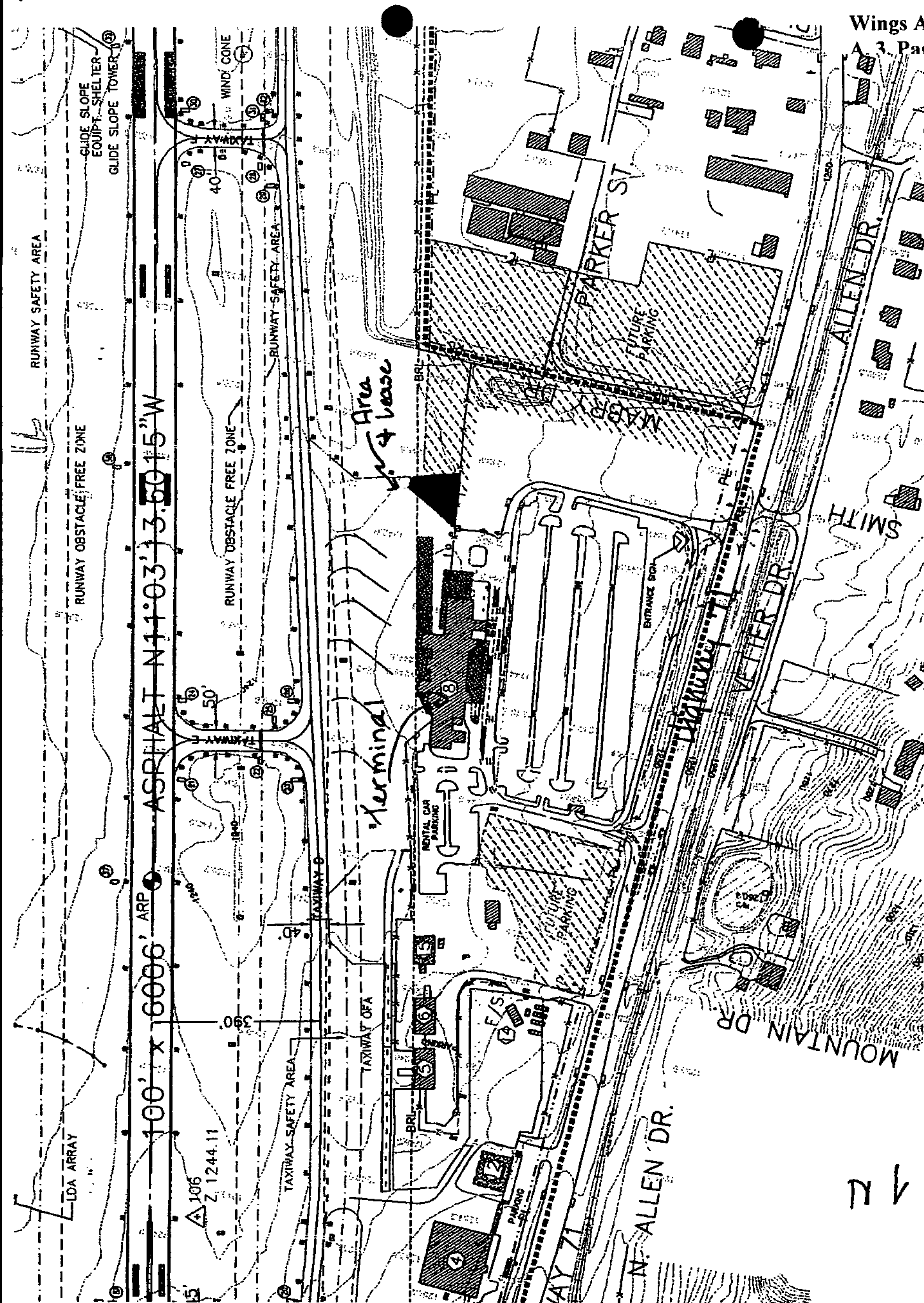
By _____

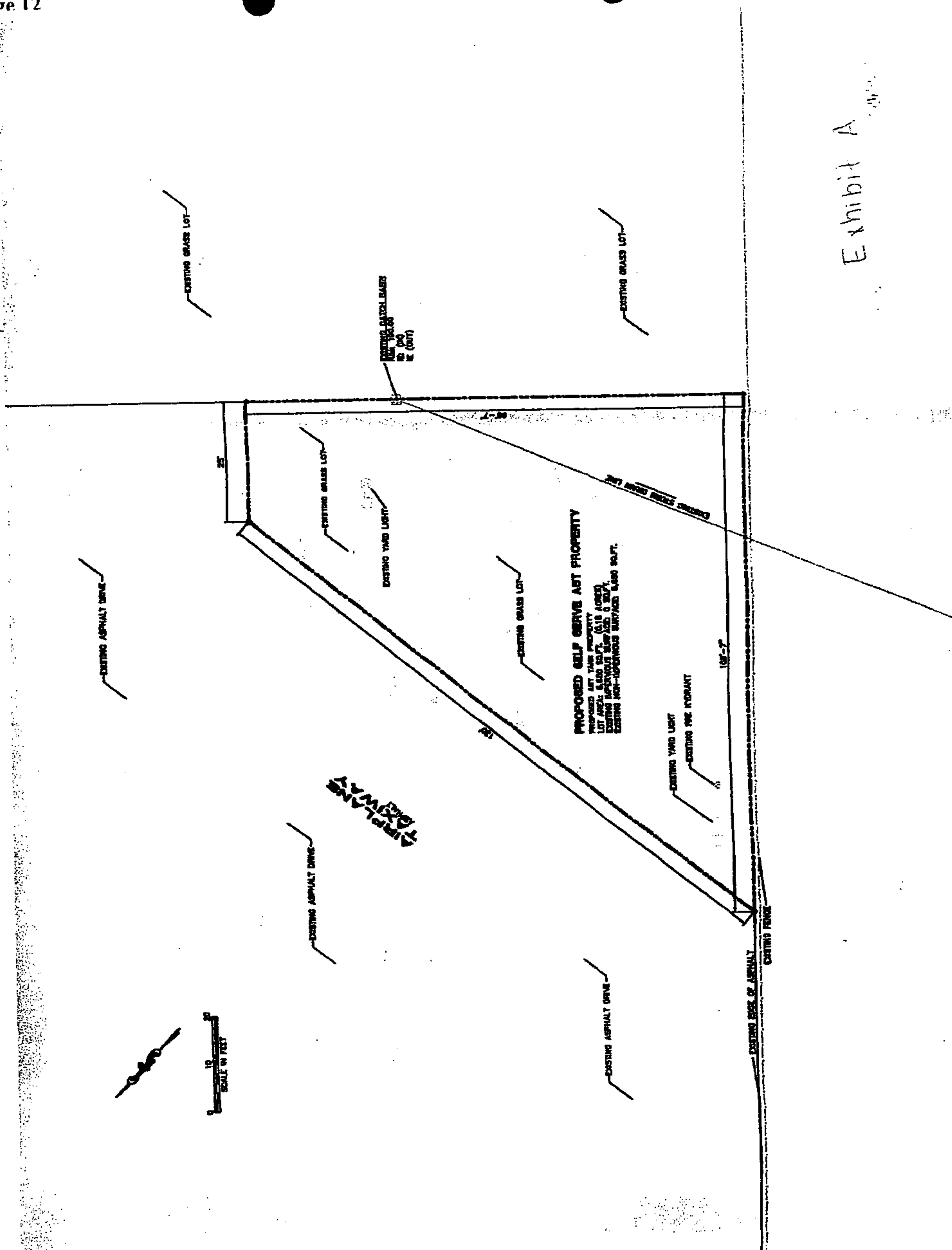
Title: _____

ATTEST

By: _____

Above Ground
Fueling Facility
General Vocab





ALL: Aye.

McKINNEY: That motion carries.

ITEM #3: Old Business

a. Re-establishment of 3/4 mile minimums on Localizer 16.

McKINNEY: Alett, will you address this?

LITTLE: Yes. You and Doc Wallace made a trip in the last week of June and spoke with several people including Dean Alexander and Don Harris. Don Harris is in Fort Worth and Dean Alexander is in Oklahoma City. I have spoken with them since then. My last contact was with Dean on July 25. The information that they do have in Oklahoma City about the obstructions that we have in our approach was not the most up to date information. I had transmitted the study that you all had commissioned from Garver and he has that now. He tells me that he is putting that into his NFDC program. I do not know what an NFDC program is but I do know that it is a modeling program which is three dimensional that will tell them where the obstructions are. I believe the work that you have already paid for from Garver is very similar to this so I think that their work is not going to be extensive. I did try to contact him this week and found that he is on vacation all this week. So, I have nothing further other than I talked to him last week and he does have the correct information now. He is putting that into a modeling format and I will commit to you to get in touch with him upon his return and give you a letter report.

McKINNEY: As I recall, Doc, they have continual use of the modeling program and they sequence in and process, so we are in line for the modeling. That's the best thing to say. Once they run the model, he should be able to give us a pretty good idea of what waivers we might need to come back with.

b. Recommendation of Lease Agreement with Wings Air for terminal space.

c. Recommendation of Lease Agreement with Wings Air for ground lease.

LITTLE: The bottom line on this one is that we have reached agreement. The staff does recommend approval of this lease. There have been some changes since your agenda packets were distributed. Those changes were on page two, paragraph 3B1, we added:

"...as known to Lessee or any defaults that are not otherwise in the process of being resolved in the manner provided in this agreement."

The second change is on page two, paragraph 3B3. The original wording was, "a recommendation of renewal has been made by the Airport Board after completion of a perform review." The addition is:

"...made in accordance with the performance standards set forth in paragraph five of this agreement."

Those two additions have been added since you last saw the lease agreement. What I have given you in memo form is the staff recommendation and request for your recommendation to the City Council. Just to make you aware, we have worked pretty fast and furious and we have worked really well together. We have worked with two separate attorneys and if you remember the other lease and it's volume, this lease is much cleaner and more straight forward. We understand this a whole lot better. There are three areas that Mr. Schossow still has some concerns about. I would like to address those. One is that he is concerned over access to where the fueling facility will be. He does not want his ingress/egress blocked for his customers. We have agreed that he can paint or otherwise mark the area in front of the self serve facility saying, "Do Not Block". I have agreed to give him a Letter of Commitment that says he can do that. The next issue is our process to get to the City Council. This requires the person applying for the lease to execute the lease before it goes forward. The Council wants a complete packet as does this Board. We realize that he has to apply to the Planning office, he has insurance issues, and he must also finalize his agreement with Air BP. If all of those items are not completed by the time we get before the City Council, we will add a paragraph saying the lease will be contingent upon these things being approved and agreements being signed. The third thing which is very minor is the description of the area and I believe that we have significantly improved the exhibit that you have. If you will turn to the exhibit which follows the lease. We have an area which is triangular in shape. In the lease description on page one, we only used the two largest dimensions to describe the area and then added a reference to Exhibit A. Exhibit A is the description and drawing attached to the back of the lease. If there is confusion, we can clarify that. I spoke to the City Attorney and they were fairly unconcerned because of the phrase, "as more particularly described by Exhibit A." We have worked well together. I think this is a good lease. I'm ready to go forward with it.

SCHOSSOW:

The only other thing that I would like to address is we have withdrawn our

intention to put a counter and office in the terminal. The reason for that is this has taken a lot of time to work through this and get to this point. We are looking at probably another 30 days for the Council's approval. We still have to work through the Planning Department process. We need approval from the State Fire Marshall. Once we do all that, it's going to take approximately six weeks to be up and running with the self serve fuel facility. We won't be able to capture the business from the football crowd. What we're intending on doing is coming back sometime next year with terminal lease. That helps our debt service and makes a full service operation a financial feasibility.

McKINNEY: Ken, why don't you define that for us? What do you mean by full service?

SCHOSSOW: That's for the 100 low lead and full service that we asked for originally.

McKINNEY: The fuel truck?

SCHOSSOW: The fuel truck, servicing, manned operation, fuel and oil and everything that is required for a fuel and oil sales FBO.

McKINNEY: Have you seen a copy of the letter Chuck sent?

SCHOSSOW: Yes, I have.

McKINNEY: Do you have any type of retort to that?

SCHOSSOW: My position is as I have said before, we are providing avionics as well as maintenance in our existing business. If the current FBO wishes to put in an operation just like this, there is nothing to prevent them from doing that. I see this as fair competition. If they want to do that, I would say they need to get this Board's approval granting them the right to do it. This is an opportunity for the airport which they do not have now. This will be a 24 hour operation and someone can pull up and swipe their card and fuel their aircraft instead of flying over Fayetteville when they need fuel during peak hours and late at night. We will post all of our numbers and if there is a problem, they just have to call.

McKINNEY: Alett, are there any ties in this lease for the full service aspect?

LITTLE: No. This is only for self serve fuel.

McKINNEY: Ken, what assurances can you give us that this will happen?

- SCHOSSOW: We have every intention to make that happen to the extent that we have added maintenance to our avionics shop. We are now adding a self serve fuel facility. I would submit to you that we are one of the only businesses on the field that is growing right now. If the market is there and proves to be feasible, that is our business plan. I won't give you a 100% guarantee that this will happen. We want to see it happen. This process took a lot of time. We lost our market to spring board into operation. I look at this like a cotton farmer and the crop is gone for this year.
- McKINNEY: Do you intend to advertise this in a manner where pilots are aware of this service?
- SCHOSSOW: BP has an extensive marketing program. We are planning to get in publications. I don't have all the information on that yet. We have to acquire a lease before we sign an agreement with BP. They are very aggressive in marketing. Dale and Alett have met with BP's representative and they can attest to that.
- LYALL: I understand the changes to the Above Ground Fueling Facility. What about the other lease?
- LITTLE: That one has been removed from the agenda.
- McKINNEY: That's the one he wants to defer until next year.
- WALLACE: So, action today is on one lease for a fueling facility.
- LITTLE: That is correct.
- BURGGRAF: I would make the stipulation that this lease be sent forward with the response letter from SCS per their request.
- McKINNEY: Unfortunately, Chuck couldn't be here today.
- WALLACE: I'm in favor of it. I think it is important particularly to be hand in glove with our staff to be sure that we understand at this point and I assume from Chuck's letter that SCS group may take issue with this at some point further on. My understanding and correct me if I'm wrong, is that first of all, Wings has met all of our Minimum Standards.
- LITTLE: We have a specific section in our Minimum Standards that addresses fueling services.

WALLACE: Basically, they have jumped through all our hoops and met all that criteria.

LITTLE: They have yet to acquire their insurance but they are aware of that requirement.

WALLACE: The second piece is that should Fayetteville Air Service (SCS) desire to offer the same service, they are free to do so.

LITTLE: Or anyone else.

WALLACE: It is not our role to keep someone from going into business on the Airport so long as they meet our standards.

McKINNEY: Since we are federally funded through grants, we cannot deny service to people who want to put businesses on the Airport.

WALLACE: Those two points are very important to me. He has met the standards and this is not unfair competition.

McKINNEY: Dale, if you'll help me remember, a couple of years ago, we discussed a similar type self fueling station with Mark Cordine being placed on the east side. I know he contacted Phillips to inquire into buying a used station and they opted not to do that after they ran a survey about who might tentatively use it or use it in the future. They've had this opportunity to put a self fueling station in before and they declined to it.

WALLACE: **I move recommendation that we forward this to the City Council with our approval.**

BURGGRAF: Why are we sending the letter?

McKINNEY: Was that a request that Chuck made?

LITTLE: Typically, I forward this type of response to the City Council. I forward letters from citizens and I don't think this letter is outside procedure. The Council will want that kind of background before the meeting. It helps them get the full picture and be prepared to respond to that person if they make an appearance and it certainly helps them be aware of issues even more than the summary of the Minutes. It helps with the decision making process.

McKINNEY: Charles made a motion. Is that a second?

LYALL: **Second.**

McKINNEY: Any questions or discussion? All those in favor.

ALL: Aye.

McKINNEY: **That carries.** Thank you very much.

ITEM #4: New Business

a. Presentation by Fayetteville Fire Department for a training school on airport property.

McKINNEY: Chief Jackson, this relates back to a prior conversation that we have had.

LITTLE: We have the Minutes from June 3, 1999 and October 7, 1999.

JACKSON: I want to brief but I need to cover all the bases. I'll begin with a quick history of our service here. The old fire station that we used to operate from was built in 1964 by the City as Fire Station #3. It operated as a City Fire Station throughout its entire life time. In 1986, we removed the engine company from out of there and they came downtown but it was continually operated as an ARFF station. Back then it was called the CFR station but it was Fayetteville Fire Station #3. That continued until the new fire station was built over here. Planning for that began in 1995 or 1996 and we began to work with the FAA trying to get a new facility built because this one was totally inadequate. There was barely room for a two man crew and we were getting a new ARFF truck. We had an '86 model ARFF truck and when we put both trucks in the bay, the southern bay which is smaller, didn't allow for walking space. We contended that we needed a new facility and that project was approved and the station was built. It greatly improved the situation for us. Traditionally, there were two people on duty at Station #3 but we decided to add a third person and put an engine company back in service to cover the south end of town. That was not workable because the engine company was not busy enough to warrant the cost of its operation. During this time, the Airport was going through changes. When the last commercial airline left, it was not necessary under FAA regulations for us to man the ARFF station all the time. We talked to the FAA and they wanted to maintain it as a station with ARFF services and we thought we were the best agency to render those services. It wasn't feasible economically for us to keep our people here so we decided to form a special operations team and call it the ARFF Team. Organizationally, it is very similar to our HazMat Team and our

SCS Group Limited, Inc.

Wings Air, Inc.
A. 3. Page 19



August 3, 2000



Fayetteville Airport Board
Drake Field
Fayetteville, AR 72701



Re: Wings Air Ground Lease

Dear Mr. McKinney and members of the Fayetteville Airport Board;

As you know, I have for some time represented Fayetteville Air Service. Next to staff and members of the board, my attendance at these meetings have been consistent. However, today I will be unable to attend, and, for that, I apologize.

In any event I write this letter in an effort to allow the Board, the airport staff and the public to understand some of Fayetteville Air Service's concerns relating to the ground lease and the placement of a self-fueling station on the ramp at Drake Field.

Fayetteville Air Service currently is the sole FBO and fuel supplier at Drake Field. As part of the lease arrangement with the city, Fayetteville Air Service rents the old terminal building at the rate of approximately \$1,600.00 per month. In addition, Fayetteville Air Service rents the fuel farm from the city at the rate of approximately \$640.00. Additionally, Fayetteville Air Service pays the utilities on the old terminal building of approximately \$600.00 per month.

What allows Fayetteville Air Service to pay these fees to the city is income from the sale of aviation fuel, including 100 Low Lead, and Jet A. In addition to providing fuel, pilots and passengers have the following amenities at Fayetteville Air Service:

- A. Aircraft greeting, parking, marshaling, tie down and towing.
- B. Air Conditioned facility in the summer.
- C. Heated facility in the winter.
- D. Staffing of our facility from 6:00 a.m. until 10:00 p.m. Monday through Friday, and until 9:00 p.m. on the weekends.
- E. Coordination of catering orders.
- F. Provide courtesy cars to pilots.
- G. Coordination of on-site rental cars.

802 Airport Rd.
Springdale, AR
72764

(501) 751-4462
Fax (501) 751-2646
800-828-4462

- H. Flight planning area with real time weather radar.
- I. Clean bathroom facilities.
- J. Large screen television in the public access area.
- K. Private sleeping room for pilots and passengers.
- L. Telephone for personal use for pilots and passengers.
- M. Fax sending, receiving and copy machine use for the pilots and passengers.
- N. Conference room use for the pilots and passengers.
- O. Special hotel and motel rates for the pilots.
- P. Hotel shuttle service.
- Q. Ground Power Unit use for the pilots.
- R. Modern Jet A and 100LL fuel trucks to deliver the fuel direct to the aircraft.
- S. Trained staff to assist in all wants and needs of the pilots and passengers.

All of these items are at no extra charge to the flying public. These are services that we offer as a full service FBO. We offer these services because these services are what the flying public need, want and deserve. Profits made from the sale of aviation fuel are what allows these services to be provided.

With the consideration of allowing a company to come in, provide fuel, pay the city only \$32.00 per month, provide no staffing, no amenities, no services to the flying public, threatens the full service FBO operation. To allow the only source of revenue to be taken without giving anything back to the flying public moves Drake Field backwards not forward. Fayetteville Air Service wishes to continue providing full service FBO treatment to the flying public that arrive and depart Fayetteville Municipal Airport. However, allowing one operator to have a substantially lower cost of operation, not holding one operator to the same standard of service as another is inherently wrong (at best), and certainly not in the best interest of Drake Field.

Fayetteville Air Service has proposed moving into the new terminal building and working with the City of Fayetteville to improve the areas to not only continue a full service FBO, but to move the services and facilities to the level of a Phillips 66 Performance Center. Such a move would require an investment not only on the part of Fayetteville Air Service, but also on the part of the City of Fayetteville. However, if the City and this Board is going to allow the pillaging of the financial coffers without the return of service, then these types of investments will never be justified.

-3-

I appreciate the Board's time. I would also ask, that if indeed the Board approves the lease and forwards it to the City Board, that this letter be forwarded with it.

With all best regards,



Charles R. Chadwick
Corporate Counsel
Fayetteville Air Service

DEPARTMENTAL CORRESPONDENCE

To: Fayetteville City Council

Thru: Fred Hanna, Mayor 

From: Mickey Jackson, Fire Chief 

Date: August 11, 2000

Re: Mr. Schossow's Fuel Tank Project

I have reviewed this project and it appears to comply with our ordinance pertaining to above ground fuel tanks. The ordinance requires these projects to go through the plat review process for review by all parties who might have an interest or concern. I have discussed with Planning, at Mr. Schossow's request, the possibility of waiving this part of the ordinance (plat review requirement) for this project, and we are both uncomfortable about doing that.

If it is the council's desire that going through that process is unnecessary in this case, I will not object. I just didn't feel like I could declare that on my own, and Tim Conklin doesn't either.

If you have questions or need other information about this, feel free to give me a call.
Thank you.

MJ/ca

cc: Tim Conklin, Planning Director
Alett Little, Airport Manager

STAFF REVIEW FORM

XXXX AGENDA REQUEST
XXXX CONTRACT REVIEW
____ GRANT REVIEW

For the Fayetteville City Council meeting on August 15, 2000.

FROM: Wayne Ledbetter Engineering Public Works
Name Division Department

ACTION REQUIRED: Approval of an Agreement (Amendment #1) to a previous contract for additional professional services with EGIS Consulting Inc. regarding the USCOE 404 permit for the Arkansas Research & Technology Park. The total contract amount is \$ 164,050.00. A bid waiver is requested.

COST TO CITY:

<u>\$ 164,050</u> Cost of this Request	<u>\$ 1,892,956</u> Category/Project Budget	<u>Research and Technology Park</u> Category/Project Name
<u>1010-6600-5314-00</u> Account Number	<u>\$ 59,076</u> Funds Used To Date	<u>Street Improvements</u> Program Name
<u>95075-10</u> Project Number	<u>\$ 1,833,880</u> Remaining Balance	<u>General</u> Fund

BUDGET REVIEW: XXXX Budgeted Item Budget Adjustment Attached

W. Ledbetter 8-2-00
Budget Manager

Administrative Services Director

CONTRACT/GRANT/LEASE REVIEW:

GRANTING AGENCY: _____

<u>Accounting Manager</u>	<u>8-2-00</u> Date	_____ Internal Auditor	_____ Date
<u>City Attorney</u>	<u>8-2-00</u> Date	_____ ADA Coordinator	_____ Date
<u>P. Vice</u> Purchasing Officer	<u>8-2-00</u> Date		

STAFF RECOMMENDATION: Staff recommends that the Council approve this amendment #1 to a previous contract with EGIS Consulting Inc. for additional consultation work with the USCOE Permit 404 regarding the Arkansas Research & Technology Park.

<u>Jon Beaton</u> Division Head	<u>8/02/00</u> Date
<u>Charles L. Leland</u> Department Director	<u>8/4/00</u> Date
<u>John Mayhew</u> Administrative Services Director	<u>8/4/00</u> Date
<u>Fred Hamme</u> Mayor	<u>8/5/00</u> Date

Cross Reference

New Item: Yes

Prev Ord/Res #: _____

Orig Contract Date: _____

Orig Contract Number: _____

STAFF REVIEW FORM

Description EGIS Consulting Contract Amendment Meeting Date 8-15-00

Comments:

Budget Coordinator

Reference Comments:

Accounting Manager

@ orig contract was for 27,000.
(why amend for 164,050⁰⁰?) (should
this be advertised & bid?)

City Attorney

I'd feel better knowing the
answers to the above before
signing.

Purchasing Officer

ADA Coordinator

Internal Auditor

large change order for such a
small org. contract - same concerns
as Acct. Mgr. on advertising for bids

THE CITY OF FAYETTEVILLE, ARKANSAS

To: Fayetteville City Council

Thru: Fred Hanna, Mayor
Charles Venable, Public Works Director
Don Bunn, Assistant Public Works Director
Jim Beavers, City Engineer *JB*

From: Wayne Ledbetter, Engineering *WLF*

Date: July 31, 2000

RE: Arkansas Research & Technology Park
Amendment #1 to Existing Contract with EGIS
for Consultation Services regarding USCOE 404 Permit

1. Existing Conditions. The City owns approximately 290 acres in the Northwest portion of Fayetteville and that property is designated the Arkansas Research & Technology Park. The property adjoins Shiloh on the south, Moore Lane on the west, Deane Solomon Rd. on the north, and Truckers Lane on the east. This parcel is broken up into several pastures (some pastures are field, some pastures are part field with trees and shrubs). The land typically drains northward to Clabber Creek which is the main outfall for all the drainage in the immediate area. This area has approximately eighty-nine acres determined as wetlands. The wetland determination was performed by EGIS Consulting. An existing contract dated January 18, 2000 in the amount of \$ 27,000 is essentially still in effect. This contract provided consultation services to see the USCOE permit through a conceptual stage of mitigation.

The first step in regards to the USCOE 404 Permit is determining the existing wetland areas and planning what areas will be impacted and which will be undisturbed. The existing wetland performed by EGIS is already complete and the first stage of the 404 Permitting process is complete. The City has submitted the materials needed for the this first stage of the permit and has followed any revisions that may be needed. The public notice time has been completed with all items of the permit process submitted except for the proposed final mitigation plan. This plan will need to be submitted and approved before the USCOE will issue the permit.

2. Proposed Conditions. The Arkansas Research & Technology Park will accommodate several sites for technologically based industries. This area is planned for light industry yet still maintain an aesthetically pleasing environment. In fact, this area is planned with a wetland reserve and a woodland preserve and other amenities that will be eye pleasing to the community.

However, there are several areas that we will need assistance in following up the wetland determination and pursuing the 404 Permit. EGIS can assist us in the tasks that are beneficial to acquiring this permit. The accompanying scope of services enumerates the work we will ask of them in the permit process. The following is a summary of these services:

1. Design services for the mitigation plan in conjunction with the City design and drafting services. Essentially a 50/50 percent effort.
2. Bidding phase services for the City when the mitigation plans go to bid.
3. Mitigation construction observation services when the plan goes to construction.
 - a. Agency coordination.
 - b. Erosion control coordination.
 - c. Tree preservation coordination and observation.
 - d. Mitigation area construction observation
4. Mitigation monitoring and reporting services.

Please note the accompanying scope of services for detail. Also, included is a copy of the January 18, 2000 contract for reference.

The total of consultation services for this Amendment #1 is a not to exceed of \$ 164,050.00

3. Bid Waiver. The staff requests that the Council grant a bid waiver for these 404 Permit consultation services. EGIS has already performed the wetland determination and is familiar with the project. We have essentially completed the permit process except for design of the mitigation plan and would like to keep this process moving forward. This amendment overshadows the amount of the original contract. However, we wanted to receive a maximum not to exceed on any work left in finalizing the permit, construction observation of the wetlands, and followup monitoring of the mitigated areas. The original contract, dated January 18, 2000, did not include the scope of work reflected in this amendment. You must note two things in considering this waiver. One was that the previous wetland determination was competitively priced. The other is that the hourly amounts for their personnel will remain the same for this amendment as was presented in the original contract.

4. Staff Recommendation. The Staff recommends that the Council approve the Amendment #1 to the existing contract with EGIS Consulting Inc. for consultation services regarding the USCOE 404 Permit for The Arkansas Research & Technology Park.

ATTACHMENT A

DESIGN PHASE						
COE Permit Coordination						
30.00%	\$ 7,500.00	100.00	Hrs.	Principal Scientist	\$ 75.00	\$ 7,500.00
40.00%	\$ 10,000.00	166.67	Hrs.	Sr. Environmental Scientist	\$ 60.00	\$ 10,000.00
3.00%	\$ 750.00	13.64	Hrs.	Environmental Scientist	\$ 55.00	\$ 750.00
10.00%	\$ 2,500.00	62.50	Hrs.	Environmental Technician	\$ 40.00	\$ 2,500.00
10.00%	\$ 2,500.00	50.00	Hrs.	CADD Technician	\$ 50.00	\$ 2,500.00
7.00%	\$ 1,750.00	50.00	Hrs.	Administration	\$ 35.00	\$ 1,750.00
100.00%	\$ 25,000.00	442.80				\$ 25,000.00 \$ 25,000.00
BIDDING PHASE						
Consultation with City regarding Mitigation Construction Bids						
38.40%	\$ 1,920.12	25.00	Hrs.	Principal Scientist	\$ 75.00	\$ 1,875.00
46.08%	\$ 2,304.15	30.00	Hrs.	Sr. Environmental Scientist	\$ 60.00	\$ 1,800.00
5.84%	\$ 291.86	3.80	Hrs.	Environmental Scientist	\$ 55.00	\$ 209.00
0.00%	\$ -	-	Hrs.	Environmental Technician	\$ 40.00	\$ -
0.00%	\$ -	-	Hrs.	CADD Technician	\$ 50.00	\$ -
9.68%	\$ 483.87	6.30	Hrs.	Administration	\$ 35.00	\$ 220.50
100.00%	\$ 5,000.00	65.10				\$ 4,104.50
MITIGATION CONSTRUCTION OBSERVATION PHASE						
1) Agency Coordination						
38.42%	\$ 2,881.66	37.50	Hrs.	Principal Scientist	\$ 75.00	\$ 2,812.50
46.11%	\$ 3,457.99	45.00	Hrs.	Sr. Environmental Scientist	\$ 60.00	\$ 2,700.00
5.94%	\$ 445.70	5.80	Hrs.	Environmental Scientist	\$ 55.00	\$ 319.00
0.00%	\$ -	-	Hrs.	Environmental Technician	\$ 40.00	\$ -
0.00%	\$ -	-	Hrs.	CADD Technician	\$ 50.00	\$ -
9.53%	\$ 714.65	9.30	Hrs.	Administration	\$ 35.00	\$ 325.50
100.00%	\$ 7,500.00	97.60				\$ 6,157.00
2) Erosion Control Coordination						
10.31%	\$ 3,091.51	50.00	Hrs.	Principal Scientist	\$ 75.00	\$ 3,750.00
24.73%	\$ 7,419.62	120.00	Hrs.	Sr. Environmental Scientist	\$ 60.00	\$ 7,200.00
14.26%	\$ 4,278.65	69.20	Hrs.	Environmental Scientist	\$ 55.00	\$ 3,806.00
43.28%	\$ 12,984.34	210.00	Hrs.	Environmental Technician	\$ 40.00	\$ 8,400.00
1.24%	\$ 370.98	6.00	Hrs.	CADD Technician	\$ 50.00	\$ 300.00
6.18%	\$ 1,854.91	30.00	Hrs.	Administration	\$ 35.00	\$ 1,050.00
100.00%	\$ 30,000.00	485.20				\$ 24,506.00
3) Tree Preservation Coordination and Observation						
7.00%	\$ 1,750.63	27.80	Hrs.	Principal Scientist	\$ 75.00	\$ 2,085.00
37.78%	\$ 9,445.84	150.00	Hrs.	Sr. Environmental Scientist	\$ 60.00	\$ 9,000.00
10.18%	\$ 2,544.08	40.40	Hrs.	Environmental Scientist	\$ 55.00	\$ 2,222.00
34.01%	\$ 8,501.26	135.00	Hrs.	Environmental Technician	\$ 40.00	\$ 5,400.00
3.15%	\$ 787.15	12.50	Hrs.	CADD Technician	\$ 50.00	\$ 625.00
7.88%	\$ 1,971.03	31.30	Hrs.	Administration	\$ 35.00	\$ 1,095.50
100.00%	\$ 25,000.00	397.00				\$ 20,427.50
4) Mitigation Area Construction Observation						
10.91%	\$ 8,180.63	125.00	Hrs.	Principal Scientist	\$ 75.00	\$ 9,375.00
30.54%	\$ 22,905.76	350.00	Hrs.	Sr. Environmental Scientist	\$ 60.00	\$ 21,000.00
25.17%	\$ 18,880.89	288.50	Hrs.	Environmental Scientist	\$ 55.00	\$ 15,867.50
30.10%	\$ 22,578.53	345.00	Hrs.	Environmental Technician	\$ 40.00	\$ 13,800.00
0.00%	\$ -		Hrs.	CADD Technician	\$ 50.00	\$ -
3.27%	\$ 2,454.19	37.50	Hrs.	Administration	\$ 35.00	\$ 1,312.50
100.00%	\$ 75,000.00	1,146.00				\$ 61,355.00 \$ 112,445.50
MITIGATION MONITORING AND REPORTING PHASE						
Reporting & Monitoring of Mitigation Area - 5 years						
100.00%	\$ 22,500.00	5.00		5 yrs @\$4,500.00	\$ 4,500.00	\$ 22,500.00 \$ 22,500.00
						\$ 164,050.00
This attachment illustrates estimated hours by specific personnel.						
Although the number of hours may vary among personnel, the amount designated for each section will not be exceeded.						

**AMENDMENT NO. 1 TO CONTRACT BETWEEN THE
CITY OF FAYETTEVILLE AND EGIS CONSULTING
DATED JANUARY 18, 2000 REGARDING
ENVIRONMENTAL SERVICES FOR THE ARKANSAS
RESEARCH & TECHNOLOGY PARK PROPOSED DEVELOPMENT**

STATE OF ARKANSAS

COUNTY OF WASHINGTON

This Amendment No. 1 to the Contract dated January 18, 2000 is entered into this ____ day of August, 2000, by and between the City of Fayetteville acting by and through its Mayor hereinafter called the "OWNER" and EGIS Consulting, also known as Egis, Inc. and Egis Natural Developments, Inc. with offices in Bentonville, Arkansas, hereinafter called "EGIS." The said Contract regards environmental services for the Arkansas Research & Technology Park proposed development.

WITNESSETH:

Whereas, the OWNER is in the process of developing a project known as the Arkansas Research and Technology Park Development in the City of Fayetteville, Arkansas; and Whereas the aforesaid project requires an environmental permit presently being pursued by EGIS and which in turn requires mitigation construction; and Whereas the OWNER does not have the expertise to provide the necessary detailed plan development or construction supervision of the wetlands/stream mitigation and Whereas it is now time to provide the services to be performed by EGIS as stated in the original contract in Section 1, Paragraph 1.6 and Section 1, Paragraph 1.7 (as it pertains to mitigation construction consultation and observation).

Now therefore, it is considered to be in the best public interest for the OWNER to amend the original agreement dated January 18, 2000. In consideration of the faithful performance of each party of the mutual covenants and agreements set forth hereinafter, it is mutually agreed as follows:

SECTION I - EMPLOYMENT OF EGIS

EGIS, Inc. is presently assisting OWNER regarding the attainment of the final Section 404 permit from the Corps of Engineers ("COE") as required by The Clean Water Act. In compliance with the anticipated Section 404 permit, **EGIS Natural Developments, Inc.** shall assist OWNER in the preparation for construction of compensatory mitigation for the aforementioned project's impacts to the wetland and water of the U.S. **EGIS Natural Developments, Inc.** shall be involved in mitigation construction observation and erosion control coordination with OWNER. This contract does not cover actual construction of the project's compensatory mitigation area.

SECTION II - INFORMATION & SERVICES

The OWNER will furnish any specifications, standards and other information which may relate to the project including survey data. Aerial mapping data will be provided free of charge to EGIS on magnetic media.

SECTION III - SERVICES TO BE FURNISHED BY EGIS DURING "DESIGN" PHASE

The mitigation project will be designed and constructed to meet standards in accordance with the Little Rock District Corps of Engineers Section 404 permit, including Corps of Engineers regional, general and special conditions. The design concept will be

coordinated with the OWNER with EGIS providing mitigation plans and specifications on a 50/50 percentage basis with OWNER (i.e., EGIS providing 50% effort and OWNER providing 50% effort). EGIS's effort will involve reviewing OWNER CADD drawings, producing CADD drawings at the EGIS office, conducting field investigations, reviewing survey data produced by the OWNER's Engineering Department, advising the OWNER regarding the filing of the mitigation area conservation easement, and coordinating/meeting with COE and OWNER's Engineering personnel as needed.

SECTION IV - COORDINATION WITH OWNER

EGIS shall hold conferences throughout the mitigation design of the project with representatives of the OWNER to the end that the design, as perfected, shall have full benefit of the OWNER's knowledge and to be consistent with the current policies and construction practices of the OWNER. The OWNER reserves the right to accept or reject any and all plans, but this stipulation will not relieve EGIS of the 50% responsibility for the design of the mitigation project.

SECTION V - OFFICE LOCATION FOR REVIEW OF WORK

Review of the work as it progresses under this Agreement shall be made at the OWNER's City Engineer's office.

SECTION VI - FINAL SUBMISSION

Coordinating with OWNER, the final submission for the mitigation construction documents shall consist of the originals of all drawings, specifications and contract documents. All

design drawings on magnetic media shall be submitted on disks compatible with AutoCAD Release 14 software.

SECTION VII - EGIS's RESPONSIBILITY DURING "BIDDING" AND "MITIGATION CONSTRUCTION OBSERVATION" PHASES

During the "Bidding" phase of the mitigation construction project, EGIS shall provide administrative and environmental consulting services needed to obtain bids for the project. This may include preconstruction conferences, description of technical requirements for successful mitigation construction and clarification of special sensitive environmental issues. EGIS may be asked to evaluate technical qualifications of bidders.

During the "Construction Observation" or possibly preconstruction phase of work, EGIS shall provide environmental consulting services regarding:

- a. Assisting OWNER in responding to government agencies and other entities, such as:
 - i. The U.S. Fish & Wildlife Service regarding the Arkansas darter on Clabber Creek and Wilson Spring or other environmental issues
 - ii. The Corps of Engineers regarding permit issues
 - iii. The Arkansas Historic Preservation Program regarding cultural resources
 - iv. The University of Arkansas Biology Department regarding sensitive environmental issues.
- b. Assisting OWNER in responding to public concerns regarding environmental issues of the project.

The responses to the entities and/or parties described in subparagraph "a" and "b" above regarding environmentally sensitive issues will be coordinated first with OWNER.

- c. Erosion Control Coordination with OWNER including:
 - i. Coordination of erosion control initial placement
 - ii. Weekly inspection of erosion control measures
 - iii. Bi-Weekly reporting to OWNER or general contractor of status of erosion control features
- d. Tree Preservation Coordination and Observation with OWNER, including:
 - i. Initial directed assessment of tree health
 - ii. Recommendation of initial placement of silt fence
 - iii. Coordination of root pruning
 - iv. Recommendation of remedial actions, if necessary
- e. Mitigation Area Construction Observation, including:
 - i. Direction in the field to OWNER or general contractor regarding:
 - (1) Selection and placement of hydric soils
 - (2) Hydrology manipulation and water controls
 - (3) Questions that arise from the mitigation construction contractor regarding implementation of the mitigation plans
 - (4) Fine-tune wetland elevation, soils and hydrology decisions
 - (5) Stream enhancements
 - (6) Wilson Spring preservation & sensitivity to fish habitat
 - (7) Clabber Creek sensitivity to fish habitat
 - (8) Wildlife habitat placement

- ii. EGIS shall review the Mitigation Contractor's progress payment requests based on the actual quantities of contract items completed and accepted, and shall make a recommendation to the OWNER regarding payment.

SECTION VIII - EGIS's RESPONSIBILITY DURING "MITIGATION MONITORING" PHASE

As determined by the Section 404 Permit general and special conditions, upon completion of the mitigation construction, EGIS will annually monitor the stream and wetland mitigation areas for a minimum of five years. EGIS will submit the annual monitoring report to OWNER prior to submission to the Little Rock District Corps of Engineers. The monitoring report will contain information specified in the permit, such as counts (or percentage of survival) of planted and native saplings, observations of herbaceous hydrophytic vegetation, description of hydrology, description of stream conditions and photographs of key areas. Upon review of the submitted reports, the Corps of Engineers may require further annual monitoring.

SECTION IX - SUBCONTRACTING

Subcontracting by EGIS of any of the services provided shall require prior approval by the OWNER.

SECTION X - TIME OF BEGINNING AND COMPLETION

EGIS shall begin work under this Amendment No. 1 to the original contract within ten (10) days of notice to proceed. Along with OWNER, EGIS shall complete the design portion of the plans for the mitigation construction within 60 days of receipt of the Section 404

permit from the Corps of Engineers. The completion time is contingent upon receipt of all required information from OWNER, such as survey data, etc. Monitoring of the mitigation site will occur annually as prescribed in the anticipated Section 404 permit.

SECTION XI - FEES AND PAYMENTS

With the exception of Paragraph D below, the following described fees are estimated hourly professional fees for work-time directly connected with work chargeable to the project. Travel time to the job site will be charged at ½ of the hourly professional fees listed in Appendix A attached hereto. "Not to exceed" is interpreted to mean EGIS will not exceed the amount of dollars and hours attributed to each phase, however, should the amount of hours required be less than designated below, OWNER will only be billed for the actual work-time directly connected with the project. Services described in Paragraph D will be provided on a fixed annual rate of \$4,500.00. Adjustment of the upper limit may be made should EGIS establish and the OWNER agree that there has been or is to be a significant change in scope, complexity or character of the services to be performed; or if the OWNER decides to shorten the duration of the work from the time period specified in the Agreement for completion of work and such modification warrants such adjustment.

A. "Design" Phase Services:

For "design" phase services rendered and in consideration of the services to be rendered by EGIS, the OWNER shall pay EGIS on the basis of hourly professional fees (as described above) not to exceed \$25,000.00.

- 1) Assist the OWNER regarding the attainment of the final Section 404 permit from the COE.

- 2) EGIS will provide mitigation plans and specifications for the proposed technology park on a 50/50 percentage basis with the OWNER (i.e., EGIS providing 50% effort and the OWNER providing 50% effort). EGIS's effort will involve reviewing the OWNER's CADD drawings, producing CADD drawings at the EGIS office, conducting field investigations, reviewing survey data produced by the OWNER's Engineering Department, advising the OWNER regarding their filing of the mitigation area conservation easement, and coordinating/meeting with COE and the OWNER's Engineering personnel as needed.

Final payment for Design services shall be made upon the OWNER'S approval and acceptance with the satisfactory completion of the "Design" phase for the project.

B. "Bidding" Phase Services:

For "bidding" phase services rendered and in consideration of the services to be rendered by EGIS, the OWNER shall pay EGIS on the basis of hourly professional fees (as described above) not to exceed \$4,104.50.

Final payment for "Bidding" phase services shall be made upon the OWNER'S approval and acceptance with the satisfactory completion of the "Bidding" phase of the project.

C. "Mitigation Construction Observation" Phase Services:

For "Mitigation Construction Observation" phase services rendered and in consideration of the services to be rendered by EGIS, the OWNER shall pay

EGIS on the basis of hourly professional fees described above. The total of the following described services is not to exceed \$112,445.50 as designated below:

- | | | |
|----|--|-------------|
| 1) | Agency Coordination during Construction as required .. | \$6,157.00 |
| 2) | Erosion Control Coordination with OWNER | \$24,506.00 |
| 3) | Tree Preservation Coordination and Observation with OWNER
..... | \$20,427.50 |
| 4) | Mitigation Area Construction Observation | \$61,355.00 |

Final payment for “Mitigation Construction Observation ” phase services shall be made upon the OWNER’S approval and acceptance with the satisfactory completion of the “construction observation ” phase of the project.

D. “Mitigation Monitoring and Reporting” Phase Services:

For "Mitigation Monitoring and Reporting" phase services rendered and in consideration of the services to be rendered by EGIS, the OWNER shall pay EGIS on the basis of a fixed fee of \$4,500.00 per year for five annual periods, a total of \$22,500.00.

Adjustment of the upper limit may be made should EGIS establish and the OWNER agree that there has been or is to be a significant change in scope, complexity or character of the services to be performed and such modification warrants such adjustment. The COE may require an extended period of monitoring or adjustments in the mitigation site after review of annual monitoring reports.

SECTION XII - CHANGES

The OWNER may at any time, by written order, make changes within the general scope of the contract in the work and services to be performed. If any such change causes an increase or decrease in the cost of, or the time required for, performance of this contract, an equitable increase or decrease shall be made in the upper limit contract amount, including fee or time of required performance or both, and the contract shall be modified in writing accordingly.

Any claim by EGIS for adjustment under this clause must be asserted within thirty (30) days from the date receipt by EGIS of the notification of change; provided, however, that the OWNER, if it decides that the facts justify such action, may receive and act upon any such claim asserted at any time prior to the date of final payment under this contract. Failure to agree to any adjustment shall be cause for a dispute concerning a question of fact within the meaning of the clause of this contract entitled SECTION XV - MISCELLANEOUS PROVISIONS, (1) Dispute Resolutions. However, nothing in this clause shall excuse EGIS from proceeding with the contract as changed.

SECTION XIII - OWNERSHIP OF DOCUMENTS

All documents, including original drawings, disks of CADD drawings and cross sections, estimates, specification field notes, and data are and remain the property of the OWNER. EGIS may retain reproduced copies of drawings and copies of other documents. OWNER shall not reuse or make or permit to be made any modification to the drawings and specifications without prior authorization of EGIS. OWNER is specifically prohibited from

reuse of environmental mitigation drawings on other projects without written authorization of EGIS.

SECTION XIV - POSTPONEMENT OR CANCELLATION OF THE CONTRACT

It is understood that the OWNER will have the right to suspend or cancel the work at any time.

- A. Postponement - Should the OWNER, for any reason whatsoever, decide to postpone the work at any time, the OWNER will notify EGIS, who will immediately suspend work. Should the OWNER decide during such suspension not to resume the work, or should such suspension not be terminated within a year, the work shall be cancelled as hereinafter provided.
- B. Cancellation - Should the OWNER, for any reason whatsoever, decide to cancel or to terminate the use of EGIS's service, the OWNER will give a written notice thereof to EGIS, who will immediately terminate the work. If the OWNER so elects, EGIS may be instructed to bring a reasonable stage of completion to those items whose value would otherwise be lost. EGIS shall turnover over all data, charts, survey notes, figures, drawings and other records or information collected or produced hereunder whether partial or complete. Upon such termination of EGIS's services, EGIS shall be paid on a proportional amount of the total fee, less prior partial payments, based on the ratio of work done to the total amount of work to be performed.

SECTION XV - MISCELLANEOUS PROVISIONS

1. Dispute resolution – Any dispute concerning a question of fact in connection with the work in having a financial value of \$10,000 or less, shall be referred for determination to the Mayor of the City of Fayetteville whose decisions in the matter shall be final and conclusive. Disputes resulting from claims greater than \$10,000 shall be subject to mediation such as the Christian Law Center in Bentonville, Arkansas or other mutually acceptable mediator.
2. Responsibility for Claims and Liability -- EGIS shall save harmless the OWNER from all claim and liability due to its (EGIS's) activities, or those subcontractors, its agents, or its employees during the time this contract is in force. Neither OWNER nor EGIS shall be obligated to indemnify the other party in any manner whatsoever for the other party's own negligence.
3. General Compliance with Laws – EGIS shall comply with all federal, state and local laws and ordinances applicable to the work.
4. EGIS's Endorsement – EGIS shall endorse and recommend all mitigation construction plans, specifications, estimates and environmental data finished by it. All designed shall be checked in accordance with excepted environmental practices. All plan quantities shall be checked and verified.

SECTION XVI -SUCCESSORS AND ASSIGNS

The OWNER and EGIS each binds itself and its partners, successors, executors, administrators, and assigns to the other party of this Agreement, except as above, neither the OWNER nor EGIS shall assign, sublet or transfer its interest in this Agreement without written consent of the other. Nothing herein shall be construed as creating any possible

personal liability on the part of any officer or agent or any public body which may be party hereto.

SECTION XVII - COVENANT AGAINST CONTINGENT FEES

EGIS warrants that it has not employed or retained by company or person, other than a bonafide employee working solely for EGIS, to solicit or secure this contract, and that it is not paid or agree to pay in the company or person, other than a bonafide employee working solely for EGIS, any fee, commission, percentage, brokerage fee, gifts, or any other consideration, contingent upon our resulting from the award or making of this contract.

For breach or violation of this warranty, the OWNER shall have the right to annul this contract without liability.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be duly executed as of the date in your first herein written.

CITY OF FAYETTEVILLE

By: _____
Mayor

Attest:

City Clerk

EGIS, INC.
EGIS NATURAL DEVELOPMENTS, INC.

By: 
Manuel Barnes, President

Attest:


Witness Printed Name: Donna Mansell

ATTACHMENT A

DESIGN PHASE						
COE Permit Coordination						
30.00%	\$ 7,500.00	100.00	Hrs.	Principal Scientist	\$ 75.00	\$ 7,500.00
40.00%	\$ 10,000.00	166.67	Hrs.	Sr. Environmental Scientist	\$ 60.00	\$ 10,000.00
3.00%	\$ 750.00	13.64	Hrs.	Environmental Scientist	\$ 55.00	\$ 750.00
10.00%	\$ 2,500.00	62.50	Hrs.	Environmental Technician	\$ 40.00	\$ 2,500.00
10.00%	\$ 2,500.00	50.00	Hrs.	CADD Technician	\$ 50.00	\$ 2,500.00
7.00%	\$ 1,750.00	50.00	Hrs.	Administration	\$ 35.00	\$ 1,750.00
100.00%	\$ 25,000.00	442.80				\$ 25,000.00 \$ 25,000.00
BIDDING PHASE						
Consultation with City regarding Mitigation Construction Bids						
38.40%	\$ 1,920.12	25.00	Hrs.	Principal Scientist	\$ 75.00	\$ 1,875.00
46.08%	\$ 2,304.15	30.00	Hrs.	Sr. Environmental Scientist	\$ 60.00	\$ 1,800.00
5.84%	\$ 291.86	3.80	Hrs.	Environmental Scientist	\$ 55.00	\$ 209.00
0.00%	\$ -	-	Hrs.	Environmental Technician	\$ 40.00	\$ -
0.00%	\$ -	-	Hrs.	CADD Technician	\$ 50.00	\$ -
9.68%	\$ 483.87	6.30	Hrs.	Administration	\$ 35.00	\$ 220.50
100.00%	\$ 5,000.00	65.10				\$ 4,104.50
MITIGATION CONSTRUCTION OBSERVATION PHASE						
1) Agency Coordination						
38.42%	\$ 2,881.66	37.50	Hrs.	Principal Scientist	\$ 75.00	\$ 2,812.50
46.11%	\$ 3,457.99	45.00	Hrs.	Sr. Environmental Scientist	\$ 60.00	\$ 2,700.00
5.94%	\$ 445.70	5.80	Hrs.	Environmental Scientist	\$ 55.00	\$ 319.00
0.00%	\$ -	-	Hrs.	Environmental Technician	\$ 40.00	\$ -
0.00%	\$ -	-	Hrs.	CADD Technician	\$ 50.00	\$ -
9.53%	\$ 714.65	9.30	Hrs.	Administration	\$ 35.00	\$ 325.50
100.00%	\$ 7,500.00	97.60				\$ 6,157.00
2) Erosion Control Coordination						
10.31%	\$ 3,091.51	50.00	Hrs.	Principal Scientist	\$ 75.00	\$ 3,750.00
24.73%	\$ 7,419.62	120.00	Hrs.	Sr. Environmental Scientist	\$ 60.00	\$ 7,200.00
14.26%	\$ 4,278.65	69.20	Hrs.	Environmental Scientist	\$ 55.00	\$ 3,806.00
43.28%	\$ 12,984.34	210.00	Hrs.	Environmental Technician	\$ 40.00	\$ 8,400.00
1.24%	\$ 370.98	6.00	Hrs.	CADD Technician	\$ 50.00	\$ 300.00
6.18%	\$ 1,854.91	30.00	Hrs.	Administration	\$ 35.00	\$ 1,050.00
100.00%	\$ 30,000.00	485.20				\$ 24,506.00
3) Tree Preservation Coordination and Observation						
7.00%	\$ 1,750.63	27.80	Hrs.	Principal Scientist	\$ 75.00	\$ 2,085.00
37.78%	\$ 9,445.84	150.00	Hrs.	Sr. Environmental Scientist	\$ 60.00	\$ 9,000.00
10.18%	\$ 2,544.08	40.40	Hrs.	Environmental Scientist	\$ 55.00	\$ 2,222.00
34.01%	\$ 8,501.26	135.00	Hrs.	Environmental Technician	\$ 40.00	\$ 5,400.00
3.15%	\$ 787.15	12.50	Hrs.	CADD Technician	\$ 50.00	\$ 625.00
7.88%	\$ 1,971.03	31.30	Hrs.	Administration	\$ 35.00	\$ 1,095.50
100.00%	\$ 25,000.00	397.00				\$ 20,427.50
4) Mitigation Area Construction Observation						
10.91%	\$ 8,180.63	125.00	Hrs.	Principal Scientist	\$ 75.00	\$ 9,375.00
30.54%	\$ 22,905.76	350.00	Hrs.	Sr. Environmental Scientist	\$ 60.00	\$ 21,000.00
25.17%	\$ 18,880.89	288.50	Hrs.	Environmental Scientist	\$ 55.00	\$ 15,867.50
30.10%	\$ 22,578.53	345.00	Hrs.	Environmental Technician	\$ 40.00	\$ 13,800.00
0.00%	\$ -		Hrs.	CADD Technician	\$ 50.00	\$ -
3.27%	\$ 2,454.19	37.50	Hrs.	Administration	\$ 35.00	\$ 1,312.50
100.00%	\$ 75,000.00	1,146.00				\$ 61,355.00 \$ 112,445.50
MITIGATION MONITORING AND REPORTING PHASE						
Reporting & Monitoring of Mitigation Area - 5 years						
100.00%	\$ 22,500.00	5.00		5 yrs @\$4,500.00	\$ 4,500.00	\$ 22,500.00 \$ 22,500.00
						\$ 164,050.00
This attachment illustrates estimated hours by specific personnel.						
Although the number of hours may vary among personnel, the amount designated for each section will not be exceeded.						

4215

ORDINANCE NO. 4215

AN ORDINANCE WAIVING THE REQUIREMENTS OF COMPETITIVE BIDDING FOR PROFESSIONAL SERVICES FOR THE USCOE 404 PERMIT FOR THE ARKANSAS RESEARCH AND TECHNOLOGY PARK; AND AWARDING A CONTRACT TO EGIS CONSULTING INC. IN THE AMOUNT OF \$27,000.

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

Section 1. That the City Council hereby waives the requirements of competitive bidding for the USCOE 404 permit for the Arkansas Research and Technology Park for the reason that said requirements are neither practical nor feasible. EGIS Consulting Inc. has already performed the wetland determination, is familiar with the project and would facilitate acquiring a timely permit.

Section 2. That the contract for professional services for the USCOE 404 permit for the Arkansas Research and Technology Park is hereby awarded to EGIS Consulting Inc. in the amount of \$27,000, and the Mayor and City Clerk are hereby authorized to execute said contract. A copy of the contract is attached hereto as Exhibit "A" and made a part hereof.

PASSED AND APPROVED this 18th day of January, 2000.

APPROVED:

By: _____


Fred Hanna, Mayor

ATTEST:

By: _____


Heather Woodruff, City Clerk



STAFF REVIEW FORM

XXXX AGENDA REQUEST
XXXX CONTRACT REVIEW
GRANT REVIEW

For the Fayetteville City Council meeting on January 18, 2000.

FROM:

Wayne Ledbetter *W. Ledbetter* Engineering Division Public Works Department
Name Division Department

ACTION REQUIRED: Approval of an Agreement for professional services with EGIS Consulting Inc. regarding the USCOE 404 permit for the Arkansas Research & Technology Park. This contract amount is \$ 27,000.00. A bid waiver is requested.

COST TO CITY:	700,000 570,000	Research and Technology Park
\$ 27,000	\$ -	Category/Project Name
Cost of this Request	Category/Project Budget	
1010-6600-5314-00	\$ 00	Street Improvements
Account Number	Funds Used To Date	Program Name WATER & Sewer Tap
	700,000 570,000	GENERAL FUND &
95075-10	\$ -	Sales Tax
Project Number	Remaining Balance	Fund

BUDGET REVIEW: XXXX Budgeted Item Budget Adjustment Attached

Steph Budget Coordinator Administrative Services Director

CONTRACT/GRANT/LEASE REVIEW:

GRANTING AGENCY:

<i>Marilyn J. Cramer</i>	1-11-00		
Accounting Manager	Date	ADA Coordinator	Date
<i>Paul G.</i>	1-12-00	<i>Yolanda Fields</i>	1-12-00
City Attorney	Date	Internal Auditor	Date
<i>W. Vice</i> PR	1-12-00		
Purchasing Officer	Date		

STAFF RECOMMENDATION: Staff recommends that the Council approve the contract with EGIS Consulting Inc. for consultation work with the USCOE for Permit 404 regarding the Arkansas Research & Technology Park.

<i>Jim Beavers</i>	Jan 10 2000	Cross Reference
Division Head	Date	
<i>Charles Venable</i>	1-12-00	New Item: Yes
Department Director	Date	
<i>Shirley</i>	1-13-00	Prev Ord/Res #: _____
Administrative Services Director	Date	
<i>Paul</i>	1/13/00	Orig Contract Date: _____
Mayor	Date	

DEPARTMENTAL CORRESPONDENCE

To: Fayetteville City Council

Thru: Fred Hanna, Mayor
Charles Venable, Public Works Director
Don Bunn, Assistant Public Works Director
Jim Beavers, City Engineer

From: Wayne Ledbetter, Engineering 

Date: January 10, 2000

RE: Arkansas Research & Technology Park
Consultation Services regarding USCOE 404 Permit

1. Existing Conditions. The City owns approximately 290 acres in the Northwest portion of Fayetteville and that property is designated the Arkansas Research & Technology Park. The property adjoins Shiloh on the south, Moore Lane on the west, Deane Solomon Rd. on the north, and Truckers Lane on the east. This parcel is broken up into several pastures (some pastures are field, some pastures are part field with trees and shrubs). The land typically drains northward to Clabber Creek which is the main outfall for all the drainage in the immediate area. This area has approximately eighty-nine acres determined as wetlands. The wetland determination was performed by EGIS Consulting.

2. Proposed Conditions. The Arkansas Research & Technology Park will accommodate several sites for technologically based industries. This area is planned for light industry yet still maintain a aesthetically pleasing environment. In fact, this area is planned with a wetland reserve and a woodland preserve and other amenities that will be eye pleasing to the community. The first step in regards to the USCOE 404 Permit is determining the existing wetland areas and planning what areas will be impacted and which will be undisturbed. The existing wetland performed by EGIS is already complete and the first stage of the 404 Permitting process has begun. The City has submitted the materials needed for beginning this first stage of the permit. However, there are several areas that we will need assistance in following up the wetland determination and pursuing the 404 Permit. EGIS can assist us in the tasks that are beneficial to acquiring this permit. The accompanying scope of services enumerates the work we will ask of them in the permit process. The following is a summary of these services:

1. Coordination with USCOE with cultural resources and threatened species. They will help with the State Historic Preservation Office, US Fish & Wildlife regarding this project
2. Perform a wetland functional value assessment and an alternative analysis.

3. Help develop a conceptual wetland mitigation.
4. Assist the City regarding public concerns pertaining to project environmental impacts.
5. Assist City regarding cultural resource matters, if needed.

Other work such as plan work for the wetland mitigation and construction of mitigation areas will be determined at a future. Essentially EGIS is helping in the permit process. Please note the accompanying scope of services for detail.

The total of consultation services for this phase is a not to exceed of \$ 27,000.00

3. Bid Waiver. The staff requests that the Council grant a bid waiver for the 404 Permit consultation services. EGIS has already performed the wetland determination and is familiar with the project. We have already begun the permit process and would like to expedite this by retaining their services quickly. By granting this waiver, they would be available to begin some of these tasks and help us get a timely permit. Their previous work was competitively priced which allowed us to award them the wetland determination.

4. Staff Recommendation. The Staff recommends that the Council approve the Agreement with EGIS Consulting Inc. for consultation services regarding the USCOE 404 Permit for The Arkansas Research & Technology Park.



ENVIRONMENTAL AND GIS CONSULTING, INC.

**SCOPE OF SERVICES
PROVIDED FOR
CITY OF FAYETTEVILLE
PROJECT: ARKANSAS RESEARCH &
TECHNOLOGY PARK
PROPOSED DEVELOPMENT SITE
EGIS PROJECT #1850**

EGIS Consulting, Inc. ("EGIS") proposes to perform the following services for the City of Fayetteville ("Client") for a 289± acre development site for the proposed Arkansas Research and Technology Park in Fayetteville, Arkansas. The specific site location to be identified on a map provided by Wayne Ledbetter, Staff Engineer for the City of Fayetteville.

I. SERVICES PROVIDED BY EGIS

EGIS will assist the City of Fayetteville in obtaining a Corps of Engineers Section 404 permit regarding the above-referenced site:

1. Coordination of Corps Engineer 404 permit process including cultural resources, threatened or endangered species (T&E), and working closely with COE and PE to minimize adverse project impacts. Services include initial coordination with State Historic Preservation Officer (SHPO) and US Fish & Wildlife Service (USF&WS) regarding the above. Should detailed SHPO or T&E investigations be required, additional work will be performed on an additional hourly basis or by an additional contract. Coordinate closely with PE and COE to provide COE information necessary for COE public notice regarding the project. The City of Fayetteville and EGIS will work cooperatively to accomplish this task. EGIS's work will be performed on an hourly basis (Not to Exceed) \$7,500.00
2. EGIS will perform a wetland functional value assessment and an alternative analysis on an hourly basis (Not to Exceed) \$7,500.00
3. Develop conceptual wetland mitigation plan. This task will be accomplished by both the city of Fayetteville and EGIS. EGIS's work will be performed on an hourly basis (Not to Exceed) \$5,000.00
4. EGIS will assist the City of Fayetteville regarding public concerns pertaining to project environmental impacts. For example, impacts to wetlands, fish and wildlife, such as the Arkansas darter. EGIS will perform this work on an hourly basis
(Not to Exceed) \$4,500.00
5. If cultural resources investigation is required, the City of Fayetteville will select a cultural resource contractor and provide necessary coordination with said entity and the COE. EGIS will assist the City of Fayetteville regarding cultural resource matters as needed on an hourly basis in an advisory capacity (NTE) \$2,500.00
6. EGIS and the City of Fayetteville will work cooperatively to develop detailed wetlands mitigation plans. This may involve additional field investigation. The scope of detailed plans will be determined once conceptual mitigation plans are approved by COE. EGIS's portion of this work will be performed on an hourly basis or a fixed fee to be determined later in the permit process.

7. Construction of mitigation plans will be performed by an environmental consultant with contractor's license. Cost will be determined later in during the permit process once final mitigation plans are approved by the COE.

II. **Limitation of Professional Liability Insurance.** To the maximum extent permitted by law, Client agrees to limit EGIS's professional liability for damages to the sum of \$1,000,000. This limitation shall apply regardless of the cause of action or legal theory pled or asserted.

III. **PROVIDED BY CLIENT**

- A. A site location map, legal description, name and address of Permittee, and a topographic survey will all be provided by the client.
- B. A grading and site plan will also be provided by the client, if they are readily available.
- C. The client assures EGIS, by this contract signature, that legal access to the property is authorized for EGIS to conduct wetland permitting related work

FEE SCHEDULE

Principal Scientist \$75.00 / hr.
Sr. Environmental Scientist \$60.00 / hr.
Environmental Scientist \$55.00 / hr.

CAD \$50.00 / hr.
Environmental Technician \$40.00 / hr.
Clerical/Secretary \$35.00 / hr.
(Travel time is billed at ½ the regular rate.)

- Client agrees to provide payment for services rendered within 30 days of date of EGIS invoice.

Approval Signatures and
Authorization to Proceed:

CITY OF FAYETTEVILLE

BY: 
ITS: FRED HANNA
MAYOR

Date: 1-18-00

City of Fayetteville
113 West Mountain
Fayetteville, AR 72701
501-575-8206
501-575-8316 (fax)

EGIS CONSULTING, INC.

BY: 
ITS: Manuel Barnes
President

Date: 1-10-00

EGIS Consulting, Inc.
314 South Main
Bentonville, AR 72712
501-271-9252
501-271-8627 (fax)

☒ AGENDA REQUEST
☐ CONTRACT REVIEW
☐ GRANT REVIEW

or the Fayetteville City Council meeting of August 15, 2000

FROM:

John Maquire

Administration

ame

Division

Department

ACTION REQUIRED: Consideration of a claim by Bekka Development for legal expenses in conjunction with the Town Center. A claim for parking rental revenue was approved at the June 20, 2000 meeting of the Fayetteville City Council. If the claim is approved, approval of a budget adjustment to fund the approved claim is also requested.

COST TO CITY:

\$8,545.35

\$8,545.35

Services and Charge

Cost of this Request

Category/Project Budget

Category/Project Name

5600-9600-5314-01

Account Number

Funds Used To Date

Town Center

Program Name

Project Number

Remaining Balance

Fund

BUDGET REVIEW:

☐ Budgeted Item

☒ Budget Adjustment Attached

Budget Coordinator

Administrative Services Director

CONTRACT/GRANT/LEASE REVIEW:

GRANTING AGENCY: _____

Accounting Manager

Date

ADA Coordinator

Date

City Attorney

Date

Internal Auditor

Date

Purchasing Officer

Date

Grant Officer

Date

STAFF RECOMMENDATION:

Division Head

Date

Cross Reference

Department Director

Date

New Item: Yes No

Prev Ord/Res #: _____

Admin. Svcs Director

Date

Orig Contract Date: _____

Mayor

Date

Description _____ Meeting Date _____

Comments:

Budget Coordinator

Reference Comments:

Accounting Manager

Reference Comments:

City Attorney

Reference Comments:

Purchasing Officer

Reference Comments:

ADA Coordinator

Reference Comments:

Internal Auditor

Reference Comments:

Grants Officer

Reference Comments:

RECEIVED

JUL 28 2000

BDC

BEKKA DEVELOPMENT

CITY OF FAYETTEVILLE
MAYOR'S OFFICE

EXECUTIVE SQUARE, ONE WEST MOUNTAIN, FAYETTEVILLE, AR 72701

(501) 442-7672 FAX (501) 442-4580

June 27, 2000

City of Fayetteville

Attn: Hon. Fred Hanna, Mayor

113 W. Mountain

Fayetteville, AR 72701

Dear Mayor Hanna:

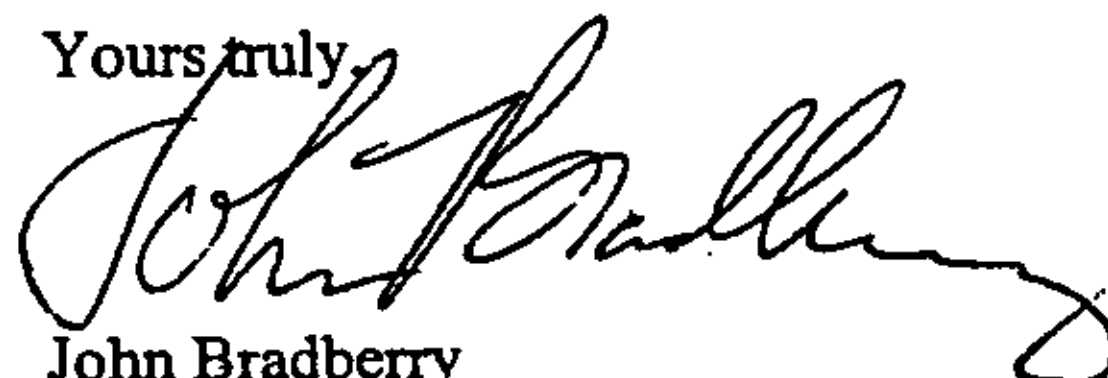
In accordance with our lease agreement and further to my letter of May 25, 2000, we are submitting an updated invoice for legal fees related to the leased premises. As you may have heard, Judge Gunn denied our motion for the plaintiff in the Town Center Lawsuit to pay defendant legal fees.

Please remit promptly to:

Bekka Development Company
One West Mountain
Fayetteville, AR 72701

Thank you for your attention to this matter.

Yours truly,



John Bradberry

Vice President-Bekka Development Co.

cc: Mr. E.G. Bradberry, President Bekka Development Co.
Mrs. Dianne Boyd, Secretary Bekka Development Co.

**One West Mountain Street
Fayetteville, AR 72701**

DATE	INVOICE NO.
7/27/2000	2561

City of Fayetteville
13 W. Mountain
Fayetteville, AR 72701

P.O. NO.	TERMS	MONTH
	Net on receipt	

DESCRIPTION	AMOUNT
Legal Costs-Davis,Cox & Wright 8/99-5/00	8,545.35
Total	\$8,545.35

Davis, Cox & Wright PLC Customer Balance Detail

<u>Type</u>	<u>Date</u>	<u>Num</u>	<u>Account</u>	<u>Class</u>	<u>Amount</u>
Bekka Corp.					
Williams, et al v city of Fayettev & Bekka					
Invoice	8/31/99	1474	2021-A/R	WJB	811.50
Invoice	9/30/99	1655	2021-A/R	WJB	836.00
Invoice	10/26/99	1813	2021-A/R	WJB	1,012.40
Invoice	11/29/99	1998	2021-A/R	WJB	480.00
Invoice	12/30/99	2212	2021-A/R	WJB	2,670.25
Invoice	1/31/00	2361	2021-A/R	WJB	1,220.20
Invoice	2/29/00	2525	2021-A/R	WJB	450.00
Invoice	3/30/00	2722	2021-A/R	WJB	345.00
Invoice	4/27/00	2892	2021-A/R	WJB	585.00
Invoice	5/31/00				<u>135.00</u>
					<u>\$8,545.35</u>

LEASE AGREEMENT

Agreement made this 22nd day of October, 1998, by and between BEKKA Development Company, an Arkansas Corporation, with offices at One West Mountain Street, Fayetteville, Arkansas 72701, (hereinafter called "Lessor"), and the City of Fayetteville, Arkansas, a municipal corporation, with offices at 113 West Mountain Street, Fayetteville, Arkansas 72701, (hereinafter called "Lessee").

WHEREAS, the City of Fayetteville desires to revitalize its Downtown by building a Town Center with a Plaza connected to the Fayetteville Square; and,

WHEREAS, BEKKA Development Company is also interested in revitalizing Downtown Fayetteville; and,

WHEREAS, BEKKA Development Company recognizes that its property is much more valuable than indicated by the terms of this Lease Agreement; nevertheless, is willing to lease the hereinafter described property, under the terms and conditions specified herein; and,

WHEREAS, the plans contemplate the conversion of an entire tract of Lessor's property to use as an entrance plaza to the Town Center, which may materially and adversely impact Lessor's adjacent developed lots to the east and west of the intended plaza, and will preclude integrated development of Lessor's combined tracts fronting the Fayetteville Square; and,

WHEREAS, while the City could exercise its power of eminent domain to acquire Lessor's property, both parties wish to avoid the uncertainties and potential expense of condemnation proceedings, as well as the threat such proceedings could hold for either the project itself or the value to Lessor of this and its adjacent lots.

NOW, THEREFORE, IN CONSIDERATION of the rents, promises, recitals and mutual covenants contained herein, the Lessor and Lessee hereby agree as follows:

1. **LEASED PREMISES.** Lessor hereby lets, leases and demises unto Lessee, without representations as to physical condition or suitability, subject to the terms and conditions contained herein, the following described property situated in Washington County, Arkansas:

Lots Two (2) and Three (3) in Block Thirty (30) in the Original Plat of the Town (now City) of Fayetteville, Arkansas, and part of Lot 4 West of Lot 3 to the existing walkway edge, a distance of approximately 15'.

To have and hold said premises unto the said Lessee for and during the term herein stated, subject to the covenants, terms and conditions contained herein.

2. **TERM.** This lease shall commence upon the effective date hereof and shall extend for a term of twenty-five (25) years. Lessee shall have the option to extend said lease in five (5) year increments, on an Evergreen basis, rent to continue as set forth in paragraph 7, if Lessee is not in default. It is the specific intent of the parties that this lease be one of perpetual renewal at the option of the Lessee so long as Lessee is not in default.

AS
[Signature]

and take possession of the leased premises. Pursuit of said remedy shall not preclude pursuit of any other remedies herein provided, or provided by law. No waiver by Lessor or any violation or breach of any portion hereof shall be deemed or construed to constitute a waiver of any other violation or breach of the same or otherwise. Lessee shall pay any and all costs and expenses resulting from an event of default hereunder or incurred in the collection of any past due balances hereunder, including reasonable attorney fees, whether said attorney is in-house or not, and whether or not suit is brought.

13. CONTINUING OBLIGATIONS. Lessee shall bear all cost and expenses, directly or indirectly associated with the Leased Premises, including, but not limited to, any and all improvements, maintenance, up-keep, lighting, utilities, insurance, accidents, taxes, fees, assessments, cleaning, snow removal and trash removal, and shall defend, indemnify and hold Lessor harmless therefore. Lessee shall maintain the Leased Premises in a clean, attractive, healthful condition, and in accordance with all laws and ordinances. Lessee's obligations under this agreement shall continue and shall survive the expiration or termination hereof, until all obligations of the Lessee incurred hereunder have been met. Nothing herein is to be interpreted or intended as a waiver of the tort immunity granted Lessee under the law of the State of Arkansas.

14. MISCELLANEOUS PROVISIONS.

A. Lessee shall pay any and all costs and expenses associated with, directly or indirectly, the removing, relocating, replacing, providing, etc., any and all utilities, electrical service, heating and air-conditioning, water, sewer, steps, entrances, driveways, parking, etc., to or for the Leased Premises. Said removal, relocations, etc., shall be subject to Lessor's prior approval and shall be done with minimum disruption of services.

B. Lessee shall provide and maintain reasonable access from the Leased Premises (plaza and parking) to the premises east and west of the Leased Premises, to Lessor's satisfaction, including at least three (3) walkways from the plaza to the premises located to the west of the Leased Premises.

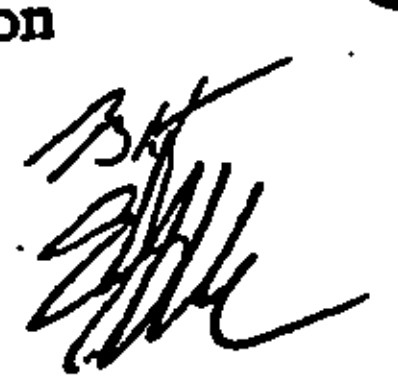
C. The rent provided in this lease shall not be used directly or indirectly in determining fair market value in any subsequent condemnation action regarding this property.

D. All risk and loss to the Leased Premises during the term or any extended terms hereof shall be borne by Lessee.

E. Upon termination of the lease, Lessee shall continue to provide Lessor reasonable ingress and egress to and from the Leased Premises across Lessee's property lying south of the Leased Premises. Said access is currently being afforded by a driveway/alley along the south edge of the Leased Premises from both East and Block Streets.

F. Lessee shall provide, at no cost to Lessor, during the term and any extended term hereof, reasonable space for trash/garbage disposal and pickup for use by Lessor and the occupants of the premises lying east and west of the Leased Premises.

15. SUCCESSION. This lease agreement shall inure to the benefit of and be binding upon the parties hereto and their respective heirs, successors and permitted assigns.

A handwritten signature in black ink, appearing to be "Bekka", is located in the bottom right corner of the page.

16. **SEVERABILITY.** Each provision of this lease agreement is severable from all other provisions. In the event any court of competent jurisdiction determines that any provision is invalid or unenforceable for any reason, all remaining provisions shall remain in full force and effect and shall be construed to best effectuate the intent of the parties.

17. **INTERPRETATION.** This Lease Agreement shall be deemed to have been made under and shall be governed by the laws of the State of Arkansas in all respects, including without limitation, matters of construction, validity, performance and venue. Venue of any legal actions shall be in Washington County, Arkansas and the parties specifically waive any and all other.

18. **AUTHORIZATION.** The persons executing this agreement covenant and represent that they are duly authorized and empowered to do so on behalf of the party they purport to represent.

19. **LIABILITY.** Lessor shall not be liable to Lessee or any other party, person, or entity for damage, injury or loss of any kind arising from or associated with the Leased Premises, directly or indirectly, and Lessee shall defend, indemnify and hold Lessor and its officers, agents, employees, directors, and shareholders harmless therefrom. The Lessee shall be liable for any and all damages from their construction, development, and use of the Leased Premises. Nothing herein is to be interpreted or intended as a waiver of the tort immunity granted Lessee under the Law of the State of Arkansas.

20. **TIME OF ESSENCE.** Time shall be of the essence in this Lease Agreement.

21. **ALL RIGHTS NOT SPECIFIED.** All rights not specifically granted under this Lease shall remain with the Lessor.

22. **ENTIRE AGREEMENT.** This Lease Agreement including Exhibit "A" contains the entire agreement of both parties hereto, and no other oral or written agreement shall be binding on the parties hereto. This Lease Agreement supersedes all prior agreements, contracts, and understanding of any kind between the parties relating to the subject matter hereof.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals on this 27 day of October, 1998.

LESSOR:

BEKKA DEVELOPMENT CO.
An Arkansas Corporation

By: [Signature]
President

ATTEST:

By: [Signature]
Secretary

LESSEE:

CITY OF FAYETTEVILLE, ARKANSAS
A Municipal Corporation

By: [Signature]
Fred Hanna, Mayor

ATTEST:

By: [Signature]
Heather Woodruff, City Clerk

[Signature]

3. **DESIGN.** Lessor agrees to allow Lessee to construct a Town Plaza in substantially the same design as shown in the architectural drawing attached hereto as Exhibit "A". Before and after initial construction, any substantial changes to the design as shown in Exhibit "A", must be approved by the Lessor in writing prior to construction. Lessor shall not unreasonably withhold such approval.

4. **ASSIGNMENT.** Lessee shall not assign this lease or sublet the leased premises or any part thereof without prior written consent of the Lessor.

5. **POSSESSION.** Lessee may take possession of the leased premises when Lessor has given final approval of Lessee's plans for the improvements to be made to the Leased Premises as set forth in paragraph 3 above and, when a construction contract for the Town Center Project, which will be located south of the Leased Premises, has been entered into.

6. **COSTS, UTILITIES AND LIABILITY.** All costs, utilities, and liability of and for the plaza and connecting areas, steps, and tie ins shall be borne by the Lessee.

7. **RENT.** As partial consideration, in addition to the terms, conditions and covenants hereof, Lessee agrees to pay Lessor the sum of one hundred twenty thousand dollars (\$120,000.00) upon possession and one dollar (\$1.00) per year during the term or any extended terms, hereof.

8. **TAXES.** Lessee shall pay any and all ad valorem taxes, fees and assessments levied against said premises during the term of this lease; including, but not limited to, real estate taxes, personal property taxes, sales taxes and off-street parking district taxes.

9. **PARKING.** Lessee shall at no cost to the Lessor provide and maintain a paved area adjacent to the Executive Square Office Building, underneath the Town Plaza, sufficient to accommodate 32 parking spaces. Said area shall be for the exclusive use of the Lessor and/or Lessor's Tenants and guests; however, when not in use by Lessor, said spaces may be utilized by the Lessee for public purposes. Lessee shall provide and maintain reasonable access which is satisfactory to the Lessor from the parking area provided to Lessor hereunder, to the premises to the east and west of the Leased Premises; and shall provide and maintain lighting, ventilation and upkeep of said parking area in a manner which is satisfactory to Lessor.

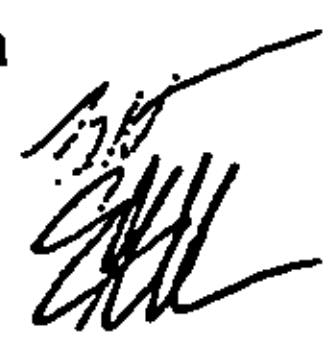
10. **USE.** Lessee shall use the Leased Premises for the purpose of building and operating a Town Plaza, which shall be the entrance from the south side of the Fayetteville Square to the Town Center, and for no other purpose or purposes without the written consent of Lessor.

11. **DEFAULT.** Lessor may declare a default by Lessee upon the following:

A. Lessee failing to pay any installment of rent and the failure continues for a period of 60 days after written notice to the Lessee.

B. Failure to comply with any other terms of this Lease Agreement, and not curing such failure within 60 days after written notice to the Lessee.

12. **REMEDIES.** Upon the occurrence of any default by the Lessee, which is not timely cured after written notice, Lessor may terminate this Lease Agreement and immediately enter upon



LEGAL DEPARTMENT
CITY ATTORNEY DIVISION

JERRY E. ROSE, CITY ATTORNEY

LAGAYLE D. MCCARTY, ASST. CITY ATTORNEY

MENTAL CORRESPONDENCE

To: Fred Hanna, Mayor
Fayetteville City Council

From: Jerry E. Rose, City Attorney *J.E.R.*

Date: June 9, 2000

Re: Bekka claims for legal expenses and lost parking

John Bradberry's letter dated May 25, 2000 asks for the City to pay attorney fees and lost parking revenue under the terms of Bekka's lease dated October 22, 1998 which is attached as part of the agenda packet. I thought these comments may be of some assistance to you in your decision.

1. Attorney fees: Since the filing of what is commonly referred to as the Town Center lawsuit in mid-1999, I have been asked by Bekka on a number of occasions as to what my position was on paying Bekka's attorney fees incurred as a result of their being named a party to the suit. I can recall two conversations with Dianne Boyd and one with Jack Butt. On every occasion I expressed my belief that the City was not legally obligated under the terms of the lease to pay Bekka's attorney fees, but that I thought that the City Council may well feel that in fairness they should pay some or all of those fees and I encouraged them to make a claim.

I do not believe that attorney fees for Bekka's defense of the Town Center suit are covered under the lease agreement. Bekka is accused in the suit of entering into an illegal contract with the City and the suit seeks to void Bekka's lease and requests Bekka refund the money paid under the terms of the lease. I don't think that fits under the lease provisions which are cited by Bekka because I don't believe the defense of the suit is directly or indirectly associated with the leased premises. Instead I believe it is associated with the money Bekka received for the lease which has no relationship whatever with the leased premises. For what it's worth, I readily concede that reasonable legal minds may differ. I also readily concede that Bekka's defense assisted the City in its position and that Jack Butt's able and highly competent legal skills were welcomed by all who supported the City's position. Accordingly, I would have no objections to the City resolving this matter by paying this claim. I just want you to know that I don't believe you are legally obligated to. Remember that this case is likely to be appealed and I assume more attorney fees may be incurred by Bekka as a result.

Page 2
Mayor/City Council
June 9, 2000

2. Lost Parking Revenues: I recall talking to Dianne Boyd and John Bradberry about the City providing alternate parking to Bekka without any additional clause in the lease. I also recall that we were not sure we could find such alternate parking and told Bekka that if they could find alternate parking that the City may compensate them for that cost. I have no memory of nor do I believe there was a discussion of any compensation that was to be made to Bekka under any circumstances for loss of parking revenue. Section 14A of the lease provides that the City pay for relocating and providing parking. We've done that by providing Bekka alternate parking. The lease does not say nor was it intended to say that if Bekka couldn't convince its tenants that they should pay for the use of the alternate parking that the City would compensate Bekka for a loss of revenue. Again, if you wish to settle this claim you're more than welcome to but I can't think of any legal obligation to do so on this one.

If I can provide anything further, just let me know.

/cbp

Orig Contract Date: _____

Description _____ Meeting Date _____

Comments:

Budget Coordinator

Reference Comments:

Accounting Manager

Reference Comments:

City Attorney

Reference Comments:

Purchasing Officer

Reference Comments:

ADA Coordinator

Reference Comments:

Internal Auditor

Reference Comments:

Grants Officer

Reference Comments:

LEASE

This Agreement, made and entered into this 1st day of September, 2000, by and between the City of Fayetteville, Arkansas, a Municipal Corporation, 113 W. Mountain, Fayetteville, Arkansas, hereinafter called "Lessor", and Fulton Enterprises, Inc. d/b/a/ Town and Country Shop, 9 S. Block St., Fayetteville, AR 72701, hereinafter called "Lessee", Witnesseth:

1. Leased Premises. For and in consideration of the rents, covenants and agreements herein entered into and agreed upon by the Lessee as obligations to the Lessor, the Lessor lets, leases and demises unto Lessee, subject to the terms and conditions contained herein, the following described property situated in Washington County, Arkansas:

Four (4) parking spaces, as set forth on Exhibit "A" attached hereto, located in the Fayetteville Municipal Parking Lot, west of the Campbell Bell Building between Mountain, Church, and Center Streets, a/k/a 160 West Mountain Street, Fayetteville, Arkansas.

To have and to hold said premises unto the said Lessee for and during the term herein stated, subject to the covenants, terms, conditions and liens herein contained.

2. Term. This lease shall commence on August 1, 2000, and shall extend for a term of 1 year, ending at midnight on July 31, 2001. The Lessee shall have the option to renew this lease for 4 additional 1 year terms. The option may be exercised by providing written notice to Lessor at least 30 days prior to expiration of this lease.

3. Rent. Lessee agrees to pay to Lessor as rental for the first year of this lease the sum of \$50 per space per month. Thereafter, the rent shall be adjusted each year at the lease anniversary date to an amount charged for comparable lease spaces in this lot. If no comparables exist, rates will be the same as the Town Center parking deck rates. Each monthly payment is due in advance and payable on or before the 15th of each month for the following month. A late fee shall be imposed, at the highest rate allowable by law, on all payments which are not received by Lessor within 5 business days from the due date.

4. Use. Lessee agrees to use the lease premises only for the purpose of vehicle parking for use of Town and Country customers. However, it is understood that the City will not provide enforcement for restrictive parking spaces identified in this lease.

5. Lessor Improvements. Lessee may make the following improvements: Install Private parking notices on meter poles. Design for all improvements shall be approved by the City. Any such improvement shall be solely at the Lessee's expense. Upon termination or expiration of this lease, such improvements shall be considered affixed to the premises and shall remain unless Lessor requires removal.

6. Assignment. Lessee shall not assign this lease or sublet the leased premises without prior written consent of the Lessor. Consent for any assignment or subletting shall only be considered at the same rates as established in Paragraph 3. above. Any such assignment or subletting shall in no way relieve Lessee from liability for the obligation imposed by this lease. Lessee may only be released from liability by a specific written release executed by Lessor.

7. Holdover. Lessee hereby agrees that upon the termination of this lease by expiration or by earlier termination for any reason whatsoever, Lessee will peaceably deliver possession of the leased premises to Lessor. In the event Lessee shall be permitted by Lessor to hold over after the expiration or termination of this lease, said holding over, in the absence of any written agreement to the contrary, shall be construed as a tenancy from calendar month to calendar month at a monthly rental equal to the rental for the last month paid under this lease, or as may be amended on the anniversary of the term set forth in Paragraph 2. above. A month-to-month tenancy arising by Lessee's holding over under this paragraph may be terminated by written notice from either party to the other party on or before the day on which any monthly rent is due with termination not becoming effective until the day on which the next following monthly rental would have otherwise become due. In the event it should become necessary for Lessor to institute any action at law to recover possession at the time of termination, whenever and however termination may occur, Lessee agrees that it will pay all costs and expenses of such action, including reasonable attorneys' fees.

8. Termination. Lessor hereby reserves the right to terminate this Lease at anytime during the term of this Lease if it is determined by the Fayetteville City Council that the leased premises is needed for a valid public purpose. If Lessor terminates the lease prior to expiration of the term in Paragraph 2., Lessor shall compensate Lessee on a prorated basis of the actual cost to make improvements to the premises.

9. Compliance with Laws. Lessee agrees not to violate any law, ordinance, rule or regulation of any governmental authority having jurisdiction of the leased premises.

10. Non-Waiver. It is agreed that the failure of Lessor to invoke any of the available remedies under this lease or under law in the event of one or more breaches or defaults by Lessee under the lease shall not be construed as a waiver of such provisions and conditions and shall not prevent Lessor from invoking such remedies in the event of any future breach or default.

11. Insurance. Lessee shall be solely responsible for maintaining insurance on any improvements made to the leased premises, as well as for general public liability insurance.

12. Succession. This lease agreement shall inure to the benefit of and be binding upon the parties hereto and their respective heirs, successors and assigns.

13. Severability. Each paragraph of this lease agreement is severable from all other paragraphs. In the event any court of competent jurisdiction determines that any paragraph or subparagraph is invalid or unenforceable for any reason, all remaining paragraphs and subparagraphs will remain in full force and effect.

14. Interpretation. This lease agreement shall be interpreted according to and enforced under the laws of the State of Arkansas.

15. Entire Agreement. This lease agreement contains the entire agreement of both parties hereto, and no other oral or written agreement shall be binding on the parties hereto. This lease agreement supersedes all prior agreements, contracts and understandings of any kind between the parties relating to the subject matter hereof. This agreement may be executed in all or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals on this ____ day of _____, _____.

LESSOR
City of Fayetteville, Arkansas

By: _____
Fred Hanna, Mayor

ATTEST:

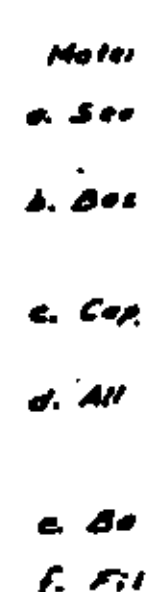
By: _____
Heather Woodruff, City Clerk

LESSEE

By: _____
Title: _____

ATTEST:

By: _____
Title: _____



STAFF REVIEW FORM

David/Cathy Prking
C. 4. Page 1

☐ AGENDA REQUEST
☐ CONTRACT REVIEW
☐ GRANT REVIEW

for the Fayetteville City Council meeting of August 15, 2000

FROM:

John Maquire

Administration

ime

Division

Department

ACTION REQUIRED: Approve attached lease for (2) parking spaces as set forth on Exhibit A) attached hereto, located at 21 S. Block St., West of the Campbell Bell Building, to David and Cathy, Inc..

OST TO CITY:

<u>N/A</u>		
Cost of this Request	Category/Project Budget	Category/Project Name
Account Number	Funds Used To Date	Program Name
Project Number	Remaining Balance	Parking Fund

BUDGET REVIEW: Budgeted Item Budget Adjustment Attached

Budget Coordinator

Administrative Services Director

CONTRACT/GRANT/LEASE REVIEW:

GRANTING AGENCY:

Accounting Manager

Date

ADA Coordinator

Date

City Attorney

Date

Internal Auditor

Date

Purchasing Officer

Date

Grant Officer

Date

STAFF RECOMMENDATION:

Division Head

Date

Cross Reference

Department Director

Date

New Item: Yes No

Admin. Svcs Director

Date

Prev Ord/Res #:

Mayor

Date

Orig Contract Date:

Description _____ Meeting Date _____

Comments:

Budget Coordinator

Reference Comments:

Accounting Manager

Reference Comments:

City Attorney

Reference Comments:

Purchasing Officer

Reference Comments:

DA Coordinator

Reference Comments:

Internal Auditor

Reference Comments:

Grants Officer

Reference Comments:

LEASE

This Agreement, made and entered into this 1st day of September, 2000 by and between the City of Fayetteville, Arkansas, a Municipal Corporation, 113 W. Mountain, Fayetteville, Arkansas, hereinafter called "Lessor", and David and Cathy, Inc., 21 S. Block, Fayetteville, AR 72701, hereinafter called "Lessee", Witnesseth:

1. Leased Premises. For and in consideration of the rents, covenants and agreements herein entered into and agreed upon by the Lessee as obligations to the Lessor, the Lessor lets, leases and demises unto Lessee, subject to the terms and conditions contained herein, the following described property situated in Washington County, Arkansas:

Two (2) parking spaces, as set forth on Exhibit "A" attached hereto, located in the Fayetteville Municipal Parking Lot, west of the Campbell Bell Building between Mountain, Church, and Center Streets, a/k/a 160 West Mountain Street, Fayetteville, Arkansas.

To have and to hold said premises unto the said Lessee for and during the term herein stated, subject to the covenants, terms, conditions and liens herein contained.

2. Term. This lease shall commence on September, 1, 2000, and shall extend for a term of 1 year, ending at midnight on August 31, 2001. The Lessee shall have the option to renew this lease for 4 additional 1 year terms. The option may be exercised by providing written notice to "Lessor" at least 30 days prior to expiration of this lease.

3. Rent. Lessee agrees to pay to Lessor as rental for the first year of this lease the sum of \$50 per space per month. Thereafter, the rent shall be adjusted each year at the lease anniversary date to an amount charged for comparable lease spaces in this lot. If no comparables exist, rates will be the same as the Town Center parking deck rates. Each monthly payment is due and payable on or before the fifteen of each month. A late fee shall be imposed, at the highest rate allowable by law, on all payments which are not received by Lessor within 5 business days from the due date.

4. Use. Lessee agrees to use the lease premises only for the purpose of vehicle parking for the use of David and Cathy, Inc. customers. However, it is understood that the City will not provide enforcement for restrictive parking.

5. Lessor Improvements. Lessee may make the following improvements: install sign identifying private parking for customers. Design for all improvements shall be approved by the City. Any such improvement shall be solely at the Lessee's expense. Upon termination or expiration of this lease such improvements shall be considered affixed to the premises and shall remain unless Lessor requires removal.

6. Assignment. Lessee shall not assign this lease or sublet the leased premises without prior written consent of the Lessor. Consent for any assignment or subletting shall only be considered at the same rates as established in Paragraph 3. above. Any such assignment or subletting shall in no way relieve Lessee from liability for the obligation imposed by this lease.

Lessee may only be released from liability by a specific written release executed by Lessor.

7. Holdover. Lessee hereby agrees that upon the termination of this lease by expiration or by earlier termination for any reason whatsoever, Lessee will peaceably deliver possession of the leased premises to Lessor. In the event Lessee shall be permitted by Lessor to hold over after the expiration or termination of this lease, said holding over, in the absence of any written agreement to the contrary, shall be construed as a tenancy from calendar month to calendar month at a monthly rental equal to the rental for the last month paid under this lease, or as may be amended on the anniversary of the term set forth in Paragraph 2. above. A month-to-month tenancy arising by Lessee's holding over under this paragraph may be terminated by written notice from either party to the other party on or before the day on which any monthly rent is due with termination not becoming effective until the day on which the next following monthly rental would have otherwise become due. In the event it should become necessary for Lessor to institute any action at law to recover possession at the time of termination, whenever and however termination may occur, Lessee agrees that it will pay all costs and expenses of such action, including reasonable attorneys' fees.

8. Termination. Lessor hereby reserves the right to terminate this Lease at anytime during the term of this Lease if it is determined by the Fayetteville City Council that the leased premises is needed for a valid public purpose. If Lessor terminates the lease prior to expiration of the term in Paragraph 2., Lessor shall compensate Lessee on a prorated basis of the actual cost to make improvements to the premises.

9. Compliance with Laws. Lessee agrees not to violate any law, ordinance, rule or regulation of any governmental authority having jurisdiction of the leased premises.

10. Non-Waiver. It is agreed that the failure of Lessor to invoke any of the available remedies under this lease or under law in the event of one or more breaches or defaults by Lessee under the lease shall not be construed as a waiver of such provisions and conditions and shall not prevent Lessor from invoking such remedies in the event of any future breach or default.

11. Insurance. Lessee shall be solely responsible for maintaining insurance on any improvements made to the leased premises, as well as for general public liability insurance.

12. Succession. This lease agreement shall inure to the benefit of and be binding upon the parties hereto and their respective heirs, successors and assigns.

13. Severability. Each paragraph of this lease agreement is severable from all other paragraphs. In the event any court of competent jurisdiction determines that any paragraph or subparagraph is invalid or unenforceable for any reason, all remaining paragraphs and subparagraphs will remain in full force and effect.

14. Interpretation. This lease agreement shall be interpreted according to and enforced under the laws of the State of Arkansas.

15. Entire Agreement. This lease agreement contains the entire agreement of both parties hereto, and no other oral or written agreement shall be binding on the parties hereto. This lease

agreement supersedes all prior agreements, contracts and understandings of any kind between the parties relating to the subject matter hereof. This agreement may be executed in all or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals on this ____ day of _____, _____.

LESSOR
City of Fayetteville, Arkansas

By: _____
Fred Hanna, Mayor

ATTEST:

By: _____
Heather Woodruff, City Clerk

LESSEE

By: _____

Title: _____

ATTEST:

By: _____

Title: _____

STAFF REVIEW FORM

☒ Agenda Request
☐ Contract Review
☐ Grant Review

For the Fayetteville City Council meeting of August 15, 2000.

FROM:

Tim Conklin

Planning

Public Works

Name

Division

Department

ACTION REQUESTED: To approve an ordinance for AD 00-24.00 submitted by Jay Snider on behalf of Kappa Sigma Fraternity to change the name of West William Street behind the Kappa Sigma house (between University Ave. and the alley to the west) to Whiteside Street in honor of Charlie B. Whiteside III.

COST TO CITY:

\$0

Cost of this request

Category/Project Budget

Category/Project Name

Account Number

Funds used to date

Program Name

Project Number

Remaining balance

Fund

BUDGET REVIEW: Budgeted Item Budget Adjustment Attached

Budget Coordinator

Administrative Services Director

CONTRACT/GRANT/LEASE REVIEW:

GRANTING AGENCY:

Accounting Manager

Date

ADA Coordinator

Date

City Attorney

Date

Internal Auditor

Date

Purchasing Officer

Date

STAFF RECOMMENDATION: Staff recommends approval of this request which is being forwarded directly to City Council for consideration.


Division Head

8-1-00
Date

Cross Reference

Department Director

Date

New Item: Yes

Administrative Services
Director

Date

Prev Ord/Res#: _____

Mayor

Date

Orig Contract Date: _____



RECEIVED

JUN 29 2000

Xi Chapter CITY ATTORNEY'S OFFICE

University of Arkansas
711 West Dickson Street
Fayetteville, Arkansas 72701



Kappa Sigma Fraternity
Continuing a Second Century of Tradition

June 14, 2000

Mr. Jerry Rose
City Attorney
City of Fayetteville
Fayetteville, AR 72701

Dear Mr. Rose,

On behalf of Xi Chapter of the Kappa Sigma Fraternity at the University of Arkansas, I am writing to formally request the small section of West Williams Street to Whiteside Street. This street is only a couple of blocks long and runs directly behind the Kappa Sigma house from the University to the cemetery. The only housing on this street are the apartments on 730 West Williams, which are owned and occupied by Kappa Sigma. Therefore, all residents are in full support of the name change.

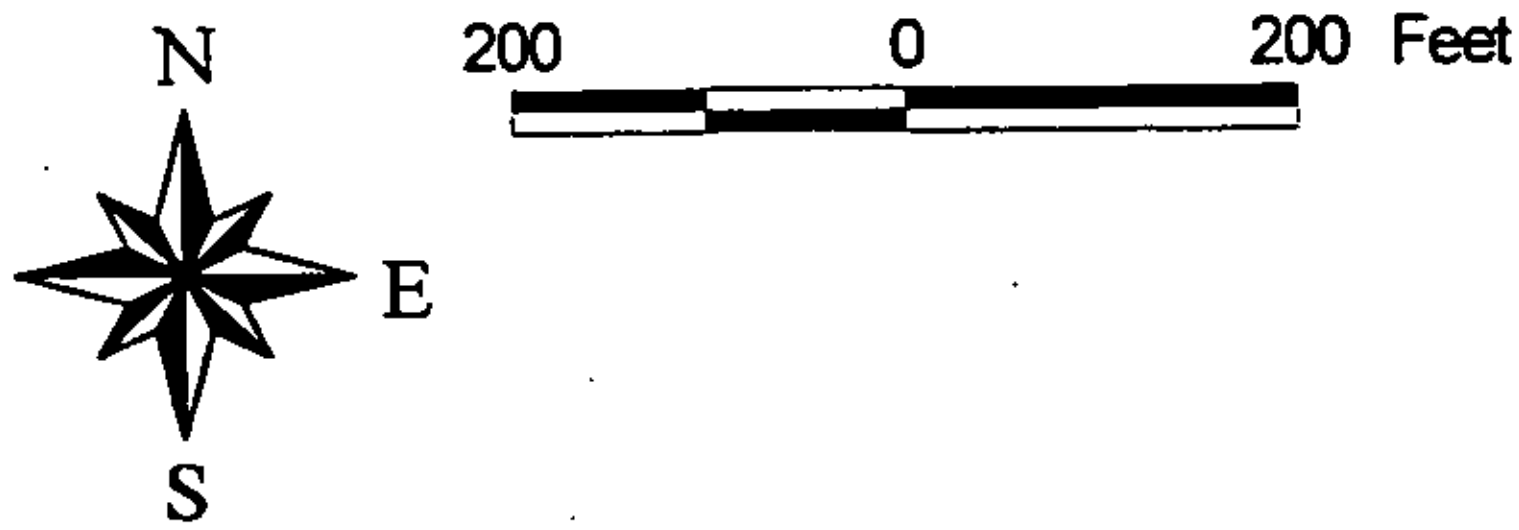
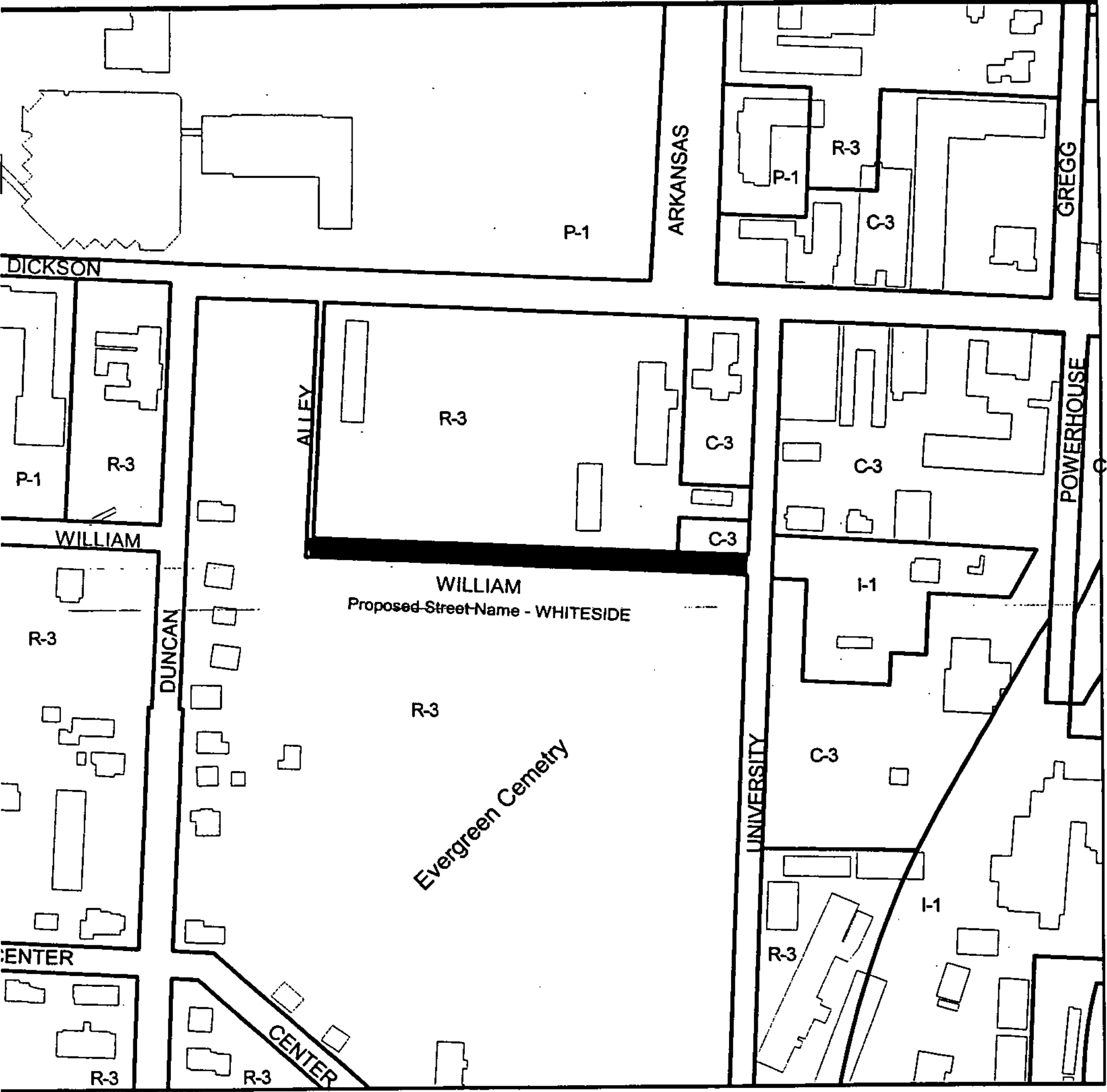
The name Whiteside would recognize Charlie B. Whiteside III, who is an University of Arkansas alumnus and benefactor, who has been instrumental in the rebuilding the Kappa Sigma house. This house will be dedicated in October before the Homecoming football game. It would be our hope that the street name could be announced at that time.

I would sincerely appreciate you forwarding this request to the proper city officials. We will be happy to meet with them and any interested parties. If you have any questions or need any additional information, please contact me at 444-8488. Thank you for your assistance and consideration.

Sincerely,

Jay Snider
President, Kappa Sigma Fraternity
710 West Beck
Fayetteville, AR 72703

AD00-24.00 - Kappa Sigma - Close Up



AD00-24.00 - Kappa Sigma - One Mile Diameter



1400 0 1400 Feet



A RESOLUTION CENSURING THE BOARD OF DIRECTORS OF CRAFTON, TULL, & ASSOCIATES, INC., FOR THE FIRING OF FAYETTEVILLE ALDERMAN CYRUS YOUNG

WHEREAS, the Board of Directors of Crafton, Tull, & Associates, Inc., has fired Fayetteville Alderman Cyrus Young,

WHEREAS, the justification given for this action was "conflict of interest" between the short-term financial interests of Crafton, Tull, & Associates and the interest of the public health and welfare,

WHEREAS, this action has punished an elected representative for duly serving his electorate rather than the short-term financial interests of Crafton, Tull, & Associates,

WHEREAS, this action undermines the ideals of representative government by implying that the interest of the electorate and the Constitutionally guaranteed right to free speech must be subordinate to the interest of the employer,

WHEREAS, this action has undermined public confidence that those employees who have been appointed to City boards, commissions, and committees will be able to contribute their expertise and good judgment without having to ask permission from their employers every time they speak or vote,

WHEREAS, this action has contributed to a sense of suspicion that is beginning to isolate the community of developers from the citizens of Fayetteville,

WHEREAS, this action may compel Mr. Young to seek work elsewhere, thereby depriving the city of Fayetteville of an alderman whose expertise, along with his honesty and courage, make him ideal for serving the interests of this city,

WHEREAS, this action has an immediate, long lasting, and deleterious effect on the city of Fayetteville, where Crafton, Tull, & Associates do business, and has thereby damaged the reputation and good name of Crafton, Tull, & Associates among the citizens of Fayetteville,

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

1. The City of Fayetteville declares that the action of Crafton, Tull, & Associates in firing Fayetteville Alderman Cyrus Young from his position of Engineering Inspector was an act inimical to the processes of elected representation basic to the United States of America and the City of Fayetteville, Arkansas.
2. The City of Fayetteville shall refrain from entering into contractual obligations with Crafton, Tull, & Associates for a period of two years and will refrain from entering into business partnerships with all other companies that fire or otherwise punish, intimidate, or harass Fayetteville elected representatives for the manner in which they perform their public duties.
3. The City of Fayetteville shall refrain for a period of two years from appointing any employees of Crafton, Tull, & Associates to any City advisory or decision-making boards, commissions, or committees, and any employees of Crafton, Tull, & Associates currently serving in such capacities shall be immediately dismissed from their positions on any City advisory or decision-making boards, commissions, or committees.

STAFF REVIEW FORM

XX AGENDA REQUEST
____ CONTRACT REVIEW
____ GRANT REVIEW

For the Fayetteville City Council meeting of August 15, 2000

FROM:

Stephen Davis Budget & Research Admin Services
Name Division Department

ACTION REQUIRED: Enactment of an ordinance establishing credit/debit card convenience fees.

COST TO CITY:

\$-0-

<u>Cost of this Request</u>	<u>Category/Project Budget</u>	<u>Category/Project Name</u>
<u>Account Number</u>	<u>Funds Used To Date</u>	<u>Program Name</u>
<u>Project Number</u>	<u>Remaining Balance</u>	<u>Fund</u>

BUDGET REVIEW: _____ Budgeted Item _____ Budget Adjustment Attached

[Signature]
Budget Manager Administrative Services Director

CONTRACT/GRANT/LEASE REVIEW: GRANTING AGENCY: _____

<u>Accounting Manager</u>	<u>Date</u>	<u>Internal Auditor</u>	<u>Date</u>
<u>[Signature]</u>	<u>8-10-00</u>	<u>ADA Coordinator</u>	<u>Date</u>
<u>City Attorney</u>	<u>Date</u>	<u>Grant Coordinator</u>	<u>Date</u>
<u>Purchasing Officer</u>	<u>Date</u>		

STAFF RECOMMENDATION: Staff recommends approval of an ordinance authorizing credit/debit card acceptance convenience fees.

[Signature]
Division Head

Date

Cross Reference

Department Director
[Signature]
Administrative Services Director

Date

New Item: Yes No

Prev Ord/Res #: _____

Mayor

Date

Orig Contract Date: _____

Orig Contract Number: _____

DEPARTMENTAL CORRESPONDENCE

TO: Mayor Fred Hanna and City Council

THRU: John Maguire, Administrative Services Director

FROM: Budget & Research 

DATE: August 9, 2000

SUBJECT: Credit/Debit Card Acceptance

The City has solicited proposals for credit/debit card processing services to enable the City to accept credit/debit cards as an additional payment method of utility deposits, monthly utility bills, municipal court fines and fees, park fees, and other City fees. The City is prohibited by state statute from absorbing the discount fees assessed by credit card companies for transactions paid with credit cards.

The attached ordinance proposes establishing a convenience fee when a credit or debit card is used to pay utility deposits, monthly utility bills, municipal court fines and fees, and other City fees.

Also attached as part of this agenda item is a copy of the Credit/Debit Card Service Request for Proposal and a copy of the state statute allowing payment of municipal court fines and fees with a credit card.

RFP 00-14
Credit/Debit Card Services
July 21, 2000

Proposers:

There is a mandatory pre proposal meeting on July 26th, 2000 at 10:30 a.m. in Room 326 of the City Administration Building. Please send a staff person to this meeting that is knowledgeable in this area and who has the authority to structure this proposal to meet the City's needs.

Proposals are due on or before August 3rd, 2000, by 5:00 p.m.

CITY OF FAYETTEVILLE
RFP 00-14
CREDIT/DEBIT CARD SERVICE

The City of Fayetteville wishes to accept credit/debit cards for certain transactions. The City requests proposals from qualified credit card processing firms to provide credit card accepting services to the City that will comply with state law and any rules and/or regulations of the credit card issuing companies. The City will begin this credit/debit card service for monthly utility bills, deposits, and other fees as listed on "Schedule of Typical Fees" as soon as practical. Respondents must be on list of banks eligible to accept public deposits as published by the Arkansas State Bank Department.

1. List and cost of equipment and supplies required to implement program. Only electronic systems will be considered.
2. Number of phone lines, special line or modem requirements.
3. Describe what procedures are used for deposits.
4. Do deposits have to be segregated by issuing bank?
5. Does your bank have a courier service?
6. Is there a charge for courier service, if available?
7. Is any financial affiliation or banking relationship required other than for this service?
8. Cancellation requirements.
9. Please provide a copy of your proposed contract with proposal.
10. List of credit/debit cards your bank will accept.
11. What type of training will your bank provide to get the program up and running and are there any cost associated with training?
12. Are debit cards handled any different from credit cards? Are the transaction fees the same for debit cards as they are for credit cards?
13. List of any other fees that may not be listed above.
14. Please attach a schedule of your fees as they would apply to this request for proposal.

Any conditions or expectations on the part of the proposer for performance by the City must be set forth in the proposal. The City is not obligated to consider the proposer's past submittal terms and conditions. The City does not guarantee specific amounts of purchases as a result of this request for proposal.

The evaluation criteria used in selection of the firm is as follows:

- 1) 20 **Qualifications in Relation to Specific Project to be Performed:** Information reflecting qualifications of the firm. Indicate specialized experience and technical competence of the firm in connection with the type and complexity of the service required.
- 2) 20 **Experience, Competence, and Capacity for Performance:** Information reflecting the names, titles, and qualifications (including experience and technical competence) of the major personnel assigned to this specific project.
- 3) 20 **Proposed Method of Doing Work:** A proposed work plan (description of how the project would be conducted as well as other facts concerning approach to scope you wish to present) indicating methods and schedules for accomplishing each phase of work.
- 4) 20 **Past Performance:** Previous evaluations. If previous evaluations with the City are not available, the professional firm's past performance records with City and others will be used, including quality of work, timely performance, diligence, ability to meet past budgets, and any other pertinent information. Firm will provide a list of similar jobs performed and person whom we can contact for information.
- 5) 20 **Price**

At the discretion of the City, one or more firms may be asked for more detailed information before final ranking of the firms, which may also include oral interviews.

Six copies of the proposal shall be mailed or hand delivered to the following address:

City of Fayetteville
Peggy Vice
Purchasing Manager
113 West Mountain
Fayetteville, AR 72701

Telephone: 501/575-8289
Fax: 501/575-8241

The envelope must be clearly marked "RFP 00-14, Request for Credit/Debit Card Service".

A mandatory pre proposal meeting to discuss the request for proposal will be July 26, at 10:30 a.m. Proposals will be due August 3, 2000 by 5:00 p.m.

Schedule of Typical Fees

Type of Fee	Range of Fees as of 6/5/00
Building Permits	\$20 - \$1000
Planning Fees	\$200 - \$300
Drainage/Grading	\$75 - \$200
Animal Licenses	\$5 - \$15
Athletic Field Rentals	\$25/ ½ hr.
Parks Tournament Fees	\$115 - \$135/team
Parks Soccer Participant	\$25 - 55/participant
Parks Team Fees-Softball/Soccer	\$350 - \$450/team
Boarding-Shelter	\$5/day
Impound-Shelter	\$15-\$100
Adoption-Shelter	\$50
Water Tap Fees	\$425 - \$1,200/tap
Sewer Tap Fees	\$425 - \$625/tap
Rural Water Tap	\$475 - \$1,250/tap
Residential W/Sewer Utility Bill	\$55/average
Residential W/Sewer Deposits	\$50/average
Swimming Lessons	\$25/session
Tree & Landscape	\$120/development
Court Fines & Fees	\$25- \$1300
Health Insurance-Cobra Payments	\$115- \$500/month
Planning- Lot Splits	\$200/application
Planning-Conditional Use Permit	\$100/application
Planning-Rezoning Fee	\$325/application
Planning-Annexation Fee	\$325/application
Hot Checks & Fees	\$20- \$50 plus hot check amount

16-17-123

PRACTICE, PROCEDURE, AND COURTS

122

municipal court administration; additional costs for benefit of judicial retirement system; additional costs for administration of justice purposes; and intergovernmental agreements, were repealed by Acts 1995, No. 1256, § 20, as amended by Acts 1995 (1st Ex. Sess.), No. 13, § 4. They were derived from the following sources:

16-17-109. Acts 1951, No. 275, §§ 1-3; 1971, No. 290, § 1; A.S.A. 1947, §§ 22-706.1 — 22-706.3; Acts 1991, No. 904, §§ 5, 20.

16-17-110. Acts 1983, No. 918, § 1; 1995, No. 1032, §§ 2, 9; A.S.A. 1947, § 75-2531.

16-17-123. [Repealed.]

Publisher's Notes. This section, concerning the filing fee for civil actions, was repealed by Acts 1995, No. 1256, § 20, as amended by Acts 1995 (1st Ex. Sess.), No.

16-17-111. Acts 1981, No. 942, §§ 1, 2; 1983, No. 860, §§ 1, 2; 1985, No. 246, § 1; A.S.A. 1947, §§ 22-706.4, 22-706.5; Acts 1987, No. 580, § 1; 1987 (1st Ex. Sess.), No. 49, §§ 1, 2; 1987 (1st Ex. Sess.), No. 57, §§ 1, 2; 1991, No. 357, § 1; 1991, No. 904, §§ 6, 20.

16-17-112. Acts 1983, No. 621, §§ 1-3; A.S.A. 1947, §§ 22-706.6 — 22-706.8; Acts 1987, No. 139, § 1.

16-17-113. Acts 1983, No. 860, § 3; A.S.A. 1947, § 22-706.9; Acts 1987, No. 859, § 2; 1991, No. 904, §§ 7, 20. For present law, see § 16-10-301 et seq.

13, § 4. This section was derived from Acts 1989, No. 816, § 1. For present law, see § 16-10-301 et seq.

16-17-128. Payment of fines by credit card.

(a) All municipal courts may accept payment of fines and associated costs by an approved credit card.

(b)(1) All municipal courts are authorized to enter into contracts with credit card companies and to pay those companies fees normally charged by those companies for allowing the court to accept their credit cards in payment as authorized by subsection (a) of this section.

(2)(A) Where the offender pays fines by an approved credit card, the court shall assess a service fee equal to the amount charged to the court by the credit card issuer.

(B) This charge may be added to, and become a part of, any underlying obligation.

History. Acts 1997, No. 864, § 1.

SUBCHAPTER 2 — ESTABLISHMENT IN CITIES OF 2,400 OR MORE AND COUNTY-SEAT TOWNS OF LESS THAN 2,400

SECTION.

16-17-206. Jurisdiction of municipal courts.

16-17-211. Court clerks generally.

16-17-206. Jurisdiction of municipal courts.

(a) Municipal courts and justices of the peace shall not have jurisdiction in civil cases where a lien on land or title or possession thereto is involved.

(b) The jurisdiction of a municipal court shall be coextensive with the county in which it is situated, except in counties having two (2) judicial

123

districts, the jurisdiction court is situated.

History. Acts 1927, No. 60, 1929, No. 224, § 2; Pope's Dig., 9907; Acts 1935, No. 160, § 1; A.S.A. 1947, §§ 22-709, 22-710, 22-712; Acts 1931, § 8; 1939, No. 142, § 1; 1296, § 60.

ANALYSIS

Felonies.

Judicial immunity upheld.
Personal property.

Felonies.

Municipal courts are without jurisdiction to try felony cases. *State v. County Circuit-Chancery Court*, 473, 872 S.W.2d 854 (1994).

Judicial Immunity Upheld.

Because Arkansas law authorizes municipal judges to issue arrest warrants where municipal judge issued warrants to enforce a circuit court judgment.

16-17-211. Court clerks generally.

(a) The judge of any municipal court, who shall be designated

(b) The city council of the county shall determine the salary of the municipal court clerk to be computed on an annual basis in installments. However, the salary is to pay any portion of the salary approved by the quorum court and salaries of any municipal court clerk in which the court is located, the quorum court of the county.

(c) The municipal court clerk shall do and proceedings had in the court, under the direction of the court.

(d) The municipal court clerk shall

(1) Administer oaths;

(2) Take affidavits requiring action;

(3) Approve bond in criminal cases;

(4) Keep a complete docket of the court in the manner directed by the court.

STAFF REVIEW FORM

Credit Cards
C. 11. Page 1

XX AGENDA REQUEST
 _____ CONTRACT REVIEW
 _____ GRANT REVIEW

For the Fayetteville City Council meeting of August 15, 2000

FROM:

<u>Stephen Davis</u>	<u>Budget & Research</u>	<u>Admin Services</u>
Name	Division	Department

ACTION REQUIRED: Approval of a resolution accepting a proposal from Bank of Fayetteville for credit/debit card processing services, approval of and authorizing the Mayor and City Clerk to sign a VISA/MASTERCARD MERCHANT AGREEMENT and setting convenience fees associated with credit/debit card acceptance.

COST TO CITY:

\$-0-

<u>Cost of this Request</u>	<u>Category/Project Budget</u>	<u>Category/Project Name</u>
<u>Account Number</u>	<u>Funds Used To Date</u>	<u>Program Name</u>
<u>Project Number</u>	<u>Remaining Balance</u>	<u>Fund</u>

BUDGET REVIEW: _____ Budgeted Item _____ Budget Adjustment Attached _____

<u>Steph Davis</u>	<u>John Maguire</u>
Budget Manager	Administrative Services Director

CONTRACT/GRANT/LEASE REVIEW:

GRANTING AGENCY:

<u>Marilyn G. Chance</u>	<u>8-10-00</u>	<u>Danny Smith</u>	<u>8/10/00</u>
Accounting Manager	Date	Internal Auditor	Date
<u>[Signature]</u>	<u>8-10-00</u>		
City Attorney	Date	ADA Coordinator	Date
<u>Phyllis</u>	<u>8-10-00</u>		
Purchasing Officer	Date	Grant Coordinator	Date

STAFF RECOMMENDATION: Staff recommends acceptance of the Bank of Fayetteville proposal, approval of and authorizing the Mayor and City Clerk to sign the merchant agreement and setting credit/debit card acceptance convenience fees.

<u>Steph Davis</u>	<u>8-10-00</u>
Division Head	Date

Cross Reference

New Item: **Yes No**

Prev Ord/Res #: _____

Orig Contract Date: _____

Orig Contract Number: _____

<u>John Maguire</u>	
Administrative Services Director	Date
<u>Fred Penn</u>	<u>8/11/00</u>
Mayor	Date

DEPARTMENTAL CORRESPONDENCE

TO: Mayor Fred Hanna and City Council

THRU: John Maguire, Administrative Services Director

FROM: Budget & Research 

DATE: August 9, 2000

SUBJECT: Credit/Debit Card Acceptance

The City has solicited proposals for credit/debit card processing services to enable the City to accept credit/debit cards as an additional payment method of utility deposits, monthly utility bills, municipal court fines and fees, park fees, and other City fees. The City is prohibited by state statute from absorbing the discount fees assessed by credit card companies for transactions paid with credit cards.

City Council is requested to accept a proposal from the Bank of Fayetteville for credit/debit card processing services, approval of and authorizing the Mayor and City Clerk to sign a VISA/MASTERCARD MERCHANT AGREEMENT and approve a resolution setting convenience fees associated with credit/debit card acceptance.

If you should have any questions concerning this item please contact Stephen Davis at 575-8296.



THE BANK OF FAYETTEVILLE, N.A.

Credit Cards
C. 11. Page 3

August 3, 2000

City of Fayetteville
Peggy Vice
Purchasing Manager
113 West Mountain
Fayetteville, AR 72701

Dear Peggy,

I appreciate you giving the Bank of Fayetteville the chance to submit a proposal for the service of processing credit cards. I think it is a good program for the City as well as the community. We hope you will give us the chance to show you the kind of professional service we have provided in the past. Good luck in your decision. We look forward to continuing our relationship for many years to come.

Sincerely,

John M. Lewis
Chairman of the Board of Directors
President & CEO

City of Fayetteville
Proposal for Credit/Debit Card Processing Services
(RFP 00-14)

Submitted August 3, 2000
by
Bank of Fayetteville
1 S. Block Street
Fayetteville, AR 72701
(501) 444-4444

The Bank of Fayetteville appreciates the opportunity to provide a proposal for credit/debit card accepting services to the City of Fayetteville. We believe this service will be of great value and much appreciated by our City's residents. The Bank of Fayetteville looks forward to participating in this program, as we feel our capabilities, interest and unique understanding of the needs of the City and its residents make us an ideal choice.

Also, we understand your concerns regarding compliance with all applicable laws and regulations, quality of service, ease of administration and the cost of such a program. With our experience, respect in the community and relationship with Security BankCard Center, Inc., we are confident that we can meet or exceed your expectations regarding each of these issues. Our bank has had a strong and satisfying relationship with the City over the past six years. Our history of taking City water payments over the last six years shows our commitment to serving the City and the community to the best of our capabilities.

On the issue of cost, we believe we are very competitive on both equipment and ongoing processing. We also have confirmation from our processor, Security BankCard Center that allows the City to pass the costs of using a credit card/debit card on to the customer as a convenience fee or surcharge. The state law does neither allow nor prohibit the city from charging a surcharge. As a result it appears the City may pass on the fees in the form of a surcharge.

The Bank of Fayetteville knows that we can service all needs professionally and efficiently. In case of potential difficulties, we can resolve these problems quickly and effectively. With three professional contacts at our Main branch location and three at Security BankCard Center, we feel that any requests can be addressed promptly. Our past record of processing the City's water payments should be an indication of our sincere interest in providing outstanding service. Our close proximity to the City Administration building has proven beneficial the few times questions have arisen.

We feel that the relationship we have shared has been an advantage to the City, our bank and our customers. We would like to carry this success into the credit/debit card processing program. One of the highest priorities at the Bank of Fayetteville will be to make sure that the City and its residents are excited and aware of our involvement in the community.

The following are in response to the 14 specific points covered in the RFP.

1. The Bank of Fayetteville will provide the first two electronic machines (printer included) at no charge; the City will be responsible for any additional machines at our cost of \$425.00 per machine. However, equipment can be leased-to-own over a 1 to 3 year period. (See attached schedule)
2. Each machine will require a dedicated standard telephone line for operation. There will be no need for specialized lines or modems.
3. Your machine will settle and deposit automatically at 2:00 a.m. The total dollar amount from the previous day's collections will normally be deposited within 24 hours but no later than 48 hours.
4. Deposits do not have to be segregated by issuing bank.
5. Because this process is completely electronic, we do not believe that a courier service will be necessary.
6. If courier service is needed for special situations within the program, it will be provided at no additional cost.
7. Other than an account to deposit the credit/debit card sales into, no other financial affiliation will be necessary with the Bank of Fayetteville. Each machine will have its own identifying number to distinguish the different departments.
8. The agreement may be terminated by any party at any time upon written notice to the other party. Notice is deemed to have been given when such notice is deposited in the United States mail. Upon termination, the City will return all supplies, materials and equipment provided by the Bank of Fayetteville. Termination of this agreement for whatever reason does not terminate the right of the Bank of Fayetteville to charge backs pursuant to the Agreement.
9. A copy of the proposed contract is attached.

10. The Bank of Fayetteville will accept all Visa, MasterCard and Debit Cards at no additional charge. However, we can accept additional cards if you wish. There will be a 12 cents per item fee for American Express, Discover and any other credit cards. We at the Bank of Fayetteville want you to be aware that each additional credit card sets its own cost and additional fees will result from accepting them.
11. The machines you will be receiving are very user friendly and will not require a great deal of training to use. All employees involved will receive training free of charge. An employee of the Bank of Fayetteville will be on hand during business hours to address specific problems that arise. For problems that might arise after hours, there is an 800 number you can call 24 hours a day.
12. Debit card will be handled the same as a MasterCard or Visa. There will be no additional charges.
13. There are no statement fees or per item fees. The only extra charges included are for cards other than MasterCard, Visa or Debit cards.
14. A schedule of fees is attached.

In response to the five evaluation criteria list in the RFP, the following additional information is offered.

- 1) The Bank of Fayetteville has been servicing this community for 13 years and has become a well-respected locally owned bank. Security BankCard Center, Inc. has been doing business for 18 years throughout the Southwest. They presently service over 200 Banks and have experience setting up other municipalities.
- 2) Bruce Johanson – Bank of Fayetteville – Executive Vice President of Retail Banking – 13 years in banking.
Patricia Hight – Security BankCard Center – Vice President – 20 years in credit card business.
Bob King – Bank of Fayetteville – Senior Vice President – 26 years in Banking
Andrew Johnson – Bank of Fayetteville – Credit Card Manager - 5 years in banking
Cheryl Stoeper - Security BankCard Center – Merchant Business Development Representative – 9 years in banking and 7 years servicing credit card merchants.
Lisa Merrill – Security BankCard Center - Credit Card Specialist – 5 years servicing credit card merchants
- 3) The first phase of the project would be the implementation of the equipment. We will need a standard dedicated telephone line for each machine. Any employee using the machine will be trained on its uses and functions. The machine will settle and deposit automatically at around 2:00 a.m. Employees will never have to do anything but swipe the cards and replace the paper in the machine. No additional employees will be needed to implement this project. Both the training and the supplies are free of charge. Each night your totals will be received from your machine and deposited normally within 24 hours but no more than 48.
- 4) For the past six years we have helped the City of Fayetteville by accepting water payments at all of the Bank of Fayetteville branches. We presently have six City of Fayetteville accounts and count all of the change for the City parking meters. Any questions that arise with the City have been straightened out promptly and completely. Our processor, Security BankCard Center has had experience setting up and servicing municipalities.
- 5) The discount for this service will be 1.97% of your average ticket sale. There are no per transaction fees and all of your supplies are free of charge. The cost per terminal is \$425.00. The bank will provide the first two machines. Any additional machines will be the responsibility of the City.

**The Bank of Fayetteville and
Security BankCard Centers, Inc.
Schedule of Fees**

**Credit Cards
C. 11. Page 7**

<u>Equipment</u>	<u>Price</u>	<u>Lease-to-own 1 year</u>	<u>Lease-to-own 2 year</u>	<u>Lease-to-own 3 year</u>
Tranz 460	\$425.00	\$39.00 mo.	\$24.00 mo.	\$20.00 mo.
Printer Included				
If your machine malfunctions during the lease period it will be replaced free of charge.				
Annual Membership Fee	WAIVED			
Initial set-up fee	WAIVED			
Other card type auth. fee	\$.12 (12 cents)	<i>This is in addition to the discount fee charged by Discover, Amex, etc</i>		
Statement fee	FREE			
Transaction fee	FREE			
Processing fee	FREE			
Chargeback & Adjustment fee	FREE			
Maintenance fee	FREE			
Help Desk Fee	FREE			

	Fee
\$0.00 to \$24.99	\$ 0.50
\$25.00 to \$49.99	1.00
\$50.00 to \$74.99	1.50
\$75.00 to \$99.99	2.00
\$100.00 to \$149.99	3.00
\$150.00 to \$199.99	4.00
\$200.00 to \$249.99	5.00
\$250.00 to \$349.99	7.00
\$350.00 to \$499.99	10.00
\$500.00 to \$749.99	15.00
\$750.00 to \$999.99	20.00
\$1,000.00 to \$1,499.99	30.00
\$1,500.00 to \$1,999.99	40.00
\$2,000.00 to \$2,999.99	60.00
\$3,000.00 to \$3,999.99	72.00
\$4,000.00+	80.00

RFP 00-14
Credit/Debit Card Services
July 21, 2000

Proposers:

There is a mandatory pre proposal meeting on July 26th, 2000 at 10:30 a.m. in Room 326 of the City Administration Building. Please send a staff person to this meeting that is knowledgeable in this area and who has the authority to structure this proposal to meet the City's needs.

Proposals are due on or before August 3rd, 2000, by 5:00 p.m.

CITY OF FAYETTEVILLE
RFP 00-14
CREDIT/DEBIT CARD SERVICE

The City of Fayetteville wishes to accept credit/debit cards for certain transactions. The City requests proposals from qualified credit card processing firms to provide credit card accepting services to the City that will comply with state law and any rules and/or regulations of the credit card issuing companies. The City will begin this credit/debit card service for monthly utility bills, deposits, and other fees as listed on "Schedule of Typical Fees" as soon as practical. Respondents must be on list of banks eligible to accept public deposits as published by the Arkansas State Bank Department.

1. List and cost of equipment and supplies required to implement program. Only electronic systems will be considered.
2. Number of phone lines, special line or modem requirements.
3. Describe what procedures are used for deposits.
4. Do deposits have to be segregated by issuing bank?
5. Does your bank have a courier service?
6. Is there a charge for courier service, if available?
7. Is any financial affiliation or banking relationship required other than for this service?
8. Cancellation requirements.
9. Please provide a copy of your proposed contract with proposal.
10. List of credit/debit cards your bank will accept.
11. What type of training will your bank provide to get the program up and running and are there any cost associated with training?
12. Are debit cards handled any different from credit cards? Are the transaction fees the same for debit cards as they are for credit cards?
13. List of any other fees that may not be listed above.
14. Please attach a schedule of your fees as they would apply to this request for proposal.

Any conditions or expectations on the part of the proposer for performance by the City must be set forth in the proposal. The City is not obligated to consider the proposer's past submittal terms and conditions. The City does not guarantee specific amounts of purchases as a result of this request for proposal.

The evaluation criteria used in selection of the firm is as follows:

- 1) 20 **Qualifications in Relation to Specific Project to be Performed:** Information reflecting qualifications of the firm. Indicate specialized experience and technical competence of the firm in connection with the type and complexity of the service required.
- 2) 20 **Experience, Competence, and Capacity for Performance:** Information reflecting the names, titles, and qualifications (including experience and technical competence) of the major personnel assigned to this specific project.
- 3) 20 **Proposed Method of Doing Work:** A proposed work plan (description of how the project would be conducted as well as other facts concerning approach to scope you wish to present) indicating methods and schedules for accomplishing each phase of work.
- 4) 20 **Past Performance:** Previous evaluations. If previous evaluations with the City are not available, the professional firm's past performance records with City and others will be used, including quality of work, timely performance, diligence, ability to meet past budgets, and any other pertinent information. Firm will provide a list of similar jobs performed and person whom we can contact for information.
- 5) 20 **Price**

At the discretion of the City, one or more firms may be asked for more detailed information before final ranking of the firms, which may also include oral interviews.

Six copies of the proposal shall be mailed or hand delivered to the following address:

City of Fayetteville
Peggy Vice
Purchasing Manager
113 West Mountain
Fayetteville, AR 72701

Telephone: 501/575-8289
Fax: 501/575-8241

The envelope must be clearly marked "RFP 00-14, Request for Credit/Debit Card Service".

A mandatory pre proposal meeting to discuss the request for proposal will be July 26, at 10:30 a.m. Proposals will be due August 3, 2000 by 5:00 p.m.

Schedule of Typical Fees

Type of Fee	Range of Fees as of 6/5/00
Building Permits	\$20 - \$1000
Planning Fees	\$200 - \$300
Drainage/Grading	\$75 - \$200
Animal Licenses	\$5 - \$15
Athletic Field Rentals	\$25/ ½ hr.
Parks Tournament Fees	\$115 - \$135/team
Parks Soccer Participant	\$25 - 55/participant
Parks Team Fees-Softball/Soccer	\$350 - \$450/team
Boarding-Shelter	\$5/day
Impound-Shelter	\$15-\$100
Adoption-Shelter	\$50
Water Tap Fees	\$425 - \$1,200/tap
Sewer Tap Fees	\$425 - \$625/tap
Rural Water Tap	\$475 - \$1,250/tap
Residential W/Sewer Utility Bill	\$55/average
Residential W/Sewer Deposits	\$50/average
Swimming Lessons	\$25/session
Tree & Landscape	\$120/development
Court Fines & Fees	\$25- \$1300
Health Insurance-Cobra Payments	\$115- \$500/month
Planning- Lot Splits	\$200/application
Planning-Conditional Use Permit	\$100/application
Planning-Rezoning Fee	\$325/application
Planning-Annexation Fee	\$325/application
Hot Checks & Fees	\$20- \$50 plus hot check amount



VISA/MASTERCARD—MERCHANT AGREEMENT



This Agreement is made between SECURITY BANKCARD CENTER, INC., a national banking association, having a notice address at 225 E. Eufaula, Norman, Oklahoma 73069 (hereinafter referred to as "Bank"), the Financial Institution executing this Agreement (hereinafter referred to as "Financial Institution"), having a notice address as shown in paragraph 30, and the Merchant executing this Agreement (hereinafter referred to as "Merchant"), having a notice address as shown in paragraph 30, in consideration of and for the purposes set forth herein and for the respective benefits which each anticipates will inure to its own business operations.

1. Definitions. As used herein, the following terms will have the meanings indicated:

- 1.1 **Annual Membership and Set-up Fees.** The fees charged by Bank pursuant to paragraph 17 to Merchant for Merchant's membership in the System and for services to be performed by Bank hereunder.
- 1.2 **Address Verification Service (AVS).** A service through which a Merchant may verify a Cardholder's billing address prior to completing a mail/telephone order Transaction wherein the merchandise will be shipped or delivered.
- 1.3 **Card.** This Agreement covers both **MasterCard** and **Visa Card** and the term "Card" shall mean the credit or debit cards validly issued by a member bank of MasterCard International, Inc., in the case of MasterCards ("MasterCard") or VISA, U.S.A. and VISA International in the case of Visa Credit Cards ("VISA") and which has not expired as shown on the face of the Card or been revoked and written notification of such revocation given to the Merchant.
- 1.4 **Cardholder.** Any person possessing a valid Card having his or her name embossed thereon, or a person who is authorized by the person named on the Card to use the Card.
- 1.5 **Credit Slip.** The form provided by Bank for use by the Merchant in effecting a credit, refund or downward price adjustment on a prior Credit Sale.
- 1.6 **Credit Sale.** The sale by a Merchant of goods and/or services to a Cardholder through the use of the Cardholder's Card and a Sales Slip.
- 1.7 **Discount Fee.** The fee charged by Bank pursuant to paragraph 16 to Merchant for purchasing Sales Slips from Merchant.
- 1.8 **Merchant Account.** The account maintained by Merchant with Bank or with Financial Institution as required by paragraph 13.
- 1.9 **Sales Slip.** The form provided by Bank for use by the Merchant in effecting a Credit Sale with a Cardholder.
- 1.10 **System.** A credit card program pursuant to which Cards are issued to Cardholders to enable them to purchase goods and/or services from Merchants upon credit and whereby such Merchants upon payment of a fee, are paid for such credit sales by certain financial institutions which undertake collection of such credit purchases, all subject to the rules, regulations and guidelines of the System, applicable law, and this and other similar agreements, as any may be amended from time-to-time.
- 1.11 **Transaction Date.** The date stated on a Sales Slip or Credit Slip in compliance with the provisions of paragraph 12.
- 1.12 **Transaction Authorization Center.** The entity which is responsible for providing credit card transaction authorization services on behalf of the Bank. Bank may change the Transaction Authorization Center by giving notice to Merchant with such change becoming effective as stated in each such notice.
- 1.13 **Exception File.** A magnetic tape listing of Cardholder account numbers on an electronic listing with a "decline/pickup" response code.

2. Compliance. This Agreement is subject to all federal and state laws and regulations and the operating regulations, bylaws, and rules of VISA and of MasterCard which may affect this Agreement. This Agreement may be amended from time-to-time in order to comply with such laws, regulations, rules and bylaws as well as any changes required by modifications which may be made from time-to-time in the System. The Merchant agrees to comply with and follow all rules, regulations and guidelines concerning the System which may be established or amended from time-to-time by Bank, VISA and MasterCard.

3. Credit Sales. Except as otherwise provided herein, and subject to such other instructions as Bank may from time-to-time provide to Merchant, the Merchant agrees to accept all validly issued, unexpired and properly tendered Cards presented by Cardholders to effect a Credit Sale in payment for purchases of merchandise or services and to notify Bank in writing if they offer or intend to offer a discount to customers who pay by cash, check or similar means. Such notice shall include the amount and terms of the discount and a representation that the Merchant is complying with the applicable provisions of Regulations of the Board of Governors of the Federal Reserve System. In no event will the Merchant add a surcharge to the cost of any goods or services because such purchase involves the use of a Card. Merchant will not establish minimum or maximum transaction amounts as a condition for honoring a Card. Each Credit Sale must generate a fully completed Sales Slip or printed transaction record. Bank will provide Merchant with standard Sales Slips, Credit Slips, VISA and MasterCard decals and point of sale material at no charge. Merchant must use such Sales Slips and Credit Slips in all transactions and must display the VISA and MasterCard decals in their places of business. Merchant shall imprint on Sales Slips and Credit Slips the necessary VISA or MasterCard information embossed on the Cards. **Merchant must retain its copy of the Sales Slip or a printed transaction record for a period of three (3) years after the Transaction Date.**

4. Sales and Credit Slips. Merchant agrees to observe and comply with each of the following requirements:

- 4.1 **Required Information.** One copy of each completed Sales Slip and Credit Slip will be given to the Cardholder at the time of the delivery of the goods or performance of the services covered thereby. Merchant will complete all Sales Slips and Credit Slips to show:
 - 4.1.1 The imprinted identification of Merchant (Merchant will notify Bank in the event that the information on the Merchant plate has changed);
 - 4.1.2 The name and account number of the Cardholder;
 - 4.1.3 The date of the Credit Sale or credit transaction;
 - 4.1.4 A description of the merchandise sold or the services rendered with respect to which a Credit Sale or credit transaction relates, by type or category of such merchandise or services (including the motor vehicle license number if the products purchased or services rendered are in connection with a motor vehicle);
 - 4.1.5 The cash price of the sale or the total amount of the credit (any tax required to be collected by the Merchant must be included in the total transaction amount and not collected separately in cash);
 - 4.1.6 The authorization information provided by the Transaction Authorization Center (where applicable);
 - 4.1.7 In the case of a Sales Slip, the signature of the Cardholder (except in the case of mail and telephone sales); and
 - 4.1.8 Such other information as Bank may from time-to-time request to enable Bank or the Transaction Authorization Center to identify the transaction and to comply with all applicable laws and regulations concerning disclosure, as such laws and regulations are from time-to-time in effect.
- 4.2 **Acceptance to be Refused.** Merchant shall refuse to make any Credit Sale (i) if the Card appears to be counterfeit or altered, cut into two or more pieces or otherwise disfigured, not yet effective, or expired; or (ii) if the Account Number appears on current Exception File or a special communication requesting that it not be honored.

5. Transaction Authorization. Merchant will check each Card for validity and currency, and as hereafter required, transaction validity is to be determined by the Card's format, and Exception File in effect. In every case where a transaction requires a transaction authorization, that transaction authorization will be obtained by contacting the Transaction Authorization Center by telephone or other methods approved by Bank and recording the positive account number verification response code on the sales slip. Transaction authorization will be required in the following circumstances:

- 5.1 **Voice Authorization.** If the total amount of any Credit Sale transaction is in excess of \$50.00, Merchant will contact the Transaction Authorization Center, by methods approved by the Bank, and obtain Bank's specific authorization to draw a Sales Slip relating thereto, and the code number for such authorization will be noted by Merchant in the appropriate place on the Sales Slip. Any voice authorization obtained on a standard transaction under \$50.00, will be charged fifty-one cents (\$0.51) per authorization.
- 5.2 **Nonstandard Transactions.** If the Credit Sales transaction, other than a mail or phone order, involves any of the following circumstances which shall hereafter be referred to as "nonstandard" transactions, or in such other circumstances as specified in writing by Bank from time-to-time:
- 5.2.1 A handwritten Sales Slip which does not contain the imprinted identification of Merchant or the Card;
 - 5.2.2 A Cardholder who is present and does not have his Card (VISA and MasterCard regulations prohibit the completion of any transaction if the customer fails to present his Card to the Merchant, except in mail, phone, or preauthorized transactions);
 - 5.2.3 A Sales Slip which is not signed by the Cardholder;
 - 5.2.4 An unsigned Card; in addition the Merchant must do the following:
 - * Review positive identification that bears Cardholder's signature to determine that the user is the Cardholder.
 - * Include such positive identification on the Sales Draft.
 - * Require the Cardholder to sign the signature panel of the Card prior to completing the transaction;
 - 5.2.5 An invalid "from/to" date on the card (VISA and MasterCard regulations prohibit the completion of any transaction where an expired VISA and MasterCard is presented);
 - 5.2.6 The Merchant desires to make a delayed presentment of Sales Slip(s);
 - 5.2.7 The Merchant believes the Card may be counterfeit or stolen or that the transaction is in some manner suspicious; the Merchant shall request a "Code 10" authorization;
 - 5.2.8 The printed four digits above the embossed account number do not match the first four digits of the embossed account number.
- 5.3 **Retention of Cards.** Merchant shall use its best efforts, by peaceful means, to retain a Card while making an authorization request. If Merchant receives a negative account number verification response and is instructed to pick up the card, Merchant shall use its best efforts, by reasonable and peaceful means, to do so, and shall notify Bank or Financial Institution when the card has been recovered.
- 5.4 **Reason for Inquiry.** In any case except where the amount of the transaction exceeds the applicable Floor Limit, the Merchant shall state, to the Transaction Authorization Center, the reason for the authorization inquiry.
- 5.5 **Electronic Transactions.** Merchant may use an electronic credit transaction terminal ("Terminal") to obtain authorization and to capture sales data for interchange by reading data encoded on the magnetic strip on the cards, so long as the Terminal is compatible with Bank's processing system. Merchant shall verify through the Terminal each transaction, regardless of the dollar amount, and shall abide by rules and regulations for electronic processing promulgated by Bank from time to time. In the event that the Terminal is unable to read a card number or expiration date, Merchant shall manually enter such information into the Terminal. In the event of a Terminal failure, Merchant shall obtain voice authorization for all transactions. In the event of a Printer failure, Merchant shall imprint the card on a Sales Slip to prove presence of card and complete the transaction.
- 5.5.1 Submitted retail transactions which do not meet the qualifications set forth by VISA and MasterCard as listed below may be subject to a surcharge.
 - a. Zero floor limit authorization
 - b. 2-day clearing for authorization and settlement
 - c. Entire contents of magnetic stripe must be read and transmitted
 - d. Cardholder signature required
 - e. Original authorization number in settlement record
6. **Identification.** The following identification information and procedures shall be required for each Credit Sale:
- 6.1 **Signature, Photo I.D.** In every Credit Sale (except in the case of mail and telephone sales), Merchant will compare the signature on the Sales Slip with the signature on the Card. If the two signatures are dissimilar, the transaction must not be completed. If the Card has a photograph of the Cardholder, that Cardholder and the person presenting the Card must appear to be the same person. In the event the Merchant believes there is a discrepancy in the signature or if the photographic identification is uncertain, the Merchant shall contact the Transaction Authorization Center for instructions.
 - 6.2 **Card Imprint Not Present.** In each Credit Sale case in which a transaction is completed without the imprinting of such Card on a Sales Slip (including, without limitation, when an expired Card is presented whether or not it is imprinted), the Merchant must note legibly on the Sales Slip sufficient detail to identify the Cardholder, the Merchant, and the Card issuer. This detail shall include at least the name and address of the Merchant, the name or trade style of the Card issuer as it appears on the face or reverse side of the Card, the Card account number, the expiration date (or, in the case of a Card bearing a dual date, both the effective date and the expiration date), the Cardholder name and any company name. The Merchant shall also use its best efforts to record on the Sales Slip any other embossed data such as security symbols.
 - 6.3 **Warranty of Identity.** In each Credit Sales transaction completed without a Card imprint, Merchant shall be deemed to warrant the true identity of the Cardholder as the authorized holder of such Card. The fact that Merchant has obtained authorization for the transaction does not alter such warranty of identity.
7. **Telephone Orders, Mail Orders and Pre-Authorized Orders.** Merchant shall not participate in direct mail or telephone Cardholder solicitations, without the prior written approval of the solicitation material by Bank and Financial Institution. When a transaction is based on a telephone order ("TO"), mail order ("MO") or preauthorized order ("PO"), Merchant shall type or print legibly on the resulting Sales Slips the letters TO, MO or PO, as appropriate. If Merchant agrees to accept a pre-authorized order, Cardholder shall execute and deliver to Merchant a written request for such preauthorized order, which request will be retained by Merchant and made available upon request to Bank. The Merchant shall not deliver goods or perform services covered by a pre-authorized order after receiving specific notification that the pre-authorized order is canceled or that the Card covering the pre-authorized order is not to be honored. The Merchant may choose to use Address Verification Service (AVS) in order to verify shipping address with cardholder address.
8. **Disclosure of Cardholder Information.** The Merchant shall not, without the Bank's and Cardholder's written consent, sell, purchase, provide, or exchange account number information in the form of imprinted Sales Slips, carbon copies of imprinted Sales Slips, mailing lists, tapes, or other media obtained by reason of a Card transaction to any third party other than the Merchant's agents or Bank. The Merchant or any agent of the Merchant shall store in an area limited to selected personnel and prior to discarding, shall destroy in a manner rendering data unreadable all material containing cardholder account numbers, or card imprints.
9. **Adjustments with Customers.** The Merchant agrees to establish and maintain a fair policy for the exchange and return of merchandise sold or adjustment for services rendered in Credit Sales and will give proper credit or refund therefore. Merchant will properly disclose or make available for inspection its returned merchandise and adjustment policy so that a customer may be aware of such policy before consummating a transaction with the Merchant. *If Merchant has a policy of not refunding the purchase price of items returned, such fact will be clearly and conspicuously disclosed by a sign or display posted at or near each public entrance to the Merchant's place of business and at all locations within the place of business where a purchase may be made. In addition, at the time of the transaction the following words or similar wording shall be legibly printed on all copies of the Sales Slips: "No Refund",*

give credit refunds, by way of credit slips, to cardholders. The refund or adjustment indicated on a Credit Slip may not exceed the original transaction amount. In the event goods are returned or the Merchant effects a credit, refund, downward price adjustment or any other price adjustment on any Credit Sale, the Merchant will prepare and execute a Credit Slip, including all information required thereon. Merchant must retain a copy of the Merchant Credit Slip for a period of three (3) years after the Transaction Date. A copy of such Credit Slip will be provided to the Cardholder by the Merchant. In no event will the Merchant effect a refund or adjustment on a Credit Sale by means of cash or check.

10. **Cash Discounts.** Merchant will not discriminate against any Credit Sale or against any Cardholder by imposing surcharges on any Credit Sale or by extracting any special agreements, conditions or security in connection with any Credit Sales. Merchant shall not make any oral, written or implied statement or give any other notice to any Cardholder respecting the Bank's charges and fees due from the Merchant pursuant to this Agreement. If Merchant offers to discount from the regular price for the purpose of inducing payment by cash, check or similar means, such discount shall be available to all customers, whether or not Cardholders, and the fact that such discount is available shall be clearly conspicuously disclosed. Any discount failing to meet these requirements shall constitute a FINANCE CHARGE imposed by the Merchant. Merchant shall be required to make all disclosures required by federal and state law with respect to FINANCE CHARGES and shall be required to comply with any law relating to maximum FINANCE or SERVICE CHARGE or rates of interest.
11. **Cash Advances.** All Credit Sales hereunder will be evidenced by Sales Slips which represent direct obligations of Cardholder to the Card issuer in the amount set forth therein for merchandise sold or services rendered. In no event will Merchant honor a Card involving any element of credit for any other purpose including, without limitation, the obtaining of cash by the use of the Card.
12. **Date of Sales Slip.** Except as provided in this paragraph, each Sales Slip will be dated the date when the Merchant has performed substantially all of its obligations in consummating the Credit Sale which involved the use of the Card. In the event a Credit Sale transaction involves an extended term in obtaining or delivery of the goods or services by the Merchant to the Cardholder, the Merchant may prepare and obtain completion of two (2) Sales Slips for the total dollar amount of the Credit Sale. One Sales Slip shall have the statement initial Deposits printed thereon and shall bear the date of execution of Sales Slip by the Cardholder. The second such Sales Slip shall have the statement Balance on Delivery printed thereon and shall not be dated until the date when the Merchant has performed substantially all of its principle obligations in consummating the transaction for which such Sales Slip was prepared and executed. Each Credit Slip will be dated the date the Merchant effects a credit, refund or price adjustment on a Credit Sale.
13. **Delivery and Payment.** Each Sales Slip and Credit Slip will be deposited by the Merchant in the Merchant Account (which must be maintained at the Bank or Financial Institution) within three (3) business days after the Transaction Date of such Sales Slip or Credit Slip; provided however, daily deposits shall be required for those merchants utilizing Terminals. Each deposit will include a batch header showing an amount deposited equal to the total of the Sales Slips less the total of the Credit Slips. The Merchant Account shall be credited the amount, if any, by which the total dollar amount of Credit Sales stated in such delivered Sales Slips (excluding any rejected Sales Slips) exceeds the total dollar amount of refunds stated in the delivered Credit Slips. The Merchant Account shall be debited by the amount, if any, which the total dollar amount of refunds stated in the delivered Credit Slips exceeds the total dollar amount of Credit Sales stated in the delivered Sales Slips (excluding rejected Sales Slips). The Merchant hereby authorizes the Bank or the Financial Institution to debit the Merchant Account from time-to-time, for payment of any such amounts. Such credits or debits to the Merchant Account shall be made to the Merchant Account immediately upon deposit by Merchant of Sales Slips and/or Credit Slips in the Merchant Account; provided that Bank or Financial Institution reserves the right to withhold for collection purposes, the availability to Merchant of amounts credited to the Merchant Account. Each Financial Institution may use its own availability schedule consistent with any pertinent regulations. Merchant shall not present Sales Slips, Credit Slips or other records of transactions using any Card which Merchant knows or should have known to be fraudulent or not authorized by the Cardholder. Merchant shall not present a Sales Slip or Credit Slip which was not originated as a result of a transaction between the Cardholder and the Merchant.

The deposit of a Sales Slip in the Merchant Account shall constitute an assignment and endorsement to Bank or Financial Institution of any and all rights Merchant may have against the Cardholder with respect to or arising from the Credit Sale evidenced thereby. Merchant, if requested by Bank, will execute a separate assignment of any Sales Slips deposited in the Merchant Account. Bank or Financial Institution is authorized to place Merchant's endorsement on any Sales Slip at anytime.

Merchant hereby waives notice of default or nonpayment, protest or notice of protest, demand for payment and any other demands or notices in connection with this Agreement or any Sales Slips. Merchant hereby consents to extensions of time granted, compromises made, or other indulgences granted to any Cardholder liable on any Sales Slip without affecting Merchant's liability thereon or hereunder.

14. **Charge Backs.** Under the circumstances described below, Bank or Financial Institution shall not be obligated to accept a Sales Slip for deposit:
 - 14.1 The Sales Slip is in excess of the applicable Floor Limit, (the amount of the Floor Limit is set for each merchant and Bank may from time to-time raise or lower such Floor Limit). It is understood and agreed that no Sales Slip for a total amount in excess of the Floor Limit in effect from time-to-time must be accepted by Bank or Financial Institution unless Merchant has previously contacted the Transaction Authorization Center, obtained approval for such transaction and the code number given Merchant to indicate said approval appears on the Sales Slip. In the event of a charge back of a Sales Slip which exceeds the Merchant's Floor Limit, the entire Sales Slip is charged back not just the amount in excess of the Floor Limit; or
 - 14.2 The Sales Slip is an attempt to circumvent the Floor Limit by ticket splitting or otherwise; or
 - 14.3 The Sales Slip is based on a pre-authorized form and the Card on which the pre-authorization was based has been revoked and the Merchant was so notified in writing; or
 - 14.4 The Card giving rise to the transaction had been revoked by the issuer prior to the transaction and Merchant had received notice of such revocation; or
 - 14.5 The Card by its terms had expired prior to the date of the transaction (the expiration date is the last day of the month appearing on the face of the Card); or
 - 14.6 The Sales Slip was not generated through the use of a validly issued Card whether or not the transaction was authorized; or
 - 14.7 The Sales Slip does not contain the signature of the person whose name is embossed on the face of the Card or an authorized user; or
 - 14.8 The Sales Slip is unsigned by the purchaser; or
 - 14.9 The Sales Slip does not contain all of the following required information: Merchant's identification including Merchant's name and address (city and state) imprinted from Merchant's plate, purchaser's signature, Cardholder's name and account number, Transaction Date, brief description of goods or services sold and, if the transaction is in connection with a motor vehicle or is conducted at a gasoline filling station, the number and state (or other jurisdiction) of the issue of the motor vehicle license, transaction amount, authorization information (where applicable), and such other information as the Bank or Financial Institution may from time-to-time request; or
 - 14.10 The Sales Slip is unpostable due to illegibility; Or
 - 14.11 The Sales Slip contains an over the Floor Limit authorization that expired prior to the Transaction Date; or
 - 14.12 The Sales Slip represents a sale on which the Bank or Card issuer has received a complaint from the Cardholder stating that there is a dispute between Merchant and the Cardholder as to whether or not such customer is entitled to a credit; or
 - 14.13 The Sales Slip lacks either a Card imprint or signature or Cardholder makes written complaint to the Bank, or Card issuer that Cardholder did not make or authorize the transaction; or
 - 14.14 The Bank receives a complaint from Cardholder that the amount of Sales Slip was increased after the transaction (or credit slip lowered); or
 - 14.15 The Sales Slip or Credit Slip used is not the form furnished by Bank; or
 - 14.16 The Sales Slip or Credit Slip was missorted, i.e., the wrong bank received the Sales Slip or Credit Slip; or

- 14.17 The Sales Slip or Credit Slip was not received by Bank or Financial Institution within three (3) business days of the Transaction Date (including the Transaction Date if it falls on a business day) unless it was generated by a merchant specified below; or
- 14.18 The Sales Slip was not received by Bank or Financial Institution within eighteen (18) business days of the Transaction Date (including the Transaction Date if it falls on a business day) or a Credit Slip was not received by Bank or Financial Institution within five (5) business days of the transaction Date (including the Transaction Date if it falls on a business day), and it was generated by a Merchant which operates at multiple locations but submits forms on a collective basis through a central office or facility and is a member of one of the following classes: airlines, railroads, oil companies, car leasing companies, hotel, motel, and restaurant chains, bus companies operating under Interstate Commerce Commission Authority, insurance companies licensed under law to issue insurance policies; or
- 14.19 The Sales Slip represents a sale on which the Bank or Card issuer has received a written complaint from its Cardholder stating that merchant customer transaction was in violation of law, or the goods, services or other things of value described on the Sales Slip were not received by Cardholder or by a person authorized by Cardholder; or
- 14.20 The Card giving rise to the sale is listed on a current Warning List or Exception File and authorization for the sale or cash advance was not obtained from the Transaction Authorization Center; or
- 14.21 The transaction occurred prior to the effective date appearing on the face of the Card; or
- 14.22 The Sales Slip resulted from a transaction, either above or below the Floor Limit, relative to which Merchant was notified in response to an authorization request that the card was not to be honored; or
- 14.23 The Sales Slip was received for settlement after termination of Bank's or Financial Institutions status as a Member of VISA or MasterCard; or
- 14.24 The Sales Slip shows on its face that there was an error in addition and that the amount shown as total on the Sales Slip is incorrect; or
- 14.25 The Sales Slip was drawn by, or credit given to, Merchant in circumstances constituting a breach of any term, condition, representation, warranty, or duty of Merchant under this Agreement; or
- 14.26 The extension of credit for merchandise sold or services performed, or any aspect thereof, was in violation of law or the rules or regulations of any governmental agency, federal, state, local or otherwise; with the opinion of counsel for Bank or Financial Institution as to such violation being conclusive for purposes of this provision.
- 15 **Rejection of Sales Slips.** The Bank or Financial Institution shall have the right, at any time, to reject and return to the Merchant any Sales Slip for any of the reasons set forth in paragraph 14. Acceptance of delivery of a Sales Slip by the Bank or Financial Institution or payment to the Merchant therefore will not be deemed to be a waiver of the right to later reject such Sales Slip. In the event a Sales Slip is rejected for which payment has previously been made to the Merchant, the Merchant agrees to pay Bank or Financial Institution for such Sales Slip, and the Bank or Financial Institution shall be entitled to debit the Merchant Account in the amount of the rejected Sales Slip. Failure of the Bank or Financial Institution to reject any Sales Slip for any reason shall not be deemed to be a waiver of the right to there after reject any Sales Slip for the same reason.
- 16 **Payment of Discount Fee and/or Other Fees by Merchant.** Unless provided otherwise in an Addendum hereto, the price for purchasing Sales Slips from Merchant hereunder will be the Visa Discount Fee and the MasterCard Discount Fee in the percentage shown in paragraph 30 of this Agreement multiplied by the monthly dollar amount of Sales Slips less Credit Slips deposited to the Merchant Account ("Net Sales"); provided, however, such fee shall in no event be less than Three and no/100 (\$3.00) Dollars per month. Said charge will be made monthly against the Merchant Account. Merchant agrees that the types and amounts of the Discount Fee or such other fees to be paid by Merchant may be redetermined and modified from time-to-time as Bank may require.
- 17 **Fees.** In addition to the Fee pursuant in paragraph 16, unless provided otherwise in an Addendum hereto, Merchant will pay an Initial **One-Time Set-Up Fee** in the amount set forth in paragraph 30 of this Agreement, which shall become due upon execution of this Agreement, and a recurring, non-refundable **Annual Membership Fee**, for amount also set forth in paragraph 30 of this Agreement, payable annually in advance for each ensuing year, to participate in the System. In the event the Merchant (i) uses a Terminal and processes through Bank's system, and (ii) accepts a credit card other than VISA or Mastercard, merchant shall pay Bank a transaction fee in an amount determined by Bank. The Set-Up Fee entitles Merchant to one (1) credit card Imprinter as provided in paragraph 22 hereof. Merchant may obtain additional imprinters for a fee. The Set-Up Fee also entitles Merchant to all necessary forms, supplies and promotional materials as will be supplied by Bank. Merchant authorizes Bank or Financial Institution to debit the Merchant Account for payment of the Annual Membership and Set-Up Fee, and additional fees for additional imprinters. Merchant agrees that the types and amounts of Fees to be paid by Merchant may be redetermined and modified from time-to-time as Bank may require.
- 18 **Collections.** Except in an effort to recover under any returned Sales Slips, Merchant will not directly bill, sue or otherwise attempt to collect from any Cardholder any indebtedness owing to the Card issuer arising under the System. In any collection effort with respect to a returned Sales Slip, Merchant will comply with all applicable laws and regulations concerning billing, disclosure and collection. Merchant also agrees to take such actions as requested by Bank or Financial Institution to assist in the resolution of any alleged billing errors or other disputes of Credit Sales. Should Bank determine to return to Merchant or reject any such Sales Slip rather than resolve the alleged dispute, or to return or reject a Sales Slip for any other reason as set forth herein, Merchant authorizes Bank or Financial Institution to charge the Merchant Account for such returned or rejected Sales Slip and to make appropriate adjustment to the Merchants Discount Fee. Merchant agrees that all Credit Sales will be handled in accordance with this Agreement and that Merchant will not solicit or accept payment from Cardholders on Credit Sales for which Sales Slips have been accepted by Bank or Financial Institution. Bank will have the sole right to receive payment on Sales Slips accepted by Bank or Financial Institution.
- 19 **Advertising, Promotion.** Merchant agrees to promote Card Sales by the following means:
- 19.1 **Display.** Prominent display of the appropriate Card emblem(s) or other advertising material and application forms on merchants premises as Bank may from time-to-time request;
- 19.2 **Recommendations.** Recommendation and explanation of the Card System to customers;
- 19.3 **Literature.** Making literature furnished by Bank available to customers; and
- 19.4 **Merchant's Advertising.** Incorporating Card emblems regularly in Merchant's advertisements.
- 20 **Advertising Restrictions.** Bank reserves the right to prohibit Merchant from distributing any advertisement Bank believes is in violation or questionable under the provisions of state and/or federal law relating to the advertising of credit terms and appropriate disclosure therewith. Merchant agrees that upon Bank's request, it will destroy any application forms, disclosure statements, advertising material, or other items relating to the System furnished by Bank or discontinue the use of such items as Bank requests until replacement items, if any, are delivered to Merchant.
- 21 **Inspection.** Bank, Financial Institution, and/or its agents shall have the right at any reasonable time to inspect and audit the Merchant's books, records, accounts and other instruments relative to Credit Sales, Sales Slips and Credit Slips tendered to Bank or Financial Institution to verify any transactions reflected in such Slips.
- 22 **Imprinters.** Bank agrees to make available to Merchant imprinters suitable for use with VISA Cards and MasterCards which Bank will provide for Merchant's use as a participant in the System. In the event of termination of this Agreement or in the event of any breach by Merchant of any of the covenants by Merchant herein, Merchant agrees to return any and all imprinters subject to this Agreement to Bank. Upon failure to return the imprinter, Merchant will pay Bank for said imprinter a price to be determined by Bank but not in any event to exceed the original price of the imprinter.

23. Representations, Warranties. The Merchant represents and warrants that:

- 23.1 **Cardholder Defenses.** No setoffs, counterclaims or defenses shall exist in favor of any Cardholder transacting a Credit Sale with the Merchant which may be asserted in an action against such Cardholder to enforce payment for the amount of such Credit Sale as stated on the Sales Slip.
- 23.2 **Credit Sales.** All Sales Slips tendered to Bank or Financial Institution by Merchant will represent obligations of a Cardholder in amounts set forth therein for merchandise sold or services rendered only and shall not invoke any element of cash advance, or credit for any other purpose.
- 23.3 **Fraudulent Credit Sales.** Merchant shall not present Sales Slips, Credit Slips or other records of transaction which Merchant knows or should have known to be fraudulent or not authorized by Cardholder.
- 23.4 **Merchant Knowledge.** Merchant represents that as of the date any Sales Slip is deposited with Bank or Financial Institution, Merchant has no knowledge, notice, or record that would impair the validity of the Sales Slip or its collectability.
- 23.5 **Prior Liens.** Merchant warrants that Sales Slips deposited with Bank or Financial Institution are subject to no prior liens.
- 23.6 **Cardholder Information.** Except as otherwise required under this agreement, or in the VISA or MasterCard regulations, Merchant shall not impose a requirement on cardholders to provide any personal information, such as telephone, address, or drivers license numbers, as a condition for honoring cards.

24. Merchant's Authority. Nothing in the Agreement, or any amendments, modifications or Addendums hereto, will be construed to constitute Bank or Financial Institution as a joint venturer with merchant or to constitute a partnership. Merchant has no authority to, and will not create or incur any obligation or liability of any kind on behalf of Bank or Financial Institution.

25. Indemnity. Merchant hereby agrees to indemnify and hold Bank or Financial Institution harmless against any liability, claim, damage, cost, attorney fees, or any other form of loss suffered by, or asserted against, Bank or Financial Institution due to any breach of Merchant's duties, obligations, representations or warranties made herein or due to any assertion made by any person against Bank or Financial Institution resulting from a Credit Sale or the goods or services sold in a Credit Sale, or resulting from any act or omission of the Merchant.

26. Other Agreements. Bank may provide for use of the System by other financial institutions and their merchants, regardless of whether such other financial institutions and their merchants may be considered to be in competition with Merchant.

27. Term. This Agreement may be terminated by any party at any time upon written notice to the other parties at the addresses shown above or such other addresses as such parties may give by notice. Notice is deemed to have been given when such notice is deposited in the United States mail. Upon termination, all supplies, materials and equipment provided to Merchant by Bank or Financial Institution will be returned by Merchant to Bank or other Financial Institution. Termination of this Agreement for whatever reason does not terminate the right of Bank to charge back pursuant to the Agreement.

28. Bank Merchant Membership Application. Merchant shall fully complete the Membership application at paragraph 30 as a condition of Bank's consideration of Merchant for participation in the System. Bank reserves the right to verify the information set forth in the application after it has been completed, including the Bank's right to investigate the credit references listed in such Application. The decision to accept or reject Merchant's application for membership in the System shall be in the sole discretion of the Bank notwithstanding initial acceptance by Financial Institution.

29. Miscellaneous. It is further agreed as follows:

- 29.1 **Construction.** This Agreement is intended to constitute a contract made under the laws of the State of Oklahoma and to be construed and enforced in accordance with the laws of said state. Except for the terms defined in paragraph 1, the descriptive headings of the paragraphs of this Agreement are for convenience only and are not to be used in construction of this Agreement.
- 29.2 **Invalidity.** If any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceable shall not affect the remaining provisions of this Agreement, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision or provisions had never been contained herein.
- 29.3 **Binding Effect.** The terms and provisions of this Agreement shall be binding upon, inure to the benefit of and be enforceable by the parties hereto and their respective personal representatives, successors and assigns; provided, that Merchant shall not assign this Agreement or any right or obligations hereunder without the prior written consent of Bank. Bank shall have the right to assign its rights under this Agreement or under any Sales Slip. Upon such assignment, Bank's assigns shall succeed to, and be entitled to enforce in their own names, all rights, privileges and immunities granted to Bank herein, including, without limitation, all rights of indemnity, recourse and setoff. None of the provisions of this Agreement are intended to benefit any person other than the Merchant, Bank and Financial Institution. Nothing contained in this Agreement will be deemed to constitute any person a third party beneficiary hereunder.
- 29.4 **Notice.** Any notice to be given by Bank or Financial Institution hereunder will be deemed given when in the United States Mail, postage prepaid and addressed to the Merchant at the address set forth in paragraph 30 of this Agreement.
- 29.5 **Waivers.** Any waiver of any term or condition of this Agreement by Bank or of any right of Bank under this Agreement on any occasion shall not be a waiver of any other term or condition or right, or of the same term or condition or right on any other occasion, unless such waiver is in writing signed by Bank and specifically waives any term or condition on future occasions.
- 29.6 **Amendments.** This Agreement may be amended by Bank at any time, upon written notice to Financial Institution and Merchant, without the prior written consent of Financial Institution or Merchant. Any other amendments or waivers of any provisions herein, may not be made without the prior written consent of Bank.
- 29.7 **Entire Agreement.** This Agreement and the addenda hereto, if any, constitute the entire Agreement between the parties and there are no agreements, understandings, warranties or representations between the parties except as set forth herein. All prior representations, statements, oral or written, and agreements are hereby cancelled, revoked and voided. Nothing in this Agreement shall be deemed to be for the benefit of or enforceable by any person not a party to this Agreement or a successor to the Bank under this Agreement.
- 29.8 **Time.** Time is of the essence in this Agreement.
- 29.9 **Setoff and Security Interest.** In order to secure the obligations of Merchant to Bank and Financial Institution under this Agreement, Merchant hereby acknowledges that Bank and Financial Institution have the right to setoff any of such obligations against all of Merchant's accounts at Bank or at Financial Institution, and further grants Bank and Financial Institution a security interest in all deposits of Merchant with Bank and Financial Institution. Merchant authorizes Bank or Financial Institution to make withdrawals from or freeze these accounts without notice in the event Bank or Financial Institution determines that Merchant is in violation of the provisions of this agreement, or Bank or Financial Institution, in good faith and upon reasonable and objective indicia believe that the prospect of Merchant's payment and performance of its obligations under this agreement are materially impaired.
- 29.10 **Attorney's Fees.** In the event of litigation of any dispute under this Agreement, the prevailing party shall be awarded a reasonable attorney's fee.
- 29.11 **Addenda.** Attached hereto are the following addenda, which are incorporated herein by this reference:
 - ☐ Terminal Lease Purchase Agreement
 - ☐ Hotel/Motel or other Leasing Transaction
 - ☐

There are no addenda to this Agreement unless these boxes are checked, or unless they are added by supplemental written agreement of the

VISA/MASTERCARD -MERCHANT AGREEMENT

30. Merchant Membership Application. (Please Print or Type)

Type of Processing:

☐ Touch-Tone Capture ☐ Electronic Data Capture

Type of Product/Service

Sold: _____

Merchant Name (d/b/a): CITY OF FAYETTEVILLE

Mail/Telephone Order:

Yes ☒ No ☐

Location Address: 113 W. MOUNTAIN

City, State, Zip: FAYETTEVILLE, AR 72701

Phone Number: 501-575-8274

Mailing Address: _____

City, State, Zip: _____

Federal Tax I.D.: 71-6018462

State Tax I.D.: _____

☐ Corporation (Resolution attached)

☐ Partnership

☐ Sole Proprietorship

☐ LLC

Owner/Officer: NAME
FRED HANNA

HOME ADDRESS

SOC. SEC. NUMBER

Owner/Officer: _____

Manager's Name: _____

Have you personally or your business ever been bankrupt, or had any judgments or garnishments against you? ☐ Yes ☒ No

If yes, attach an explanation: _____

Have you previously used VISA/MasterCard merchant services of another bank? ☐ Yes ☒ No If yes, please list Bank below.

Have you ever been denied VISA/MasterCard merchant services? ☐ Yes ☒ No

THE BANK OF FAYETTEVILLE 1 S. BLOCK STREET FAYETTEVILLE, AR 72701

(Bank Name and Address)

Estimated Annual Credit Card Sales Volume: \$ 25,000.00

Estimated Average Ticket Size: \$ _____

Depositing Bank: THE BANK OF FAYETTEVILLE

Checking Account Number: _____

Other Merchant Numbers: Discover NOT ACCEPTING AT THIS TIME Amex NOT ACCEPTING AT THIS TIME

Diners _____ Carte Blanche _____

Other _____

Floor Limits: ~~VISA \$50.00~~ ~~MasterCard \$50.00~~

Number of Imprinter Plates: Short _____ Long 2

Terminal Type: ☒ Verifone ☐ Hypercom ☐ PC Product

Schedule of Charges:

VISA Discount Fee 1.97 %

Initial Set-up Fee \$ 0

Annual Membership Fee \$ 0

MasterCard Discount Fee 1.97 %

Terminal Mo. Lease \$ 0

Printer Mo. Lease \$ 0

Other Fees: ~~Minimum Monthly Merchant Discount \$3.00~~

~~Below-Floor Authorizations \$0.45ea~~

~~SCAN-Check Verification Service \$0.25ea~~

~~Other Card Type Authorization \$0.12ea~~

~~Address Verification Service Voice \$0.70ea PC \$0.015ea~~

~~Non-qualifying surcharge: 40% (4/10 of 1%)~~

The undersigned hereby authorizes Bank and Financial Institution to investigate the credit of each person listed on the Merchant Application and represents that he/she has the authority to provide such authorization and to execute this Agreement. Merchant hereby applies on AUGUST 9, 2000 for acceptance under the terms and conditions of this agreement and agrees to be bound hereunder upon final acceptance by Bank.

CITY OF FAYETTEVILLE

(Name of Company)

By: _____

Title: _____

Initial Acceptance and approval by Financial Institution made on AUGUST 9, 2000

THE BANK OF FAYETTEVILLE

(Name, Address of Financial Institution)

By: Andrew J. [Signature] Credit Card Manager

(Signature, Title)

Final Acceptance and approval by SECURITY BANKCARD CENTER, INC. made on _____, 20____.



CITY OF FAYETTEVILLE
Final Agenda
CITY COUNCIL
August 15, 2000

A meeting of the Fayetteville City Council will be held on August 15, 2000 at 6:30 p.m. in Room 219 of the City Administration Building located at 113 West Mountain Street, Fayetteville, AR

A. CONSENT

- 1. APPROVAL OF THE MINUTES:** Approval of the minutes from the July 18, and July 25, 2000 meetings.
- 2. Skate Park:** A resolution approving a contract with Purkiss-Rose-Rsi for the design and construction supervision of a Skate Park.
- 3. WINGS AIR, INC.:** A resolution approving a lease agreement with Wings Air, Inc. for an above ground facility which they will locate south of the terminal building ramp. This will allow self-service fueling by the pilot using a credit card. Annual compensation will be \$384.00 for the ground area with three three-year renewal options. Flowage fees will be remitted to the City as set forth in Section 91.16 of the Code of Fayetteville.

B. OLD BUSINESS

C. NEW BUSINESS

1. ARKANSAS RESEARCH AND TECHNOLOGY PARK:

An ordinance approving a bid wavier and an agreement (Amendment No. 1) to a previous contract for additional professional services with EGIS Consulting Inc. regarding the USCOE 404 permit for the Arkansas Research and Technology Park. The total contract amount \$164,050.00

2. BEKKA DEVELOPMENT: Consideration of a claim by Bekka Development for legal expenses in conjunction with Town Center. A claim for parking rental revenue was approved at the June 20, 2000 meeting of the Fayetteville City Council. If the claim is approved, approval of a budget adjustment to fund the approved claim is also requested.

3. FULTON PARKING LEASE: A resolution approving a lease agreement with Fulton Enterprises, Inc. d/b/a/ Town and Country Shop, located at 9 South Block Street for the lease of four parking spaces.

4. DAVID AND CATHY, INC.: A resolution approving a lease agreement with David and Cathy, Inc. located at 21 S. Block Street for the Lease of two parking spaces.

5. AD 00-24: A resolution approving Administrative Item AD 00-24.00 submitted by Jay Snider on behalf of Kappa Sigma Fraternity to change the name of West William Street behind the Kappa Sigma house (between University Ave. and the alley to the west) to Whiteside Street in honor of Charlie B. Whiteside III.

6. CRAFTON, TULL AND ASSOCIATES: A resolution censuring the Board of Directors of Crafton, Tull and Associates for the firing of Fayetteville Alderman Cyrus Young.

7. CREDIT CARDS: An ordinance establishing credit/debit card convenience fees.

8. CREDIT CARDS: A resolution accepting a proposal from the Bank of Fayetteville for credit/debit card processing services, approval of and authorizing the Mayor and City Clerk to sign a Visa/Mastercard Merchant Agreement and setting convenience fees associated with credit/debit card acceptance.

9. SISTER CITIES: A report on the Sister Cities Committee's status, program, and recent trip to the Dominican Republic.

**FINAL AGENDA
CITY COUNCIL
AUGUST 15, 2000**

A meeting of the Fayetteville City Council will be held on August 15, 2000 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:** Approval of the minutes from the July 18, and, July 25, 2000 meetings.
2. **SKATE PARK:** A resolution approving a contract with Purkiss-Rose-Rsi for the design and construction supervision of a Skate Park.
3. **WINGS AIR, INC:** A resolution approving a lease agreement with Wings Air, Inc. for an above ground facility which they will locate south of the terminal building ramp. This will allow self-service fueling by the pilot using a credit card. Annual compensation will be \$384.00 for the ground area with three three-year renewal options. Flowage fees will be remitted to the City as set forth in Section 91.16 of the Code of Fayetteville.

B. OLD BUSINESS

C. NEW BUSINESS

1. **ARKANSAS RESEARCH AND TECHNOLOGY PARK:** An ordinance approving a bid wavier and an agreement (Amendment No. 1) to a previous contract for additional professional services with EGIS Consulting Inc. regarding the USCOE 404 permit for the Arkansas Research and Technology Park. The total contract amount is \$164,050.00.
2. **BEKKA DEVELOPMENT:** Consideration of a claim by Bekka Development for legal expenses in conjunction with Town Center. A claim for parking rental revenue was approved at the June 20, 2000 meeting of the Fayetteville City Council. If the claim is approved, approval of a budget adjustment to fund the approved claim is also requested.

3. **FULTON PARKING LEASE:** A resolution approving a lease agreement with Fulton Enterprises, Inc. d/b/a Town and Country Shop, located at 9 South Block Street for the lease of four parking spaces.
4. **DAVID AND CATHY, INC.:** A resolution approving a lease agreement with David and Cathy, Inc. located at 21 S. Block Street for the lease of two parking spaces.
5. **AD 00-24:** A resolution approving Administrative Item AD 00-24.00 submitted by Jay Snider on behalf of Kappa Sigma Fraternity to change the name of West William Street behind the Kappa Sigma house (between University Ave. and the alley to the west) to Whiteside Street in honor of Charlie B. Whiteside III.
6. **CRAFTON, TULL AND ASSOCIATES:** A resolution censuring the Board of Directors of Crafton, Tull, and Associates for the firing of Fayetteville Alderman Cyrus Young.
7. **CREDIT CARDS:** An ordinance establishing credit/debit card convenience fees.
8. **CREDIT CARDS:** A resolution accepting a proposal from the Bank of Fayetteville for credit/debit card processing services, approval of and authorizing the Mayor and City Clerk to sign a Visa/Mastercard Merchant Agreement and setting convenience fees associated with credit/debit card acceptance.
9. **SISTER CITIES:** A report on the Sister Cities Committee's status, program, and recent trip to the Dominican Republic.