FINAL AGENDA
FOR
CITY COUNCIL MEETING
MAY 20, 2003

A meeting of the Fayetteville City Council will be held on May 20, 2003 at 6:00 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 May 6, 2003 meeting minutes and approval of the January 7, 2003 meeting minutes.

2. **Arkansas Forestry Commission Grant:** A resolution authorizing the Fayetteville Parks and Recreation Division to apply for an Urban Forestry Assistance Grant in the amount of $20,000.00 through the Arkansas Forestry Commission.

3. **Citizen's Survey:** A resolution approving a proposal from the Survey Research Center (SCR) at the University of Arkansas in the amount of $23,639.64 with a not-to-exceed cost of $25,000.00 for the development and implementation of a Citizen Survey.

4. **Fayetteville Public Library as City Library:** A resolution establishing the Fayetteville Public Library as an independent Municipal Library; and ending the Interlocal Agreement for a joint City/County Library system with Washington County, Arkansas.

5. **Fayetteville Public Facilities Board:** A resolution ratifying the resolution of the Fayetteville Public Facilities Board authorizing the issuance of Fayetteville Public Facilities Board Multifamily Housing Revenue Bonds (Grandview Apartments Project), Series 2003 in a principal amount not to exceed $3,700,000.

6. **Mobile Vision:** A resolution awarding Bid #03-34 to Mobile Vision, Inc. in the amount of 66,884.00 for the purchase of 17 in-car video systems, and the upgrade of the 144X zoom camera.

7. **Carter Burgess Architects/Engineers, Inc.**: A resolution approving a contract with Carter Burgess Architects/Engineers, Inc. in the amount of $42,536.00 for design and engineering services associated with the Lake Fayetteville spillway pedestrian bridge project; and approving a ten percent project contingency.

B. OLD BUSINESS:

1. **RZN 03-14.00 (Williams):** An ordinance rezoning that property described in rezoning petition RZN 03-14.00 as submitted by James Williams for property located at the northeast corner of Mt. Comfort Road and Shiloh Drive, Fayetteville, Arkansas from R-2, Medium Density Residential and A-1, Agricultural to C-1, Neighborhood Commercial. ***This ordinance was left on the first reading at the May 6, 2003 City Council meeting.***

2. **WHM Land Investments, Inc. Condemnation:** A resolution authorizing the City Attorney to seek condemnation and possession of certain lands owned by WHM Land Investment, Inc. to secure the necessary land on which to construct the West Fayetteville Fire Station. ***This resolution was tabled at the May 6, 2003 City Council meeting.***

3. **Unified Development Code:** An ordinance repealing Title XV, Unified Development Ordinance (originally adopted by Ordinance 4100 on June 16, 1998) of the Code of Fayetteville and adopting and enacting an amended Title XV Unified Development Code. ***This ordinance was left on the first reading at the May 6, 2003 City Council meeting.***

C. NEW BUSINESS:

1. **C-PZD 03-2.00 (Lowe's Home Center):** An ordinance establishing a Commercial Planned Zoning District titled C-PZD 03-2.00 located at the southwest corner of Finger Road and Highway 62; amending the official zoning map of the City of Fayetteville; and according to the Associated Development Project as approved by the Planning Commission.

2. **VAC 03-7.00 (Bencor):** An ordinance approving VAC 03-7.00 to vacate and abandon a drainage easement located on property at the northeast corner of Sixth Street and South School Avenue as depicted on the attached map and legal description.

3. **VAC 03-8.00 (Wallace):** An ordinance approving VAC 03-8.00 to vacate and abandon a drainage easement located on property at the Lot 98 of Covington Park as depicted on the attached map and legal description.

4. **OMI Contract:** A resolution approving amendment No. 9 to the OMI contract providing for a net increase in fiscal 2003 of $36,209.00 to purchase equipment and perform services implementing a modified sludge disposal plan for the last 6 months of 2003. **No budget adjustment is requested.**

5. **OMI Hamestring Lift Station:** A resolution to approve an out-of-scope amendment with Operations Management International, Inc. in the amount of $250,000.00 to upgrade the Hamestring Sewer Lift Station. **No budget adjustment is requested.**

6. **Hotel & Restaurant Bonds (Series 2003):** An ordinance authorizing the issuance and sale of not to exceed $6,620,000 of Hotel and Restaurant Gross Receipts Tax Refunding Bonds, Series 2003, by the City of Fayetteville, Arkansas for the purpose of refunding the City's outstanding hotel and restaurant gross receipts tax bonds, Series 1998; authorizing the execution and delivery of a trust indenture pursuant to which the Series 2003 Bonds will be issued and secured; authorizing the execution and delivery of an official statement pursuant to which the Series 2003 bonds will be offered; authorizing the execution and delivery of a bond purchase agreement providing for the sale of the Series 2003 Bonds; authorizing the execution and delivery of an escrow deposit agreement providing for the redemption of the Series 1998 bonds; authorizing the execution and delivery of a continuing disclosure agreement; and prescribing other matters relating thereto.

D. INFORMATIONAL:

1. **Council Tour: May 19, 2003**

2. **Item # 3 Old Business: Unified Development Code:**
Three copies of the proposed Unified Development Code, Title XV of the Code of Fayetteville are filed in the office of the City Clerk and are available for the public to inspect and view.

3. **Item # 6 New Business: Hotel & Restaurant Bonds (Series 2003):**
The Preliminary Official Statement, Trust Indenture, Bond Purchase Agreement, Escrow Deposit Agreement, and Continuing Disclosure Agreement documents that are related to this Agenda Item are available for review in the City Clerk's Office.

Adjourn 8:55 PM

Meeting of May 20, 2003

Subject:	Roll					
Motion By: **Seconded:**						
Motion To:						
Cook	✓					
Marr	✓					
Rhoads	✓					
Davis	✓					
Lucas	absent					
Jordan	✓					
Reynolds	✓					
Thiel	✓					
Mayor Coody	✓					

Subject:	Consent	Pulled Fayetteville Public Facilities Board #5. from Consent				
Motion By: **Seconded:**						
Motion To:		Jordan Davis				
Cook	✓					
Marr	✓					
Rhoads	✓					
Davis	✓					
Lucas	—					
Jordan	✓					
Reynolds	✓					
Thiel	✓					
Mayor Coody	—					

✓

Jim McCord
Public Facilities

Meeting of May 20, 2003

Subject:		Approve the Amended Resolution of the Public Facilities Board				
Motion By: **Seconded:**						
Motion To:		Approve Amended Resolution				
	Cook	✓				
	Marr	✓				
	Rhoads	✓				
	Davis	✓				
	Lucas	—				
	Jordan	✓				
	Reynolds	✓				
	Thiel	✓				
	Mayor Coody	—				

Jim McCord

Coody Wilkerson

75-03

Subject:	#1 Old Business – R2N 03-14.00 (Willions)					
Motion By: **Seconded:**		2nd Reading				
Motion To:		Jordan / Davis				
	Cook	✓				
	Marr	✓				
	Rhoads	✓				
	Davis	✓				
	Lucas	—				
	Jordan	✓				
	Reynolds	✓				
	Thiel	✓				
	Mayor Coody	—				

Jim Conklin

Lionel Jordan

Jim Conklin

Left On Second Reading

Meeting of May 20, 2003

Subject:		#2 Old Business WHM Land Investments Inc.				
Motion By:		Jordan				
Seconded:		DAVIS				
Motion To:		Table Indef.				
	Cook	✓				
	Marr	✓				
	Rhoads	✓				
	Davis	✓				
	Lucas	—				
	Jordan	✓				
	Reynolds	✓				
	Thiel	✓				
	Mayor Coody	—				

Dawn
Tabled Ind.

Subject:		#3 Old Business Unified Development Code				
Motion By:		Thiel				
Seconded:		Reynolds				
Motion To:		2nd Reading				
	Cook	✓				
	Marr	✓				
	Rhoads	✓				
	Davis	✓				
	Lucas	—				
	Jordan	✓				
	Reynolds	✓				
	Thiel	✓				
	Mayor Coody	—				

Dawn

Draft Copy for the Web Site.

Left on 2nd reading

Meeting of May 20, 2003

Subject:	#1 New Business C-PZO 03-2.00 (Lowes Home Center)					
Motion By: **Seconded:**						
Motion To:						
Cook						
Marr						
Rhoads						
Davis						
Lucas						
Jordan						
Reynolds						
Thiel						
Mayor Coody						

Left on first reading

Sign issue

~~Copies of traffic report for Lowe's Study~~

Sara Lebblar

Mark Millis Lowes Home Center

Jim Cordelia

Greg Simmons Peters & Associates Engineers

Richard Jordan

Cary Medley

Lance Mills

Barbara Mooneyham

Subject:	#2 New Business VAC 03-7.00 (Bencor)					
Motion By: **Seconded:**		Davis Thiel	Davis Reynolds			
Motion To:		2nd Read	3rd reading			
Cook		✓	✓	✓		
Marr		✓	✓	✓		
Rhoads		✓	✓	✓		
Davis		✓	✓	✓		
Lucas		—	—	—		
Jordan		✓	✓	✓		
Reynolds		✓	✓	✓		
Thiel		✓	✓	✓		
Mayor Coody		—	—	—		

Passed Ordinance 4486

Meeting of May 20, 2003

Subject:	#3 New Business VAC 03-8.00 (Wallace)					
Motion By: / **Seconded:**		Davis / Reynolds	Jordan / Reynolds			
Motion To:		2nd Read	3rd Read	Pass		
Cook		✓	✓	✓		
Marr		✓	✓	✓		
Rhoads		✓	✓	✓		
Davis		✓	✓	✓		
Lucas		—		—		
Jordan		✓	✓	✓		
Reynolds		✓	✓	✓		
Thiel		✓	✓	✓		
Mayor Coody		—	—	—		

Passed

Ordinance

4487

Subject:	#4 New Business OMI Contract Amendment No. 9					Tom Brown
Motion By: / **Seconded:**		Davis / Reynold				
Motion To:		Pass				
Cook		✓				
Marr		✓				
Rhoads		✓				
Davis		✓				
Lucas		—				
Jordan		✓				
Reynolds		✓				
Thiel		✓				
Mayor Coody		—				

Passed

Resolution

76-03

Subject:	#5 New Business OMI Hamestring Lift Station					
Motion By: Seconded:		Jordan Davis				
Motion To:		Pass				
Cook		✓				
Marr		✓				
Rhoads		✓				
Davis		✓				
Lucas		—				
Jordan		✓				
Reynolds		✓				
Thiel		✓				
Mayor Coody		—				

Pass

Resolution

77-03

Subject:	#6 New Business Hotel & Restaurant Bonds (Series 2003)					
Motion By: Seconded:		Davis Jordan	Davis Jordan			
Motion To:		2nd Read	3rd Read	Pass		
Cook		✓	✓	✓		
Marr		✓	✓	✓		
Rhoads		✓	✓	✓		
Davis		✓	✓	✓		
Lucas		—	—	—		
Jordan		✓	✓	✓		
Reynolds		✓	✓	✓		
Thiel		✓	✓	✓		
Mayor Coody		—	—	—		

Tom Brown

Dennis Hunt

Stephens Inc.

Check on all the items that we are to have on file - See Ordinance

where are they in our office.

Ord 4488

no Ward 4 meeting because of Memorial Day

Ward

CITY COUNCIL MEETING REGISTRATION
May 20, 2003

	SPEAKER'S NAME (Please print clearly)	PHONE NO.	AGENDA ITEM NO. SPEAKING ON
1	Gary Medley		
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FINAL AGENDA
FOR
CITY COUNCIL MEETING
MAY 20, 2003

A meeting of the Fayetteville City Council will be held on May 20, 2003 at 6:00 p.m. in Room 219 of the City Administration Building located at 113 West Mountain Street, Fayetteville, Arkansas.

A. CONSENT: Passed w/ #5 being removed to end of consent for discussion.

1. **Approval Of The Minutes:** Approval of the May 6, 2003 meeting minutes and approval of the January 7, 2003 meeting minutes.

70-03

2. **Arkansas Forestry Commission Grant:** A resolution authorizing the Fayetteville Parks and Recreation Division to apply for an Urban Forestry Assistance Grant in the amount of $20,000.00 through the Arkansas Forestry Commission.

71-03

3. **Citizen's Survey:** A resolution approving a proposal from the Survey Research Center (SCR) at the University of Arkansas in the amount of $23,639.64 with a not-to-exceed cost of $25,000.00 for the development and implementation of a Citizen Survey.

72-03

4. **Fayetteville Public Library as City Library:** A resolution establishing the Fayetteville Public Library as an independent Municipal Library; and ending the Interlocal Agreement for a joint City/County Library system with Washington County, Arkansas.

Pulled from Consent

5. **Fayetteville Public Facilities Board:** A resolution ratifying the resolution of the Fayetteville Public Facilities Board authorizing the issuance of Fayetteville Public Facilities Board Multifamily Housing Revenue Bonds (Grandview Apartments Project), Series 2003 in a principal amount not to exceed $3,700,000.

73-03

6. **Mobile Vision:** A resolution awarding Bid #03-34 to Mobile Vision, Inc. in the amount of 66,884.00 for the purchase of 17 in-car video systems, and the upgrade of the 144X zoom camera.

74-03

7. **Carter Burgess Architects/Engineers, Inc.**: A resolution approving a contract with Carter Burgess Architects/Engineers, Inc. in the amount of $42,536.00 for design and engineering services associated with the Lake Fayetteville spillway pedestrian bridge project; and approving a ten percent project contingency.

75-03 # FPFB - passed w/amdmt re: amt of $

B. OLD BUSINESS:

left on 2d reading

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left on 2d reading

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left on 1st reading

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4486

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4487

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76-03

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77-03

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   The Preliminary Official Statement, Trust Indenture, Bond Purchase Agreement, Escrow Deposit Agreement, and Continuing Disclosure Agreement documents that are related to this Agenda Item are available for review in the City Clerk's Office.

FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

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

LEGAL DEPARTMENT

DEPARTMENTAL CORRESPONDENCE

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

FROM: **Kit Williams**, City Attorney

DATE: **May 20, 2003**

RE: **Consent Item #5**
Resolution to ratify resolution of the Fayetteville Public Facilities Board

At the last second, the Fayetteville Public Facilities Board decided they would like to increase the bond authority from $3,700,000 to $4,070,000. We have accordingly changed the figure on the Resolution provided to you in your Agenda Packet from $3.7 million to $4.07 million.

If anyone wishes to remove this from the Consent Agenda because of this change, please notify Mayor Coody at or before the City Council meeting.

Attached is the amended Resolution and background information from the Fayetteville Public Facilities Board.

RESOLUTION NO. ____

A RESOLUTION RATIFYING THE RESOLUTION OF THE FAYETTEVILLE PUBLIC FACILITIES BOARD APPROVING MULTIFAMILY HOUSING REVENUE BONDS (GRANDVIEW APARTMENTS PROJECT), SERIES 2003 IN AN AGGREGATE PRINCIPAL AMOUNT OF NOT TO EXCEED $4,070,000

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

WHEREAS, the Board is authorized by the Act and the Ordinance to issue and sell its revenue bonds and to use the proceeds to finance residential housing facilities in the City for low and moderate income families, to secure payment of such revenue bonds as therein provided (including bond insurance or letters of credit), all in accordance with the provisions of the Act and the Ordinance; and

WHEREAS, the Board has determined that the economic interests of the City and public purposes of the Board are served by issuing its Multifamily Housing Revenue Bonds, Series 2003 (Grandview Apartments Project) (the "Bonds") in an aggregate principal amount of not to exceed $4,070,000 for the purpose of providing moneys to provide financing for the acquisition and rehabilitation of a multifamily housing project for low to moderate income households known as Grandview Apartments (the "Project") and for other purposes related thereto; and

WHEREAS, the Bonds are not a debt of or a pledge of the credit of either the City or the Board and neither the City nor the Board is obligated to pay debt service on the Bonds; and

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

WHEREAS, pursuant to the provisions of the Ordinance, Resolutions adopted by the Board which authorize the issuance of bonds for financing a multifamily housing project for low to moderate income households shall be ratified by the City; and

WHEREAS, the Board adopted Resolutiond on April 21, 2003 and May 20, 2003 to approve the Bonds subject to the ratification by the City and subsequent approval by the Board of final financing terms; and

WHEREAS, such Resolutions adopted by the Board on April 21, 2003 and May 20, 2003, authorized the Chairman and Secretary to execute documents to effect the issuance of the Bonds; and

WHEREAS, the City, as an exercise of its ministerial powers should ratify the Board's Resolution in recognition that the City is not a part of the deliberative process of approval of the issuance of the Bonds and provided further that the City should ratify the Resolution adopted by the Board on April 21, 2003 and May 20, 2003, based upon a determination that the Board has solely and independently exercised its powers and responsibilities in a manner which complies with the Ordinance.

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

Section 1. **Recognition of Board's Authority**. The Board is authorized by the Act and the Ordinance to approve the issuance of the Bonds for the purpose of providing moneys to finance residential housing facilities for low and moderate income families, pay the costs of issuing the Bonds and for other purposes related thereto and shall comply with other provisions of the Act and the Ordinance. The Bonds by statute and intent of this City Council are not a debt of or a pledge of the credit of either the City or the Board and neither the City nor the Board is obligated to pay debt service on the Bonds whether or not said Bonds have been properly issued.

Section 2. **Ratification of Board's Resolution**. The provisions of the Board's Resolutions approved April 21, 2003 and May 20, 2003, a copy of both Resolutions which are filed with the Clerk of the City, are hereby ratified by the City.

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

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

PASSED and **APPROVED** this the 20th day of May, 2003.

APPROVED:

By: DRAFT
DAN COODY, Mayor

ATTEST:

By: _____
Sandra Smith, City Clerk

KUTAK ROCK LLP

SUITE 1100
425 WEST CAPITOL AVENUE

LITTLE ROCK, ARKANSAS 72201-3400

501-975-3000
FACSIMILE 501-975-3001

www.kutakrock.com

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MEMORANDUM

TO

FAYETTEVILLE PUBLIC FACILITIES BOARD MEMBERS AND MR. JIM MCCORD

REGARDING

FAYETTEVILLE PUBLIC FACILITIES BOARD MULTIFAMILY HOUSING REVENUE BONDS (GRANDVIEW APARTMENTS PROJECT) SERIES 2003

Please find the attached Amended Resolution with regard to the Fayetteville Public Facilities Board Multifamily Housing Revenue Bonds (Grandview Apartments Project), Series 2003.

Due to a decrease in the interest rate charged by the underwriter as of May 1, 2003, higher than estimated rents being approved by HUD, and a decision to make further improvements to the property, the Borrower has determined that they would like to increase the amount of the bond. Therefore, the Borrower requests an amendment of the April 21, 2003 Resolution increasing the aggregate principal sum of the bonds from $3,700,000 to $4,070,000.

May 15, 2003

RESOLUTION

A RESOLUTION AMENDING THE RESOLUTION OF APRIL 21, 2003 TO REVISE THE AGGREGATE PRINCIPAL AMOUNT OF THE ISSUER'S MULTIFAMILY HOUSING REVENUE BONDS (GRANDVIEW APARTMENTS PROJECT) SERIES 2003 (THE "BONDS"); AND FOR OTHER RELATED PURPOSES.

WHEREAS, the Fayetteville Public Facilities Board (the "Issuer") has been organized and exists under the laws of the State of Arkansas as a public facilities board; and

WHEREAS, the Issuer is authorized and empowered by law, including particularly Arkansas Code Annotated Sections 14-137-101, et seq., as amended, (the "Act") and Ordinance No. 2465, as amended, of the City Council of the City of Fayetteville, Arkansas (the "Ordinance"), to borrow and lend funds in order to assist one or more multi-family residential housing facilities that provide housing for low-income persons and families in Fayetteville, Washington County, Arkansas;

WHEREAS, on April 21, 2003 the Issuer adopted its resolution authorizing the issuance of the Bonds (the "Resolution"); and

WHEREAS, the Issuer proposes to Amend the Resolution of April 21, 2003 to revise the aggregate principal amount with regard to the Bonds.

NOW, THEREFORE, BE IT RESOLVED BY THE FAYETTEVILLE PUBLIC FACILITIES BOARD AS FOLLOWS:

SECTION A. That any reference in the Resolution to $3,700,000 aggregate principal amount of the Bonds be amended with respect to the Bonds, specifically in Section 2 of the Resolution, to read as follows:

"...in an aggregate principal sum not in excess of $4,070,000..."

SECTION B. That the Chairman or the Secretary of the Issuer be and they hereby are authorized to execute and deliver for and on behalf of the Issuer any and all additional certificates, documents, opinions or other papers and perform all other acts as they may deem necessary or appropriate in order to implement and carry out the intent and purposes of this Resolution.

SECTION C. That all prior resolutions or portions thereof of the Issuer which are inconsistent with the contents hereof are hereby repealed.

SECTION D. That this Amendment to the April 21, 2003 Resolution of the Issuer shall become effective immediately upon its passage and approval.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

Adopted and approved this ___ day of May, 2003.

FAYETTEVILLE PUBLIC FACILITIES BOARD

By _____
Chairman

Attest:

By _____
Secretary

KUTAK ROCK LLP

SUITE 1100
425 WEST CAPITOL AVENUE
LITTLE ROCK, ARKANSAS 72201-3400

501-975-3000
FACSIMILE 501-975-3001

www.kutakrock.com

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NEWPORT BEACH
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OMAHA
PASADENA
RICHMOND
SCOTTSDALE
WASHINGTON

MEMORANDUM

TO

MR. HUGH EARNEST AND MR. JIM MCCORD

REGARDING

FAYETTEVILLE PUBLIC FACILTIES BOARD MULTIFAMILY REVENUE BONDS (GRANDVIEW APARTMENTS PROJECT) SERIES 2003

Please find the attached Notice of Public Hearing regarding the above mentioned project that was published in the Arkansas Democrat Gazette Full Run (all 75 counties in Arkansas) on Sunday, May 4, 2003. Also attached is a draft of the minutes for the Public Hearing scheduled for Monday, May 19, 2003, at 1:00 p.m., in room 326 of the third floor of the City Administration Building located at 113 W. Mountain, Fayetteville, Arkansas.

Please be advised that the proposed maximum bond amount has been increased from $3,700,000 to $4,070,000 since the Notice of Public Hearing was published. This increase is due to a decrease in the interest rate charged by the underwriter as of May 1, 2003, higher than estimated rents being approved by HUD, and a decision to make further improvements to the property. As a result, the Borrower has determined that they would like to increase the amount of the bond.

An Amending Resolution will go before the Board ~~prior to~~ after the Public Hearing ~~being~~ is held. This increase to the bond amount does not require a new Notice of Public Hearing due to the fact that a change of 10% or less is considered under the IRS Regulations to be an insubstantial deviation from the amount published in the Notice (§5f.103-2(f)(2) of the Internal Revenue Code Regulations).

May15, 2003

10-48250.1/1

NOTICE OF PUBLIC HEARING
REGARDING ISSUANCE OF AN AGGREGATE
PRINCIPAL AMOUNT NOT TO EXCEED $3,700,000
FAYETTEVILLE PUBLIC FACILITIES BOARD
MULTIFAMILY HOUSING REVENUE REFUNDING BONDS
(GRANDVIEW APARTMENTS PROJECT)
SERIES 2003

NOTICE IS HEREBY GIVEN of a public hearing to be held on 19th day of May, 2002, by a representative of the Fayetteville Public Facilities Board (the "Issuer"), at 1:00 p.m., in room 326 of the third floor of the City Administration Building located at 113 W. Mountain, Fayetteville, Arkansas, with respect to the hereinabove captioned bonds (the "Bonds"), to be issued by the Issuer in an original principal amount not to exceed $3,700,000, issued pursuant to Arkansas Code Annotated §§14-137-101 *et. seq.* (1996 Repl. and Supp. 2001) as amended, and the Ordinances of the City Council of Fayetteville, Arkansas and for the purpose described below, the proceeds of which will be loaned to GV Affordable Housing Limited Partnership (the "Borrower"), an Arkansas limited partnership created under the laws of the State of Arkansas. The proceeds of the Bonds will be used to provide financing for acquisition and rehabilitation of a multifamily housing project for low to moderate income households, as more particularly described below, to be owned and operated by the Borrower and located in the City of Fayetteville, Washington County, Arkansas, named Grandview Apartments (the "Project").

The Project is located at 401 W. 24th Street in the City of Fayetteville, Washington County, Arkansas, and consists of 128 units.

All interested parties are invited to attend the public hearing to express their views with respect to the issuance of the Bonds. Questions or requests for additional information may be directed to Kutak Rock LLP, 425 West Capitol Avenue, Suite 1100, Little Rock, Arkansas 72201, and (501) 975-3000.

Any interested persons unable to attend the hearing may submit their views in writing to Mr. Wooten Epes at the address of Kutak Rock LLP set forth above, prior to the date scheduled for the hearing. The location and time of the hearing may be changed or an additional hearing may be scheduled.

The Bonds will be issued pursuant to a Trust Indenture entered into between the Issuer and Regions Bank as trustee and will be secured thereunder by payments made by the Borrower under a Loan Agreement. The Bonds will not be payable from any revenues of City of Fayetteville or the State of Arkansas and will not constitute an indebtedness of the City of Fayetteville or the State of Arkansas or any subdivision thereof, within the meaning of any constitutional or statutory provision. The Issuer has no taxing power.

This notice is published and the above-described hearing is to be held in satisfaction of the requirements of Section 147(f) of the Internal Revenue Code of 1986, as amended, regarding the approval of the project by the governmental unit issuing the Bonds prerequisite to the exclusion from gross income for federal income tax purposes of the interest on the hereinabove captioned Bonds with respect to the requirement for a public hearing conducted by the Issuer and Arkansas Code Annotated Section 19-9-607 (Repl. 1998).

FAYETTEVILLE PUBLIC FACILTIES BOARD

Publication Instructions: Publish one time in the *Arkansas Democrat Gazette* Full Run on May 4, 2002, 2003. Please send your statement, along with two proofs of publication, to Melissa Carrier, c/o Kutak Rock LLP, 425 W. Capitol, Suite 1100, Little Rock, Arkansas, 72201.

10-45401.1

JAMES N. McCORD
Attorney at Law
11 N. WEST AVE.
SUITE #202
FAYETTEVILLE, ARKANSAS 72701

TELEPHONE (479) 695-1134
FACSIMLE (479) 695-1135
jimmccordlaw@alltel.net

May 16, 2003

To: Fayetteville Public Facilities Board VIA FACSIMILE/U.S. MAIL

From: James N. McCord, Board Counsel JNM

Re: Board Meeting May 20, 2003

The Fayetteville Public Facilities Board will meet on Tuesday, May 20, 2003 beginning at 4:15 p.m. in the conference room of Stephens Inc, 3425 N. Futrall Drive, Suite 201, Fayetteville Arkansas. Items on the agenda are:

(1) A resolution amending the April 21, 2003 authorizing the issuance of multifamily housing revenue bonds for the Grandview Apartments Project to revise the aggregate principal amount of the bonds to a sum not in excess of $4,070,000.

Enclosed are the amending resolution and a memorandum from bond counsel explaining the reason an increase in the amount of bonds from $3,700,00 to $4,070,000 is requested.

(2) A report from BOSC, Inc. on possible restructuring of the Board's outstanding housing bonds.

pc: Fayetteville City Clerk (For FOIA notice to media) 718-7695 fax
Wooten Epes, Kutak Rock (Bond Counsel) (501) 975-3001 fax

KUTAK ROCK LLP

SUITE 1100
425 WEST CAPITOL AVENUE
LITTLE ROCK, ARKANSAS 72201-3409

501-975-3000
FACSIMILE 501-975-3001

www.kutakrock.com

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MEMORANDUM

TO

FAYETTEVILLE PUBLIC FACILITIES BOARD MEMBERS AND MR. JIM MCCORD

REGARDING

FAYETTEVILLE PUBLIC FACILITIES BOARD MULTIFAMILY HOUSING REVENUE BONDS (GRANDVIEW APARTMENTS PROJECT) SERIES 2003

Please find the attached Amended Resolution with regard to the Fayetteville Public Facilities Board Multifamily Housing Revenue Bonds (Grandview Apartments Project), Series 2003.

Due to a decrease in the interest rate charged by the underwriter as of May 1, 2003, higher than estimated rents being approved by HUD, and a decision to make further improvements to the property, the Borrower has determined that they would like to increase the amount of the bond. Therefore, the Borrower requests an amendment of the April 21, 2003 Resolution increasing the aggregate principal sum of the bonds from $3,700,000 to $4,070,000.

May 15, 2003

RESOLUTION

A RESOLUTION AMENDING THE RESOLUTION OF APRIL 21, 2003 TO REVISE THE AGGREGATE PRINCIPAL AMOUNT OF THE ISSUER'S MULTIFAMILY HOUSING REVENUE BONDS (GRANDVIEW APARTMENTS PROJECT) SERIES 2003 (THE "BONDS"); AND FOR OTHER RELATED PURPOSES.

WHEREAS, the Fayetteville Public Facilities Board (the "Issuer") has been organized and exists under the laws of the State of Arkansas as a public facilities board; and

WHEREAS, the Issuer is authorized and empowered by law, including particularly Arkansas Code Annotated Sections 14-137-101, *et seq.*, as amended, (the "Act") and Ordinance No. 2465, as amended, of the City Council of the City of Fayetteville, Arkansas (the "Ordinance"), to borrow and lend funds in order to assist one or more multi-family residential housing facilities that provide housing for low-income persons and families in Fayetteville, Washington County, Arkansas;

WHEREAS, on April 21, 2003 the Issuer adopted its resolution authorizing the issuance of the Bonds (the "Resolution"); and

WHEREAS, the Issuer proposes to Amend the Resolution of April 21, 2003 to revise the aggregate principal amount with regard to the Bonds.

NOW, THEREFORE, BE IT RESOLVED BY THE FAYETTEVILLE PUBLIC FACILITIES BOARD AS FOLLOWS:

SECTION A. That any reference in the Resolution to $3,700,000 aggregate principal amount of the Bonds be amended with respect to the Bonds, specifically in Section 2 of the Resolution, to read as follows:

"...in an aggregate principal sum not in excess of $4,070,000..."

SECTION B. That the Chairman or the Secretary of the Issuer be and they hereby are authorized to execute and deliver for and on behalf of the Issuer any and all additional certificates, documents, opinions or other papers and perform all other acts as they may deem necessary or appropriate in order to implement and carry out the intent and purposes of this Resolution.

SECTION C. That all prior resolutions or portions thereof of the Issuer which are inconsistent with the contents hereof are hereby repealed.

SECTION D. That this Amendment to the April 21, 2003 Resolution of the Issuer shall become effective immediately upon its passage and approval.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

Adopted and approved this ___ day of May, 2003.

FAYETTEVILLE PUBLIC FACILITIES BOARD

By _____
Chairman

Attest:

By _____
Secretary

FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

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

PLANNING DIVISION CORRESPONDENCE

TO: Mayor Dan Coody
Fayetteville City Council

FROM: Dawn T. Warrick, AICP, Zoning & Development Admin.

DATE: May 16, 2003

SUBJECT: Additional information for May 20, 2003 Meeting

Please find attached the following supplemental items for the May 20, 2003 City Council meeting:

Item B.1.: RZN 03-14.00 (Williams)

- Accident report from Fayetteville Police Department for the intersection at Shiloh Drive and Mt. Comfort Road for the past four years

Item C.3.: C-PZD 03-2.00 (Lowe's)

- Letter from AHTD regarding the proposed street light at Sherman Way (new street) and Hwy 62 W (6th Street)

Item C.5.: VAC 03-8.00 (Wallace)

- Updated memo
- Photographs of the subject property (a single family home in the Covington Park subdivision)

RECEIVED
MAY 19 2003
CITY OF FAYETTEVILLE
CITY CLERK'S OFFICE

Fax

RZN 03-14

Fayetteville Police Department
PO Box 1988
100-A West Rock Street
Fayetteville, AR 72701

Office (479) 587-3555
Fax (479) 587-3570

Date: 5-14-03 Sheets (including cover): 2

To: Planning Attention: Rene

Fax Number: [redacted]202 Re: Arrest Reports

From: Kim Dept./Phone: ext 574

Comments:

May 14 03 11:13a Records 587-3570 p.2

587-3570

Fayetteville Police Department
DATE 05/14/2003
TIME 10:08:11 FROM DATE/TIME: 01/01/1998 00:00 PAGE 1
INJURY TYPE . : *ALL ACCIDENT REPORT BY LOCATION THRU DATE/TIME: 05/01/2003 23:59 PLD225
AREA . . . . : *ALL ORI# . . . . : AR0720100 FPD KROBERTS
SECTION . . . : *ALL STREET: ,,MT COMFORT,,
XSTREET: ,SHILOH,,

STREET	CROSS STREET	REPORT #	DATE	TIME	VH IN	PROPERTY DAMAGE
MT COMFORT	N SHILOH	199933656	12/22/99	17:16	2	
UNIT BAC TEST	--------DRIVER FACTORS-------		--------VEHICLE FACTORS-------		--------HIGHWAY FACTORS-------	
001						
002						
MT COMFORT	N SHILOH	200001471	05/04/00	17:00	2	
UNIT BAC TEST	--------DRIVER FACTORS-------		--------VEHICLE FACTORS-------		--------HIGHWAY FACTORS-------	
001						
002						
W MT COMFORT RD	N SHILOH DR	200102275	08/20/01	9:36	2	
UNIT BAC TEST	--------DRIVER FACTORS-------		--------VEHICLE FACTORS-------		--------HIGHWAY FACTORS-------	
001						
002						
W MT COMFORT RD	N SHILOH DR	200200135	01/15/02	8:09	2	
UNIT BAC TEST	--------DRIVER FACTORS-------		--------VEHICLE FACTORS-------		--------HIGHWAY FACTORS-------	
001						
002						

TOTAL ACCIDENTS: 4

May 14 03 11:13a Records

PLN 03-14

CPRO 03-2

ARKANSAS STATE HIGHWAY AND TRANSPORTATION DEPARTMENT

DISTRICT FOUR

4019 TOWSON AVE. • P.O. BOX 1424 • FORT SMITH, AR 72902-1424 • TELEPHONE (479) 646-5501 • FAX (479) 646-8286
WASHINGTON — CRAWFORD — FRANKLIN — SEBASTIAN — LOGAN — SCOTT — POLK

May 8, 2003

RECEIVED
MAY 12 2003
CITY OF FAYETTEVILLE
MAYOR'S OFFICE

Honorable Dan Coody, Mayor
City of Fayetteville
113 W. Mountain
Fayetteville, AR 72701

Re: Traffic Study for Proposed Lowe's
6th Street and Finger Road
Highway 62, Section 1
Washington County
Fayetteville

Dear Mayor Coody: DAN

This office recently received a traffic study prepared by Peters and Associates that recommended the installation of a traffic signal at the intersection of Highway 62 and an access drive for a proposed Lowe's Home Improvement Warehouse in Fayetteville. Upon receipt of the study, Mr. Perry Franklin with the City of Fayetteville was contacted and he indicated that he was familiar with the proposal and indicated the city concurred with the developer's request for the Department's review of the study.

The proposed development is in the southwest quadrant of the intersection of Highway 62 and Finger Road. According to the study, the property will be accessed at three separate locations. The first, Drive "B", is the western most drive and the location of the proposed traffic signal. The second, Drive "A", separates Lowe's from the proposed small retail development and bisects the overall development. The third access location is at the signalized intersection of Finger Road and Highway 62. All three locations either currently have or are proposed to have exclusive right turn lanes.

Proposed Drives "A" and "B" are both "T" intersections. With exclusive right turn lanes at each drive, the left turn volume is the critical volume when evaluating the need for signalization. The number of peak hour left turns at Drive "B" and Drive "A" is estimated to be 111 vehicles per hour and 26 vehicles per hour, respectively. As shown on Page 4C-9 of the Manual on Uniform Traffic Control Devices, the minimum threshold one lane volume for consideration of a traffic signal is 75 vehicles per hour during the peak hour. Therefore, any delay at Drive "B" will cause traffic to shift to Drive "A" where the left turn volume is projected to be less than one vehicle every two minutes (26 vehicles per hour). In addition, even if the volumes were higher than estimated, traffic could utilize the traffic signal at Finger Road.

CPZD 03-2

In consideration of the fact that the proposed development has two major access drives on Highway 62 and direct access to an existing signalized intersection, we do not agree with the conclusion reached in the report that this development warrants signalization.

If you have any questions concerning this review, please contact Joe Shipman, District Construction Engineer, at this office.

Very truly yours,

Harold Beaver
District Four Engineer

c: Peters and Associates
Roadway Design Division

CC Meeting of May 20, 2003 VAC 03-8

FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

113 W. Mountain St.
Fayetteville, AR 72701
Telephone: (479) 575-8267

PLANNING DIVISION CORRESPONDENCE

TO: Mayor Dan Coody
Fayetteville City Council
FROM: Dawn Warrick, Zoning & Development Administrator, AICP
THRU: Tim Conklin, AICP, Community, Planning & Engineering Services Director
DATE: May 14, 2003

VAC 03-8.00: Vacation (Wallace), pp 295 was submitted by Burton Pools & Spa on behalf of Cindy and Terry Wallace for property located at lot 98 of Covington Park (3704 Chatsworth). The property is zoned R-1. The request is to vacate a portion of a drainage easement.

BACKGROUND

No objections from the adjacent property owners have been submitted to the City. The applicant has submitted the required notification forms to the utility companies and to the City. The results are as follows:

UTILITIES	**RESPONSE**
Ozarks Electric	No Objections.
AEP/SWEPCO	No Objections
Arkansas Western Gas	No Objections
SW Bell	No Objections.
Cox Communications	No Objections.
City of Fayetteville:	
Water/Sewer	No Objections
Street Department	No Objections
Solid Waste	No Objections
Engineering	No objections – Only the portion where the pool is to be constructed should be vacated.

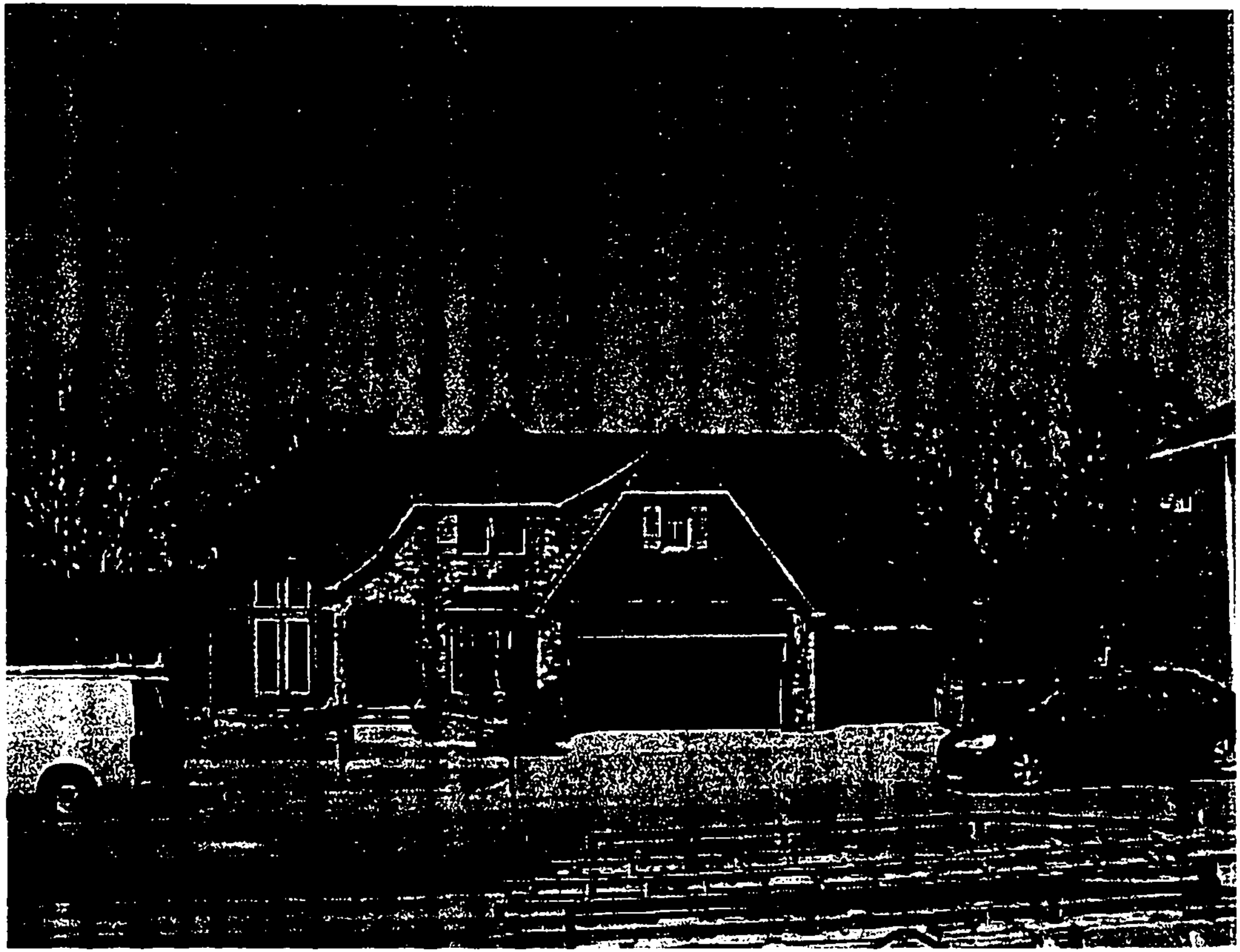
CURRENT STATUS

On April 28, 2003, the Planning Commission voted 7-0-0 (consent agenda) to forward this item to the City Council with a recommendation for approval. This property is a single family residence with an in ground swimming pool that has been constructed. A portion of the pool is located in the drainage easement which runs along the eastern boundary of the lot. The request is to vacate only the portion of the easement where the pool is constructed. Photos of the current conditions are included with ths agenda item.

RECOMMENDATION

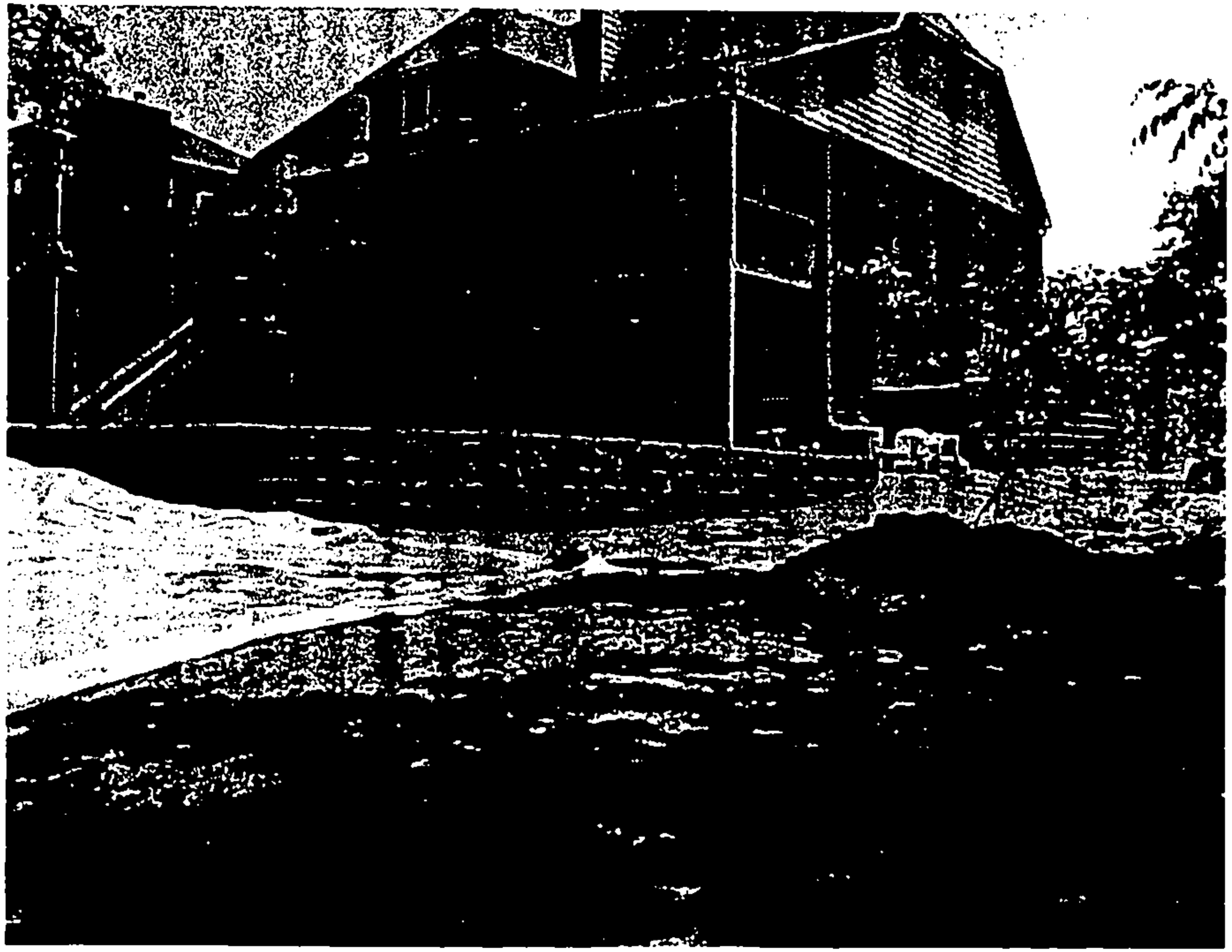
Staff recommends approval of the proposed drainage easement vacation 03-7.00 subject to the following conditions:

1. Any relocation of existing utilities will be at the owner's expense.
2. Only the portion where the pool is constructed shall be vacated.



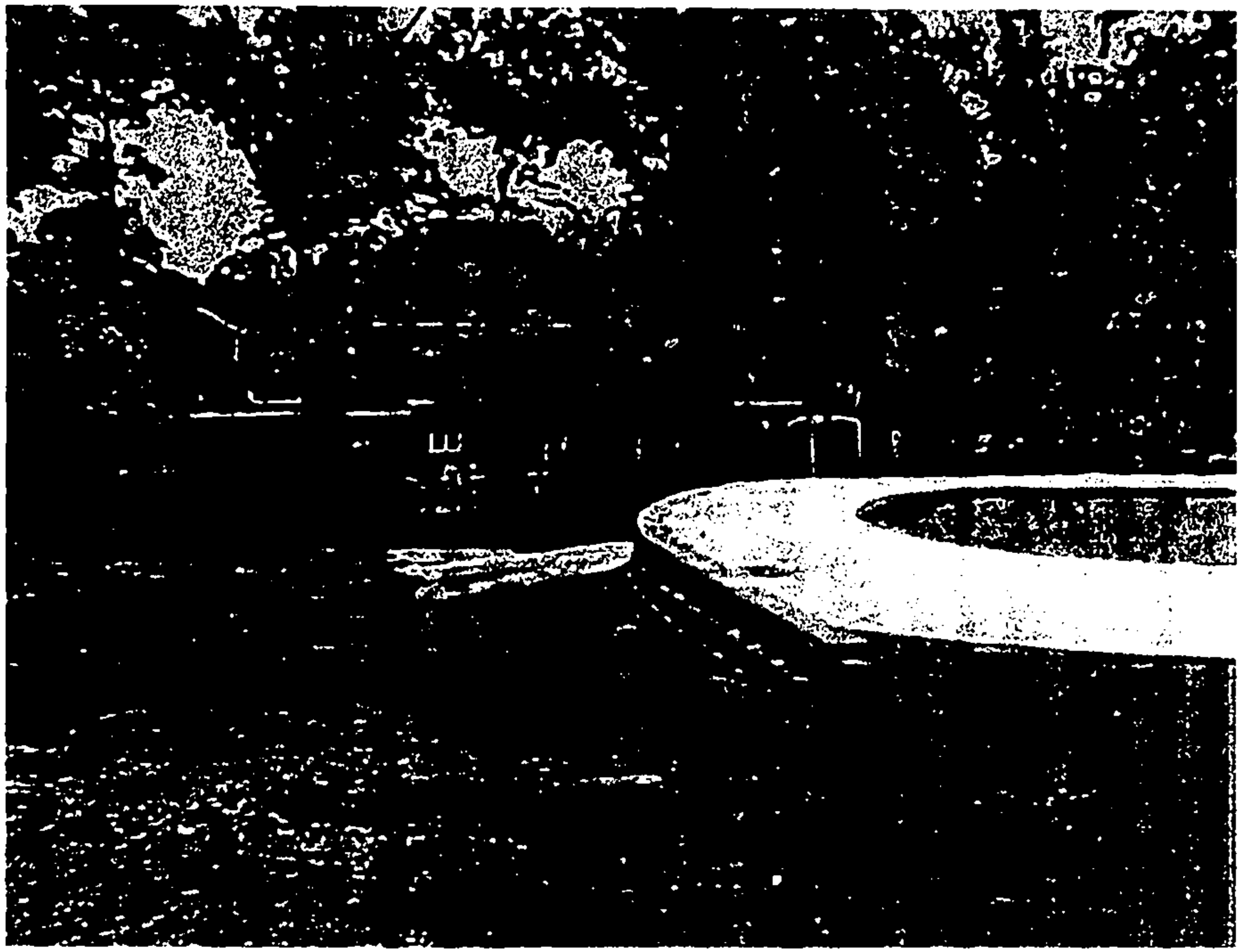
3704 Chatsworth Rd.

VAC 03-8



3704 Chatsworth Rd. (View of pool from South East)

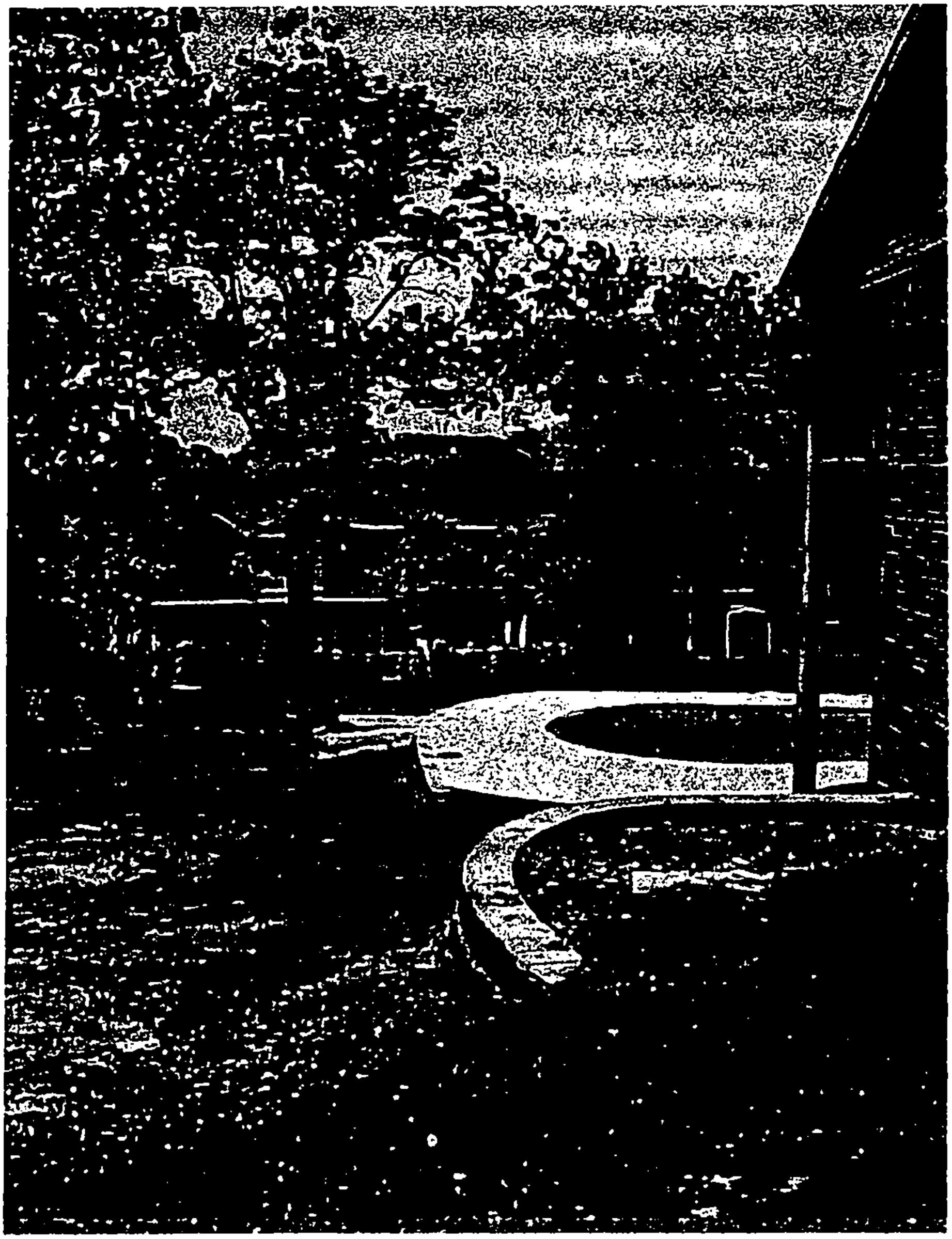
VAC 03-8



3704 Chatsworth Rd. (View of pool from the North along Easement)

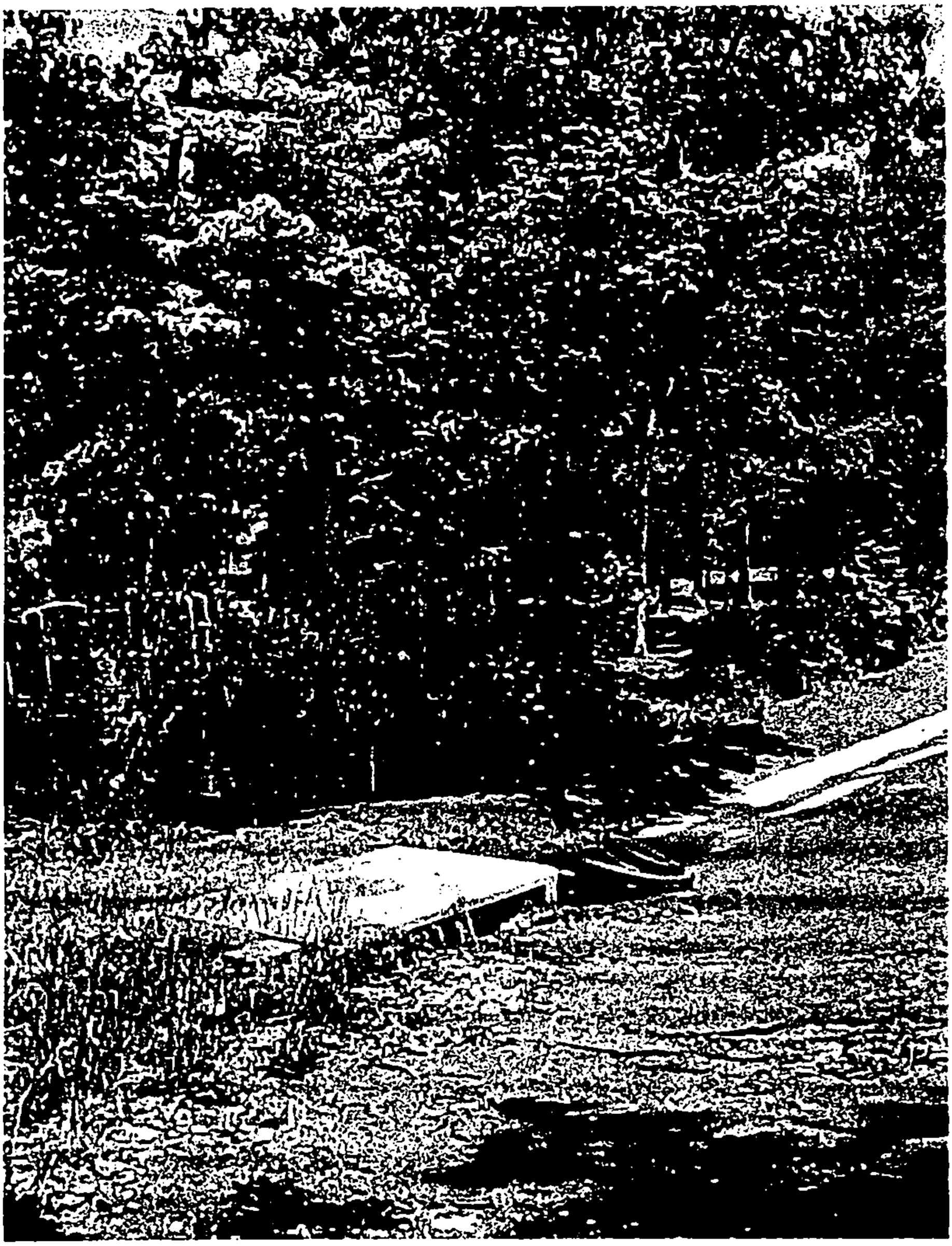
VAC 03-8

VAC 03-8



3704 Chatsworth Rd. (View of pool from the North along Easement)

VAC 03-8



3704 Chatsworth Rd. (View of Drainage easement)

MINUTES OF A MEETING OF THE CITY COUNCIL May 6, 2003

A meeting of the Fayetteville City Council was on May 6, 2003 at 6:00 p.m. in Room 219 of the City Administration Building located at 113 West Mountain Street, Fayetteville, Arkansas.

PRESENT: Alderman Reynolds, Thiel, Cook, Marr, Rhoads, Davis, Lucas, Jordan, Mayor Coody, City Attorney Kit Williams, City Clerk Sondra Smith, Staff, Press, and Audience.

Downtown Dickson Enhancement Program (DDEP) - A Streetscape and Sidewalks Study presentation.

Sharon Hoover, Chair of the Downtown Dickson Enhancement Group gave a presentation on the contractual agreement of the sidewalk master plan for the downtown area.

Mayor Coody thanked Ms. Hoover for the presentation. He said once Dickson Street is done and we start expanding to the rest of the downtown area this is going to be an enhancement to the entire downtown.

Alderman Marr said when we were going through the budget process one of the things that we talked about was having tangible measurable activities when we gave money to an organization and one of the action items under the contract for DDEP was a study of our master sidewalks within the boundary and I definitely think they have met that requirement.

CONSENT:

Approval Of The Minutes: Approval of the April 1, 2003 meeting minutes. Approval of the April 15, 2003 meeting minutes.

Fire Department Uniforms: A resolution awarding Bid #03-09 to NAFECO, Inc. in the amount of $32,060.14 to provide new uniforms to the existing personnel of the Fayetteville Fire Department.

Resolution 60-03 As Recorded In The Office Of The City Clerk.

Score, Inc. /Soccer Uniforms: A resolution approving the purchase of youth soccer uniforms from Score Uniforms in the amount of $26,600.00.

Resolution 61-03 As Recorded In The Office Of The City Clerk.

Mobley Contractors, Inc. Old Missouri Road Contract: A resolution awarding a construction contract to Mobley Contractors, Inc. in the amount of $1,644,402.38 for improvements to Old Missouri Road from Rolling Hills Drive to Mud Creek; approving a project contingency in the amount of $164,440.00 and approving a budget adjustment in the amount of $79,000.00 for same.

Resolution 62-03 As Recorded In The Office Of The City Clerk.

University of Arkansas 20 Year Hangar Lease: A resolution approving a lease agreement with the University of Arkansas for space at the Fayetteville Municipal Airport to construct an 80' x 120' hangar.

Resolution 63-03 As Recorded In The Office Of The City Clerk.

McClelland Consulting Engineers Hangar Contract: A resolution approving, contingent upon the execution of a lease agreement with the University of Arkansas, Task Order #1 with McClelland Consulting Engineers, Inc. for engineering services and construction observation associated with the construction of an 80' x 120' hangar at the Fayetteville Municipal Airport.

Resolution 64-03 As Recorded In The Office Of The City Clerk.

Bes-Pac Waste Equipment: A resolution awarding Bid #03-05 to Bes-Pac Waste Equipment in the amount of $200,000.00 for the purchase of new commercial compactors and drop boxes on an as needed basis.

Resolution 65-03 As Recorded In The Office Of The City Clerk.

Hiring Maintenance Worker II's: A resolution authorizing the Transportation Division to hire five (5) additional full-time temporary employees (Maintenance Worker II).

Resolution 66-03 As Recorded In The Office Of The City Clerk.

Ozark Regional Transit: A resolution approving the transfer of funds in the amount of $61,000 to the Ozark Regional Transit Authority for the purpose of enhancement and repair of the Public Transit Fleet; and approving a budget adjustment in that amount for same.

Resolution 67-03 As Recorded In The Office Of The City Clerk.

Alderman Jordan moved to approve the consent as read. Alderman Davis seconded. The motion carried unanimously.

Organization acceptable to and determined by Legacy Project. There are at least 85 acres of delineated wet lands and 14-15 acres of floodway. She asked if that was part of this.

Mr. Haynes said yes it is part of it. He said we consider the described wetlands on the site to be pristine acreage and we believe that that acreage should be held in perpetuity by a group or a series of groups that can preserve it. I think more study needs to be done on the site to determine where the wet lands are.

Alderman Jordan asked how we came up with the figure of $5.2 million.

Mayor Coody said he came up with that because he wanted to bring a number forward that he thought was high enough for the City Council and the tax payers to reap the benefit of, yet low enough to where a developer, if we could find one would find it attractive enough to purchase. It was kind of the middle ground of getting a good return on our investment yet attractive enough to the developer to want to make an offer, which he has.

Alderman Jordan said this comes to roughly $34,000.00 per acre.

Mr. Haynes said some of that site is easement and he is paying for land that is already owned by the City and will continue to be owned in perpetuity by the City.

Alderman Jordan said he is trying to determine what an acre of land is worth out there. He has heard from $10,000.00 up to $50,000.00. He said he wanted clarification as to what it is worth per acre.

Mr. Haynes said the worth would have to be analyzed in several different ways. This site has a signification ground water situation on it. The ground water varies from 2 feet to 5 feet in areas on this property. He said this causes additional expense in the development process. We take those numbers and work backwards to try to find what our real costs are. If we are buying land at $10,000.00 per acre but our actual development cost were $40,000.00 per acre then that is something that we would have to consider before we start the project. We have looked at the soil studies that were done; we know this is going to be an expensive site to do any development work on.

Alderman Marr asked Mr. Haynes if this is a time sensitive transaction meaning does it need to happen within a certain time frame. If this Council does not make a decision tonight will it kill the project from your perspective.

Mr. Haynes said if we are successful with obtaining approval from the City Council to a least present a plan for your review so that we could purchase this land we would be back within 30 days at the latest. With any project that has been as controversial as this one is, in order to develop it successfully there is going to have to be compromise from our side and from the ones that want to hold this land insitu forever. Without compromise it is never going to happen.

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Mayor Coody gave a brief history of the land. In 1988 the City purchased this land for $1.3 million and over the course of the next few years we spent money putting in water and sewer lines and a lift station. Southwestern Bell has put in fiber optic cable.

Steve Davis, Finance and Internal Services Director, said the City has $1,658,000.00 in land cost and an additional $552,000.00 in other cost of which includes the sewer and water lines. Total cost to the City is $2.2 million rounded.

Mayor Coody said he thought it was originally bought because Texas Instruments was interested in coming to Arkansas, but they did not come.

Jonathan Jones, a member of the Task Force, said the per acre value is about $18,000.00 per acre for 289 acres at $5.2 million and that is not counting the $700.000 rebate, with that it would be more along the line of $15,000. The appraisals came in from $11,000 to $67,000 on comparable sales along the I-540 corridor this is on the lower end of those. The reason it is lower is because a lot of the property has drainage and soil issues. Those same issues are what make this property ecologically valuable. Mr. Haynes seems like a very trustworthy fellow. I would prefer to see a more concrete proposal with more specific details where there was an agreement in hand between the developer and Audubon before the City Council approves the sale of the property.

Mayor Coody said that before the transaction would consummate, the PZD zoning would have to be approved.

Alderman Jordan asked what the 70 acres that the Task Force recommended for development would be worth per acre.

Mr. Jones said the economic value of any property is at best a guess until the transaction has been consummated. The 70 acres on the south if you look at the report the estimated development cost is across the board $50,000 per acre. Development cost on the 70 acres to the south would be less. I would put the value of the 70 acres at least the medium of the appraised value that came back which would be somewhere in the mid 30's. The pay back to the City from this investment would be 6 ½ to 7 percent.

Lou Weiss she was told that we could not have the Audubon or anyone like that because this is not a park property, but there are other places in Fayetteville that we do that so why can't we do it in this place.

Kit Williams, City Attorney, said constitutionally the City is not allowed to give away resources to non-profit groups that would be doing government service things. We can enter into agreements with non-profits organizations, it doesn't always require money if they can provide enough services to the citizens of Fayetteville to justify the value of the property that we are leasing to them. The key issue is value. In order for a non-profit to be provided this land I can't see how they would be able to provide enough services to Fayetteville citizens to pay the fair market lease on land that is worth so much money.

Ms. Weiss said so would it be up to you and the Mayor and the Council people to make the decision on how valuable the organization that wants to lease the land would be to the citizens to Fayetteville.

Mr. Williams said certainly the Council and the Mayor would need to make some decisions like that but it would also have to be reasonable decisions. The Attorney General in his opinion has stated the crucial issue is whether the agreement is supported by adequate consideration. You can lease land to non-profits, but the tax payers are entitled to adequate consideration for their property.

Terry Eastin, Sharon Davison, and Al Vick spoke against the sale of the property.

Jeff Collins, the Chairman of the Task Force said the idea that there would be development on the north side of the property was considered and it was deemed that what was required was further research on the value of that property before it would be developed. When you are talking about developing the south and the north, some amount of acreage to be determined, that is within the ream of possibility.

Tom McKinney, a member of the Task Force said the sale of this property was discussed once. Nothing in the sale proposal coincides at all with any of the recommendations that the Task Force came up with. The 100 acres is not a donation, that 100 acres is protected wet lands and flood plains, the developer can not touch that anyway unless he is going to replace it somewhere else. This is a new project, if the property is sold then as far as I am concerned the delineation of the wet lands needs to be redone. Our recommendation was that we develop 70 acres of the southern portion, that approximately 80 acres of the middle portion needs to be set aside for putridity and that the northern portion of the property should be studied. The other resolution that was voted on by the City was to negotiate with Audubon to lease the 219 acres that was not included in the 73 developed.

Alderman Jordan asked what is impacted wet lands.

Mr. McKinney said as he understands there is certain criteria that must be met to have something designated as wet land. The wet lands out there meet that criteria.

Alderman Jordan said so those wet lands have always been there but they have sort of been covered over, but if they are let to go back to their natural state they will return.

Mr. McKinney said yes.

Laura Kelly spoke against the sale of the property.

Rob Leflar, Political Chair of the Ozark Headwater Group of the Sierra Club said this does not need to be an issue that divides the citizens of Fayetteville. Mayor Coody's plan is a plan that has some merits, we just disagreed that it is the best plan. The most developable commercially saleable area that is the piece that recoups the City's investment and then some, protects the tax payers interest, it should be put on the market, and it should be sold. That is not all the

developable area. The Task Force reported that after study some of the rest of that tract could prove of less ecological value. The reminder is critical wet land habitat. The Audubon could protect that. We would request that you table this proposal that is before you. He presented a petition that was signed by 200 voters in opposition to the sale.

Mayor Coody said the sale is not a $4.2 million dollar net it is a $5.2 million, the $700,00 that we would reimburse for the development is in the bank but it can only be used for this site we can not use it for anything else. If we don't use it we have to send it back to Little Rock.

Andrea Radwell, Stephen Boss, Steven Nichols, Fran Alexander, Jennifer Holt, Jim Bemis, and Melissa Terry spoke against the sale of the property.

Jeff Erf asked about the $700,000 grant money and how those funds can be used.

Mr. Williams said he has looked at this, there were two grant applications one from Mayor Hanna's administration and from Mayor Coody's administration. They are almost identical except for the name of the I-540 site. Both Mayors' in their transmittal letters asked for money to aid in construction of the water and sewer lines and streets at the park. Mr. Williams read the resolutions; they state the grants are to aid in the construction of the water and sewer lines and streets at the park. We would only be able to reimburse Mr. Haynes for the money that he would spend for street, sewer and water lines. Mr. Williams said these grants are not tied to the University, it is not tied to technology, and it must be for the infrastructure in the development of this site. Mr. Williams said he believes that this would be completely legal to use these grants in that way.

Mr. Erf asked do you think it would be legal to use those grants and give them to the University of Arkansas Genesis.

Mr. Williams said no.

Steve Frankenberger, a resident, asked Mr. Williams if we were to lease this to the Audubon Society and we are trying to delineate the economic benefits to the tax payer of the City to make it legal to lease this out at something less than market value, you have to be able to defend that line of reasoning in court, am I correct?

Mr. Williams said yes, I would not say that we are leasing it for less than fair market value, I would say that we are getting services from the Audubon Society besides money.

Mr. Frankenberger said but it is not an arbitrary figure that you just pick out of the air and the City Council decides it, you have to be able to defend it in court. Mr. Frankenberger said no matter what you decide tonight, the wet lands are preserved. The ad in the paper implies that the wet lands are to be developed, that is simply not true. The issue is where do we draw the line between what will be preserved and what will be developed. In a perfect world there would be a lot more sites like this being preserved, but this is not a perfect world and because it is not a perfect world, this issue should not be examined in a vacuum. With any issue that involves money, it has to be decided in the context of the budget and that means it has to be examined as

to where it lies on a list of priories. The value of preservation has to be compared to the value of what the City would do with that money. This is no different than taking $5.2 million from our current budget and buying that land. The question is this, what is the best use of this resource for the people of Fayetteville, is this land more important to us than the fire protection that it would buy, is this land more important to us than the trails and sidewalks it would buy, is this land more important to us that the green space that it would buy, is this land more important to us than the traffic improvement that it would buy, is this land more important to us in the piece of mind we would have by setting the money aside and doing nothing with it. Where is this on your list of priorities, unless it is at the very top, you should vote to sell this land and fund the items that are on the top. Fully developed this property will be worth hundreds of millions of dollars that will generate millions of dollars of property taxes for our schools and the library. They will have to pay impact fees to help us with our infrastructure. You will generate a flow of millions of dollars of commerce that much of it is likely to be subject to sales tax. This is a win, win situation; I urge you to accept this offer, sell this land and use the money wisely.

Jim Huffman spoke in favor of the sale.

Robert Farrell a resident said he has never seen nor can he recall a time when the recommendation of a citizens committee became public policy. A resolution does not tie the hands of elected officials who set public policy and enact laws and ordinances. Selling the property makes since for the City's economy. Recently 70 acres was acquired at Mount Sequoyah for green space, we must allocate resources to other things like widening street, building sidewalks and maintaining our needed repairs in the city and trying to keep up with our escalating public transit insurance. Several of us went to Little Rock several times to ask for infrastructure grants for the I-540 property. I take exception that the money was intended for Genesis, certainly we wanted it to be for the entire community. Please vote for the sale of the property.

Rebecca Garner, Bob Hill, Bill Clodfelter and Bill Moeller spoke in favor of the sale of this property.

Tommy Deweese, a resident, said he represented the City of Fayetteville back in 1998 when they took 5 of the Mayors from Northwest Arkansas and traveled to Little Rock to try to get the funds from the Arkansas Economic Development Division. The specific purpose that I was asked whenever I made the presentations by the committee was number one what will you use the money for, by response to that in the way that we came up with dollars is just as Kit Williams has said, my response was that we would use that for development of the specific property for streets and sewers out there. We were able to get in those two grants about $700,000. We received a lot of support from the cities of Bentonville, Springdale, Rogers and all those communities, because they realized the benefit that all of Northwest Arkansas could have from the development of that property, on the interstate there so many people travel by each day. Kit, it's exactly as you say, it was presented and came back to us as a representative of the City of Fayetteville to be used for that specific property for improvements on street and sewer.

Len Schaper, a resident that worked on the project, said this land was proposed as a Research and Technology Park at that time because it would bring good jobs. In 1995 I received a memo

from a member of the Research and Technology Park Committee about the ecologically sensitive nature of some of the land out there, but at that time we thought there was about 7 acres of wet lands on that property. How did it get to be 85 acres of wet lands, a lot of wet lands is depending on vegetation. The wet lands may have been there at the time and never appeared because the land was being leased to folks for them to graze cattle, apparently that kept the water from running down the hill and forming wet lands. Regardless of how they got there they need to be preserved. In the mean time things have changed, ideas have changes, concepts have changed, why should we be building a Research and Technology Park out by the bypass when we have Genesis and Engineering South down here. I must disagree with Kit, the money was to go for Research and Technology Park and the building of infrastructure in a Research and Technology Park, if you say and the folks from the State say it's tied to the site, so be it, it's tied to the site, it will still bring in jobs, it will still bring in high quality jobs. If I had my druthers it would go with the use and have it down at Genesis to help the University put in the infrastructure that we need down there. Does it make since to have a $5.2 million deal on this land, I think it does in some form. I am not sure if this is the perfect form, but I think it is a really good offer and I think you folks need to consider it very, very seriously. Obviously Mr. Haynes is an environmentally conscious developer, perhaps the title to the land should not all go to him, perhaps you work it out so first you figure out how much is wet lands, and that wet lands goes directly to whatever group everybody agrees on, I don't know, it is up to you to structure the best deal possible. Do you need to vote on it tonight, maybe not, but in principle I can certainly support this because it is a good use of that land. Is a nature center the best use I don't know, when I go out in nature I like to be able to hear the frogs, I am not sure I could hear the frogs above the roar of the 18 wheelers going up and down the bypass. Let's recognize that there is a lot more history to this than just the Wilson Springs Task Force, it goes way back. The final study came in 1998, so we worked on this between 1995 and 1998. The City Council accepted it at that time. A better idea comes along you go along with it. It's been 13 years that the City has owned this, it is time to recoup the investment, it is time to get the City out of that land development business and get it into the hands that can do it very well, that has demonstrated his ability to do it very well, I urge you at some point, maybe not tonight but in the near future, get this deal worked to the satisfaction of many folks and move on.

John Kelly spoke against the sale of the property.

Bob Nickle, Wayne Mays, and Paul Justus, Charlie Sloan and Dave Fulton spoke for the sale of the property.

Jeff Collins said as you look at the Task Force process you have to understand that we started with a certain state of the world and we tried to do the best with that state of the world. We at the time had no one making an offer for the property, in fact much of the discussion revolved around the uncertainty about whether anyone would make an offer for the property. We were also very concerned about the ability of the City to be a developer. The Audubon had talked about doing some things, there were a number of ideas floating around, but no resolution had been passed about the Audubon, we didn't integrate it into our deliberations and we certainly didn't integrate the idea that someone would be in front of us today offering $5.2 million for this site into our deliberation, that would have erased a great deal of uncertainly on my part. I was sort of the leader of the group that looked at the economics of the site and if you look at our

report we made some estimations about job creation, and value of the site. What I would ask you to do is go back to those estimations and put them into the context, those estimations were made under a great deal of uncertainty much of which has been removed by my way of thinking by actually having an offer on the table. There still is uncertainty on the site with regard to environmental values; I can't speak to those because that is not my area of expertise. What I can speak to is the idea of value. I don't know how many would go there, I have my doubts about how many people would actually use the Wilson Springs site. We as individuals assign value to these environmental amenities. The idea that we are trading one environmental amenity for another as if all environmental amenities had the exact same dollar value is ludicrous we make these trade offs all the time. With regard to the Task Force recommendations I think you have to understand that as time has elapsed and a great deal of time has elapsed since we began the process the world has changed. What recommendations we would come to now in this new world I can not tell you, those are merely guidelines. We did the best we could with the information that we had. We gave it to you to use to guide your decision making process.

He read two letters from two other Task Force members, Kathy Foraker and George Faucette expressing their support of the sale.

A member of the Task Force said there are many things about the Task Force process that he regrets, of all of the proposals that were entertained at many meetings in deliberating over what to do with this property I regret that one of those proposals was not Mr. Haynes proposal. It would have put everything in better context for us and would have been a better framework for the decision making. I would say that in accepting this proposal you are in many ways embodying most of the objectives of the Task Force, one we were trying to develop some plausible scheme for development in the context of the existing wet lands, the wet lands are going to be preserved, but also you are going to have a quality development out there. Everyone can attest to the fact that I have some serious concerns about the City functioning as a private developer. Turning this over to a private developer takes care of a lot of those concerns for me.

Pete Reagan spoke in favor of the sale of the property.

Bill Ramsey, CEO of the Chamber of Commerce spoke in favor of the sale of the property. In March the Chamber Board of Directors unanimously passed a resolution in support of the sale of this property.

Don Nelms, a resident representing the National Audubon Society and Audubon Arkansas, said he talked with Dan Taylor, Vice President of the National Audubon Society, today and has come in full circle in our organization, there has been some question if we are really representing the National Audubon Society, and I can assure you that I am and that Dan Taylor is. They support what I am saying. Our objective in the National Audubon Society is to connect people with nature and almost every person in this entire room grew up in an age that is very different than what our children are growing up today. I spent 90% of my time when I was at home until dark or after dark outside and I think many of you did the same thing. You went out into the fields and you discovered the way the earth works. Today children know more about nature strictly by TV than any other method and they spend an extremely small amount of time outside and we feel like that is something important that needs to change because we feel there is something

really being lost in this country. It's not just a matter of a piece of land it's part of our soul, a part of the structure that helps us come back and be reasonable people and get along and I think that is what we are trying to do in this city tonight, we are trying to get along. I want to try to get along, I am not here to read the right act to anybody, but to say I would like to be part of the solution here tonight and not part of the problem. I think the first thing that I need to explain and we have explained it before. Let me restate what an Audubon Center is and draw you a picture of what one would be like in this community. We would be talking about, if we are talking about Wilson Springs, about a 10,000 square foot building primarily devoted to education and helping people interact with nature. Where school children could come there, college students could come there and do research, where we could have all day long with students and get them out into the field and let them feel nature and find out what it's really like and get that wow factor back into what they see, that's what TV doesn't have. Kids can sit home and watch a bird do something or watch a fish do something but there is no wow to it, but when you are in nature and you are out there and you see something and you've got that where you just say wow, wow how beautiful is that, that's what we are not getting and that's something that I think is very very important and I would like to be a part of bringing that back to the children of the future. We would like to be in a position to have people come into this city and observe wildlife, have nature professional, and professional naturalist that could take people out into this area and show them things, to be able to bring displays in from all over the nation and have it to where people could go through this center. The argument that we are having tonight and the very arguments against this I am sure were the very same arguments that were made about Central Park in New York, they were the very same arguments that were made when Portland Oregon decided to sit aside probably 30% of that entire town and today anybody that has ever been to those places can look back and say man is that not incredible that somebody had the concept and the foresight to see what that would mean to this community. I believe that some kind of resolution to this away from the 100 acre resolution has the potential of doing that for this city and I hope it does. The Springfield, Missouri center attracts about approximately 250,000 people a year and I asked Dan today how many it was. I said Dan how many do you think will be attracted to this one, he said Don it would probably be in excess of 100,000, I really couldn't tell you that, that's anybody's guess. Nobody really knows the answer to that, I think it depends on who runs it and how it's run and how our city embraces it. Obviously if the city does not embrace this it's a no deal, it's just that simple, and it just isn't going to go anywhere. What do we need out there and what would it look like, I guess I would start with what would an Audubon Center out there look like, I would visualize the wet lands being wet lands and being restored back to their natural state. Remember somebody just dug a trench right through the center of this thing to drain it and that's what we have today. I would like to see that back to the meandering stream that it once was and all the tremendous things that it would bring back to that wet land and yes the wet lands will grow because the truth of the matter is the wet lands at one time were significantly larger than they are today so that would help it grow. I would like to see the tall grass prairies out there restored, I tell you, you would not believe how many people would go out there to see the flowers on those and would be involved in the bird processes and things like that. It would be necessary to restore that and it would be a central focal point for this community and something that would be a learning experience for everybody in this community. That's another thing I would like to see, I would like to see a trail system all down the creek that runs on down to the adjoining schools, there's two schools. We need controlled access to the wet lands, it doesn't need to be something that people can just go out there and tromp around in all the time, you have nesting birds, you

have all kinds of wildlife out there and you just can't have just free access to it because if you do you will destroy the very thing that we are talking about saving here. If you are talking about just letting people walk around on it, just X it because it's gone. There are times that you can, and there are observation things and there are things that can be done, but I mean just free access to it cannot, so we have to have controlled access. A generous remnant of the tall grass prairie needs to be present out there. I spent this spring traveling back and forth to prairies all over Arkansas and I am going to Hope next week to look at the tall grass prairies down there which is a black land prairie and the flowers on those and the things that you can see and the wild life and things that you take for granted you wouldn't believe, there is just holes all over those things where there are animals living down there, there are hawks over above that are going down and getting them and it's a cycle of life that's none of us really observe unless you are there and it's a chance for us to come back and have our community be able to observe what was a very broad amount of land in this area. We have hillsides all over this town and I would certainly be in favor in saving every one of them that we could, but they are not nearly as unique as this piece of property out there is and if we restore it, it would be so unique that it would just blow your mind, I guarantee you. We need a suitable building site and that would be about three acres and so really we are talking about what we need can be put on three acres. We can build a center on three acres, we can put the parking lots, hopefully Collins if he develops this, which I certainly hope that he will, then if he could share with us some parking lots we could even cut that amount. We need a center and we need it strategically located so we could have observation out of it and these things would just have to be worked out. We need access to high traffic areas and this is the reason this site so appeals to us, no different than the reason Collins wants to come here is the same reason we want to come here, because we are in the business of attracting a large number of people, if we don't attract a large number of people, we have no purpose. The nature conservancy goes out and sets aside land and just keeps people off of it and that's a wonderful thing to do, but that's not what we are really into, we're really into bringing people into nature and letting them interact with it. There is one other part that is extremely important and it hasn't really been brought out, but we need to preserve Wilson Springs. Wilson Springs is an extraordinarily unique thing that's out there that has the Arkansas Darter in it, a small beautiful fish that is pretty special and it's got to be protected and access to it has to be protected and I am not sure exactly how to do it but I think that's another worthy ambition. The next point I would do is to say, will 100 acres work, well let's not joke each other, there is 100 acres probably of wet lands out there right now, it's not buildable, it's not usable for anything, so the answer on that is obviously not, something more than that has to work and we would have to have that. My personal opinion of this is the Task Force recommendation. Many of the people that stood up here tonight and said it's time to bail out we've changed our mind, we are going to go on, I think it was thought through better than people give it credit for because over a very long period of time I have observed this, I've went out there, I've visualized building on it and I am not an architect but I tell you it is very problematic and I think that I would have a little bit of a heart tug with some of the things that are going to have to be done out there. We talk of this like this $5.2 million is a done deal, guys read the contract it's not a done deal, this contract simply says I'm going to go out there and I'm going to work up a deal, if I can get it through and I'm happy with it I'm going to buy it if I'm not I'm gone, so you don't have a deal you've got the beginning of a deal. You have a whole lot of people that you have heard here tonight that don't want that deal, so it's not over, and the shouting is going to go on for a long time and it really is time to put this to bed, so maybe some other solution is really a better solution, a better solution

for Collins, a better solution for the National Audubon Society, a better solution for the people of this city and that is what I would like you to consider. I just tell you what I think would make some sense, sit down with this developer, look at the price that he is paying, now no one is talking about whether that's the right price, but I want to talk about it being the right price. I spent my life selling things at the right price, you can either say it's a good deal or bad deal but I have probably sold 100,000 cars in my life and if I sold the majority of those at the wrong price I wouldn't have sold them. We have a situation here where we may have the price wrong; it may need to be a little less to give this developer the flexibility necessary to take all the things into consideration that needs to be taken into consideration. I think that Collins, and I am not putting words in your mouth, because I'm frankly kind of tired of people putting words in my mouth, so I don't want to put words in your mouth, but I would be surprised if he wouldn't tell you that this thing would be a heck of a lot easier if there wasn't such a price issue on this. If this thing could be resolved at a lesser amount and just sell him the whole property and let us sit down and work with him or some other organization and it doesn't have to be us we are not the only one in the world, but let us work toward a resolution to this at a dollar amount where he could actually get us the land or work a deal with us to get the land, but he could receive the tax benefits from it and he could receive a lot of things from it, but the whole thing is at $5.2 million, guys the economic model here is that you have just about got to do the whole thing there is just not much left and that may just be too much, so I will leave you with that, I have made Collins a commitment, I said I would come back and look at it when he gets it done. The National Audubon Society would like to have a center in Fayetteville, Arkansas no matter what anybody else says we want a center here and we are willing to commit our time and our resources to get this done, but let's get it off to a good start. I suggest to go back to the drawing boards see if you can't come up with something that's a little more compatible to everybody concerned and then see if we can't make a deal here that will live, if you make a deal tonight and he has such a problem developing this thing and so many people making it difficult for him he may say man I don't have to have this life, this isn't worth it, so let's make it worth it to him, let's make it a good deal for him.

George Weiss, a resident said every intelligent person wants to gather all the information that they can if we are making a decision, one of the things I have not heard yet discussed tonight, since the Audubon does have nature centers throughout the country, has anybody looked into what impact they have in those communities, good or bad and I think until you have that information I don't know how you can make a reasonable decision, so I would suggest until you get that information you table this.

Mayor Coody said we want Audubon here too, that has always been our position. Of course everybody in Fayetteville wants Audubon here too.

Mr. Nelms said I don't think everyone is a fair statement, I've heard you say this time and time again. It's got to be compatible to us establishing and being able achieve our mission and we are talking about a very, very long term commitment to this city that will live way past any of us in this room and it has to be a deal that works and so we looked at this seriously, thought about it and we brought experts in, these guys do this every day and I am looking to them. They feel like this is a wonderful site for us, we will find a site in Northwest Arkansas, but I am telling you we are going to stick to the dying death on this one just simply because we think the habit is so

unique here and it is something that this city would be so proud of and we would be proud of, because this land is not pristine, everybody that has been out there knows that, this thing has had more alterations, it doesn't even come close to being calling pristine, but the potential for restoration is just unbelievable and the result would be unbelievable. I didn't mean to take up your time any more but I appreciate you all hearing us and whatever you do is fine with me, I am going to be happy with it and all of you really are my friends and that includes you Dan, I know we fuss and all this but I'll tell you I have been diligent about this because I think it's worth it and it's my time and I'm not even on the job here just remember that, I mean I think this is important, if we don't have this happen we'll do something else some other time, but I have met with Collins, I like him he has a great reputation, everybody here tonight has said that, so let's not let this chance pass up to make a lot of people happy with this thing.

Mayor Coody said that what he was going to say is I think there may be some room where Audubon and Mr. Haynes can work together we have been visiting with each other and I know you have mentioned the possible purchase of a small tract of some land. I want to see Audubon work out a deal here in town and I do think that there is room for that, no one knows exactly what the magic number of acres is for the potential site out there of Wilson Springs Business Park, love to have Audubon out there, love to have Collins Haynes out there, I feel certain that you two can work out some kind of a deal to where you both can come out ahead. Matter of fact after talking with Mr. Haynes about this I feel certain that he will be able to work with you to accomplish your goal and I feel certain that you will be able to be flexible enough to work with Mr. Haynes to make something work out for Audubon, so I am putting faith in the two of you to be able to work out some kind of a compatible arrangement, I just feel certain that this will work just fine.

Mr. Haynes said there has been a lot of discussion about Audubon. There are other groups out there that are just as deserving as Audubon, I don't have anything against the Audubon Society nor Mr. Nelms, I consider him a friend, I consider him a great environmentalist, but my point is this is not trying to accommodate Audubon, all I am trying to do is put an offer to the City Council of the City of Fayetteville that says I will pay you $5.2 million for this piece of property, I will deed out, this really is giving this land away, I mean I can own this 100 acres in putridity myself. I don't have to give this land up, this is a gift, and the notion that it is not a gift is a gross misconception. I see a very limited potential for failure, because I have gotten support of every person that I have talked to within the city government, I have gotten support of Mr. Nelms about trying to work out a solution on this property, if we don't come to a solution with the Audubon Society, there are other groups that I can work with on it and if I don't find a suitable group that 100 acres will sit insitu, I will protect it, I will let no one own this property. I mean it needs to stay pristine, whether Audubon uses it or the Sierra Club or the Nature Conservancy, whoever, it is a pristine wonderful piece of property, that being said I hope you vote for it so that I'll get a chance to show you what I think I can do with the property, should you vote against it, it's still a great piece of property and the Audubon Society and all the other environmental groups deserve to have a shoot at it. Thank you.

Mayor Coody read a letter from the Mayor in Rogers commending Mr. Haynes and his work.

Alderman Davis said you are willing to work with other non-profits including Audubon if they need more acreage you are possibility willing to give or sell or try to work out some deal is that correct.

Mr. Haynes said absolutely.

Alderman Davis said with that and Mr. Haynes track record and his willingness to work with Audubon or another non-profit organization, I don't believe the City needs to be in the development business, it is something we needed to be out of 12 or 13 years ago. We bought the land because of TI, Texas Instruments was coming into Fayetteville supposedly and it never happened, as long as the land is owned by the City I firmly believe that nothing is ever going to take place out there, because of what has happened at this point in time, because of that I am going to move that I would like for the City Council to accept Mr. Collins Haynes offer.

Alderman Davis moved to approve the resolution. Alderman Lucas seconded.

Alderman Thiel said she has supported the Audubon Nature Center. I really was not going to get into that, but I think there really is a desire of the people that I have heard from, because as it has been pointed out the Nature Conservative provides basically a passive preservation of land and the offer that we have from the National Audubon Society is to build a nature center, which is the reason I have always thought of this as a win, win is because that would provide tourism dollars, educational opportunities that I don't think the Nature Conservative preservation of land would offer the same thing, with that being said I want to go on and say what I had planned to say. I support the sale of this property to Collins Haynes, who I believe is a fairly environmentally sensitive developer, but I don't believe this particular contract is in the best interest of the citizens of Fayetteville. If the Mayor had followed the recommendations of the Council and had gone to Collins Haynes with a proposal for involving the Audubon idea which he has a resolution on, we could be looking at a high class business commercial area and a National Audubon Center contract tonight and I truly think both would bring immeasurable economic benefits to the City of Fayetteville. I agree with what Don Nelms said that the best solution would be for Mr. Haynes and an Audubon representative to work out an arrangement that is suitable to both parties and to the public and this would probably consist of a reduced price coming back to this Council for this land. It would allow Collins to economically develop the land 70 to 90 acres and donate the rest to the Audubon Society which then of course you would derive the tax credits for that. I think this Council and the public needs to remember this land was bought for economic incentive, it was never bought to sell for profit, that was not the intention of the purchase of this land, if we can sell this land, recoup our loss and make some, I think that is the win, win. I fully understand that people, all the public is very tired of this debate, I think they want something now, but I think we still have the opportunity to do the right thing, I think the citizens desire that, particularly the citizens of Ward 4 where this property is located. So I would like to see this tabled for another two weeks to give these people an opportunity to discuss this a little further.

Alderman Thiel moved to table the resolution until the next Council meeting. Alderman Jordan seconded.

Alderman Jordan said every once in a while when I make my decisions we come to a point to where we as politicians the plastic facade that we put around us from time comes off and the true character of the politician is revealed, what I mean by that is this. When you come to a vote like this who you are really comes out, what you believe, what you rely on, who you are. As I made decisions on this thing I flipped through my notes and I asked myself two questions, what have we said and what have we done, what do we have and what do we lose. As I made decisions on this thing, we passed a resolution last October, I in good faith and we passed it unanimously and we said this is what we are going to do, if I remember this correctly, we are going to preserve 180 acres we are going to develop 70, we are going to put a 600 foot buffer around that creek in the northern area and we are going to study the rest and that was never done. That concerns me. As far as the Audubon goes this is a chance to have a nationally known park in this area that can be passed down for our children and our children's children from one generation to the next and that is important to me. I do not want to sacrifice the inheritance of my children and my grandchildren for some monetary gain right now, now I fully believe that we can table this and come back with a better solution to this. We do know we can sale the seventy acres right now and if it is anywhere close to $35,000, that is $2.4 million and we can still have the Audubon and we can still study the land in the northern area to see what we can have, but in my opinion, I have made a decision and I am going to go with the first recommendation of that Task Force. I don't care what kind of straw vote we've got in here tonight.

Alderman Marr said he loved Mr. Molders comment that it is time to pony up to the table and make some decisions and I know that before I even ran for office in a special election this piece of land was being talked about, I remember on the Planning Commission, I remember people talking about it at our Rotary and one of my first meetings was a presentation on what the City did and this particular piece of land came up and what should be done with it. I struggle with whether it should be tabled or not because I think that most everyone who has talked to me, who has called me, I have been very clear that I absolutely 100% do not believe that the City should be a developer, there is a lot of appeal to me to get out of the business that is not our core competency, I don't think we have compensation programs around creating positions that encourage people to attract business to the city. I don't think you have proven even with the Task Force recommendation that we had people lined up to come develop or we would already have had things in front of us, I think there are a lot of weaknesses and I think we need to get out of that. I too have some questions on the contract itself, because I don't like that every out is on the side of the developer. I think Ms. Alexander's comments tonight that it's identified by Legacy Group, the time period is designated by the Legacy Group some of those things concern me. I don't want to kill a deal over that, but I'll tell you that it concerns me because I think it's a decisive issue that probably could be worked out. I also do not want to run off a developer, my very first question was is it time sensitive because I can tell you if I could pick a person that I would want to do this it would be the one that is standing here with the offer without question. What limited conservation I have had with him personally and with what my own due diligence and referencing of him as a developer in the region. So I really struggle with this motion to table because what I don't want is to be here on May 20th from 6:00 to 10:00 pm hearing the same comments again, I don't know that it will change that much and I don't know how willing we truly are to say are we willing to take a little bit less to get a little more preserve so that we get win, win. If it came down to the fact that nothing was going to change, then I don't support tabling it and if we think that we have some kind of negotiation that can take place, then I think

we should wait. So I guess I am trying to get some feel for, do we think that there is any possibility of further discussion on the contract or do you see it that way, do you see that there is a resolution on an amount and the terms.

Mr. Haynes, said we do not design by committee nor do we work deals out by committee, so I am not use to this, let me just tell you where I am coming from, I have an offer on the table to you right now for $5.2 million. My suggestion to you is that you take that as a basis in fact per acre for that property, if during our discussions and my submittal to the City through the PZD process that Audubon can work with me on taking part of that land more that just the designated wet land area and come up with a suitable site that they can use for their development and I am going to give back another amount of acreage then you reduce my basis back down that I pay you for that land by that amount, because this could go on. I have done a lot of work on this project in trying to find suitable environmental non-profit's to utilize the property, I have called the Audubon, I have emailed the Audubon, the Audubon comes back and I quote in this email " Audubon at this present time has more projects possible than we can ever possibility take on even in a strong economy" that comes from the National Audubon Society, you have nothing in writing that indicates that Audubon is going to build there, I fully believe they will build there, I want them there, I like Ken Smith, I like Don Nelms, I think it can happen, but it's not going to happen in 6 months, it's not going to happen in a year, it's going to take a long time. I'm not going to wait, neither is any reasonable businessman, so what I am trying to point out to you is I think the solution here is to put a basis per acre cost into this contract, if I buy all 289 acres for the property I am going to give you $5.2 million, if I work something out that your Planning Commission and your PZD group agrees is the best solution to try to get a nature center in there and I have to give up 30 more acres of my property then my price and my basis are reduced portionally that would be a suggestion.

Alderman Marr said how is that reflected in this contract.

Mr. Williams said he was negotiating this contract with Mr. Haynes attorney and we looked at this and this contract has gone through a lot of back and forth's to try to make it as fair as possible and as you are aware being on the Planning Commission often times the person that is asking for a rezoning doesn't own the property yet, they just have a right to buy it if the property is rezoned, so that is not so unusual. In this particular context Mr. Haynes doesn't actually have to fully go through with this contract and pay the $5.2 million unless his development is approved, and when it is approved by the Planning Commission or possibly the City Council which is our out, because if he proposes a development that is not satisfactory, that does not honor the wishes and desires of the Planning Commission or the City Council, well then he is not going to be approved. You have the power just like the Planning Commission has the power on that, especially if it is a Planned Zoning District, so he has a right and I think it is very reasonable for him to have a right to say unless my project gets approved this land is not worth anything to me, that's why he has the right to back out of it. I think at that point in time, let's assume as Mr. Haynes just said that after he has done his study on the wet land, after he has talked to whatever non-profit conservation group he wants, maybe it's looked at that there is more than 100 acres that's needed to be preserved, it doesn't mean that we can't go back as part of this contract and make an amendment to the contract just as he has suggested, if as long as you all would agree and he would agree at that point in time. I don't think you will ever get to that point though,

unless you agree to this contract, because he is not going to begin all the development process to get there.

Mr. Haynes said if you want to sell me the property for $5.2 million and I give you a minimum of 100 acres back to a non-profit that is the deal on the table, I think it's evidence by what I'm telling you and being heard and being listened to and probably quoted in the press as probably saying right now, my reputation is on the line, I do what I say I am going to do. I have just told you I want to work with Audubon or a non-profit to try to develop the piece of property so we can both co-habitat and have a great development.

Upon roll call the motion to table failed 2-6. Alderman Thiel and Jordan voting yes. Alderman Cook, Marr, Rhoads, Davis, Lucas and Reynolds voting no.

Alderman Thiel said there are some changes she would like to see in the contract, but since we didn't table this there is really no way, I don't see how we handle making amendments to a contract, I don't see how this Council can do that tonight, that's why my suggestion to table it so this could be worked out, we make suggestions for changes. they come back to us with the changes. I have a real concern about one of the sections in this, that's the one Fran eluded to. Can we make amendments to this.

Mr. Williams said I don't think you can make amendments to this particular contract, this is an offer and acceptance contract which has been signed both by the Mayor and Mr. Haynes, and so the contract is before you for acceptance or rejection at this point in time.

Mr. Haynes said that that's all it is, it's an O & A.

Alderman Thiel said she would just as soon see the consideration of this 100 acres of wet land and creek be removed from this contract.

Mr. Williams said if this contract is not acceptable to you, you will need to vote against the resolution.

Alderman Marr said how do we make sure that the proceeds go towards the things that we are talking about tonight as opposed to being in the general fund without any direction as to how it is going to be spent.

Mayor Coody said the decision is ultimately the Council's how this money is spent, but I am going to make a pitch to the Council that we spend $3 million of this money preserving creeks, streams, multi use trails, etc. It is going to be up to the Council on how we spend the money, but I feel certain that they will fall within the parameters that we came up with at the retreat.
Alderman Rhoads said the last thing you said is the most important piece and that is what we decided our priorities were a month and half ago, we all have them, I bring them to every meeting, I look at them, I refresh my memory. I think we should maintain the flexibility to use the proceeds as our priorities dictate otherwise we are going to have the same kind of conservation that we had tonight about you promised to do this and you promised to do that. I think we need the flexibility to spend the money on the priorities.

Upon roll call the motion to approve the resolution passed. 6-2. Alderman Cook, Marr, Rhoads, Davis, Lucas and Reynolds voting yes. Alderman Thiel and Jordan voting no.

Resolution 68-03 As Recorded In The Office Of The City Clerk.

Wilson Springs Business Park Survey: A resolution approving Contract Amendment #2 with McClelland Engineers, Inc. in the amount of $71,000.00 for engineering services relating to the sale of the Arkansas Business Technology Park (Wilson Springs Business Park).

Alderman Davis moved to approve the resolution. Alderman Reynolds seconded. Upon roll call the motion carried 7-0-1. Alderman Rhoads was absent during roll call.

Resolution 69-03 As Recorded In The Office Of The City Clerk.

WHM Land Investments, Inc. Condemnation: A resolution authorizing the City Attorney to seek condemnation and possession of certain lands owned by WHM Land Investment, Inc. to secure the necessary land on which to construct the West Fayetteville Fire Station. The resolution was tabled at the May 6, 2003 City Council meeting.

Alderman Davis moved to table the resolution until the next meeting. Alderman Thiel seconded. Upon roll call the motion to table passed 7-0-1. Alderman Rhoads was absent during roll call.

VAC 03-6.00 (Allen): An ordinance approving VAC03-6.00 to vacate and abandon a 43.7 sq. ft. portion of the utility easement located along the south property line of 2541 Litchfield Lane as depicted on the attached map and legal description.

Mr. Williams read the ordinance.

Alderman Davis asked what was the reason for the vacation.

Mr. Conklin stated that there is a small encroachment with ease of an existing structure, so in order to get clear title and clean that up they have to vacate just that 43.7 sq. ft.

Alderman Davis stated that this was passed by The Planning Commission 7-0.

Alderman Jordan moved to suspend the rules and go to the second reading. Alderman Davis seconded. Upon roll call the motion passed unanimously.

Mr. Williams read the ordinance.

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

Mr. Williams read the ordinance.

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

Ordinance 4481 As Recorded In The Office Of The City Clerk.

ANX 03-2.00 (Williams): An ordinance annexing into the City of Fayetteville Arkansas, an island containing approximately 0.57 acres located at the Northeast Corner of Mt. Comfort Road and Shiloh Drive.

Mr. Williams read the ordinance.

Alderman Jordan moved to suspend the rules and go to the second reading. Alderman Reynolds seconded. Upon roll call the motion passed.

Mr. Williams read the ordinance.

Alderman Jordan moved to suspend the rules and go to the third and final reading. Alderman Reynolds seconded. Upon roll call the motion passed.

Mr. Williams read the ordinance.

Alderman Davis gave an explanation of the location.

Mr. Conklin stated that the location is on Mt. Comfort where Porter Road goes under I-540 to Mt. Comfort onto Shiloh.

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

Ordinance 4482 As Recorded In The Office Of The City Clerk.

RZN 03-14.00 (Williams): An ordinance rezoning that property described in rezoning petition RZN 03-14.00 as submitted by James Williams for property located at the northeast corner of Mt. Comfort Road and Shiloh Drive, Fayetteville, Arkansas from R-2, Medium Density Residential and A-1, Agricultural to C-1, Neighborhood Commercial.

Mr. Williams read the ordinance.

The Ordinance Was Left On The First Reading.

RZN 03-15.00 (McCord): An ordinance rezoning that property described in the rezoning petition RZN 03-15.00 as submitted by James McCord on behalf of Meadows Enterprises, Inc. for property located south of Goff Farm Road and west of Dead Horse Mountain Road, Fayetteville, Arkansas containing approximately 67.47 acres from A-1, Agricultural to R-1, Low Density Residential.

Mr. Williams read the ordinance.

Mayor Coody asked Mr. Conklin if they would be using full cut off lights for the street lights.

Mr. Conklin stated that currently the type of street lights that they put in are not full cut off and are fairly low foot candle lights. You have seen them in some subdivisions and at St. Josephs Catholic School. They don't really shine up they do have a top on them but the sides are visible with light coming out. That is what we currently install with Ozark and Swepco.

Mayor Coody stated that the reason he was curious was because the mountain tops are being lighted from the valleys below and he finds that to be very wasteful of electricity.

Tim Conklin stated that looking at what some of the newer subdivisions have installed, their street lights have a very minimal type lighting 1 ½ -2' candles with light underneath.

Mr. McCord on behalf of Meadows Enterprises, Inc stated that this was approved by the Planning Commission upon the recommendation of City Planning staff. He also stated that they would comply with the subdivision regulations.

Alderman Davis moved to suspend the rules and go to the second reading. Alderman Jordan seconded. Upon roll call the motion passed unanimously.

Mr. Williams read the ordinance.

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

Mr. Williams read ordinance.

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

Ordinance 4483 As Recorded In The Office Of The City Clerk

Unified Development Code: An ordinance repealing Title XV, Unified Development Ordinance (originally adopted by Ordinance 4100 on June 16, 1998) of the Code of Fayetteville and adopting and enacting an amended Title XV Unified Development Code.

Mr. Williams read the ordinance.

Mayor Coody requested that Mr. Conklin explain this matter.

Mr. Conklin stated that the Ordinance Review Committee was unable to meet Monday so we do need to reschedule or pick another day, but basically the City of Fayetteville has taken over the codification of our codes and the Planning Division needed to be able to get this out so we took

over this project from the City Clerks Office. We spent two months to put it together and get it forward to this point. We took all our amendments to a tree ordinance, grading, and landscaping standards and codifying it in house to allow us to get code books out to our elected officials, our Planning Commissioners, developers, and staff. Right now we are dealing with code books that have numerous amendments having to add pages in and we will now be able to maintain it in-house. That is what we are trying to do.

Mr. Williams discussed the news publication with Mr. Conklin and asked if it has been published in the paper that there are copies in the City Clerk's office.

Mr. Conklin said he would have to check on that.

The Ordinance Was Left On The First Reading.

Banc of America Leasing Agreement Amendment 65: An ordinance authorizing the execution and delivery of a master equipment lease/purchase agreement having a nominal principal amount of not to exceed $5,000,000 for the purpose of financing the cost of acquiring certain solid waste vehicles, carts and other equipment; and prescribing other matters relating thereto.

Mr. Williams read the ordinance.

Mr. Davis stated that because of the particular amendment that we're under, a public hearing needs to be opened to take any comment. It's a formality and I suppose you all do that now.

Mayor Coody asked if any of the public would like to speak on this matter.

Mayor Coody closed the public hearing.

Alderman Jordan moved to suspend the rules and go to the second reading. Alderman Davis seconded. Upon roll call the motion passed.

Mr. Williams read the ordinance.

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

Mr. Williams read the ordinance.

Mr. Williams asked Mayor Coody if he would like an explanation about this $5,000,000 project.

Mayor Coody asked Mr. Davis to briefly explain.

Mr. Davis stated that this lease agreement will provide the City the opportunity to do is to lease some of our residential Solid Waste Collection Vehicles at an interest rate less than three. We can then take that cash, invest it and earn about four. So it gives us the opportunity to earn a

little bit of extra money in our Solid Waste Fund. Before we actually affect any debt with Bank of America, a separate resolution with the specific pieces of equipment will come back before City Council for specific approval.

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

Ordinance 4484 As Recorded In The Office Of The City Clerk

Dixie Development: An ordinance waiving the requirements of formal competitive bidding and approving a cost-share agreement with Dixie Development, Inc. in an amount not to exceed $54,600.00 for the widening of approximately 1,950 linear feet of the proposed Bob Younkin Drive from 28 feet to 36 feet.

Mr. Williams read the ordinance.

Alderman Jordan moved to suspend the rules and go to the second reading. Alderman Davis seconded. Upon roll call the motion passed 7-0-1. Alderman Rhoads abstained.

Mr. Williams read the ordinance.

Alderman Davis stated that a few weeks ago we had a public hearing in the Street Committee meeting and we had no one to oppose the widening of the street. E-mails that I have received on this have all been encouraging and they wanted to see the street also widened there has been no opposition that I am aware of.

Alderman Davis moved to suspend the rules and go to the third and final reading. Alderman Jordan seconded. Upon roll call the motion passed 7-0-1. Alderman Rhoads abstained.

Mr. Williams read the ordinance.

A representative from Dixie Development thanked the City Council Members and the Mayor.

Mayor Coody asked shall the ordinance pass. Upon roll call the ordinance passed 7-0-1. Alderman Rhoads abstained.

Ordinance 4485 As Recorded In The Office Of The City Clerk.

- Alderman Thiel requested to schedule an Ordinance Review Committee meeting after the next Agenda meeting.
- Alderman Jordan announced that there is a Telecom Sub-Committee Meeting May 7, 2003.
- Alderman Davis announced that they will be having a Ward 3 cleanup May 31, 2003.
- Alderman Reynolds stated that they had a Ward 1 cleanup and it was a great success. He also thanked Bob Rhoads for inviting them to the Special Olympics.

Meeting Adjourned at 11:10 PM

MINUTES OF A MEETING OF THE CITY COUNCIL JANUARY 07, 2003

A meeting of the Fayetteville City Council was held on January 07, 2003 at 6:30 p.m. in Room 219 of the City Administration Building located at 113 West Mountain Street, Fayetteville, Arkansas.

PRESENT: Alderman Reynolds, Thiel, Cook, Marr, Rhoads, Davis, Lucas, Jordan, Mayor Coody, City Attorney Kit Williams, City Clerk Heather Woodruff, Staff, Press, and Audience.

OATHS OF OFFICE

Alderman Reynolds, Alderman Cook, Alderman Rhoads, Alderman Lucas and City Attorney Kit Williams were sworn into office by Judge Rudy Moore.

NOMINATING COMMITTEE REPORT

Alderman Davis said the A & P Commission recommended that David McGeady be appointed to serve on the A & P Commission.

Alderman Davis moved to approve the nominating committee report. Alderman Marr seconded. Upon roll call the motion passed unanimously.

CONSENT

APPROVAL OF THE MINUTES: Special City Council meeting on November 25, 2002 and Special City Council meeting on November 26, 2002.

SALEM MEADOW: A resolution to accept the recommendation of the Fayetteville Parks and Recreation Advisory Board to accept money-in-lieu of land for Salem Meadows Subdivision.

RESOLUTION 01-03 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

BOARD OF HEALTH: A resolution to establish a City Board of Health and the Office of City Health Officer.

RESOLUTION 02-03 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

MUNICIPAL JUDGE AND COURT CLERK RETIREMENT FUND: A resolution to create a Board of Trustees to administer the Fayetteville Municipal Judge and Municipal Court Clerk Retirement Fund.

RESOLUTION 03-03 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

CEMS: A resolution approving a contract extension for ambulance services in the amount of $150,000 between the City of Fayetteville and Central Emergency Medical Services to operate and maintain an emergency ambulance service to serve the residents of Fayetteville in 2003.

RESOLUTION 04-03 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

Alderman Davis moved to approve the consent as read. Alderman Jordan seconded. Upon roll call the motion carried unanimously.

OLD BUSINESS

RZN 02-40.00: An ordinance approving RZN 02-40.00 as submitted by Jerry Kelso of Crafton , Tull & Associates on behalf of David Slone for property located behind 3195 N. College and east of Plainview Ave. The property is zoned A-1, Agricultural, C-2, Thoroughfare Commercial and R-1, Low Density Residential and contains approximately 8.84 acres. The request is to rezone to RMF-18, Medium Density, and Multi-Family Residential. The ordinance was left on the first reading at the December 17, 2002 meeting.

Tim Conklin, Planning Department said the applicant asked that this be postponed to the next City Council meeting.

Alderman Davis moved to table the resolution. Alderman Jordan seconded. Upon roll call the motion passed unanimously.

NEW BUSINESS

MT. SEQUOYAH: A resolution to encourage the negotiation of a contract between the City of Fayetteville and the Methodist Western Assembly Association for the purchase of about seventy acres of forested hillside known as Sequoyah Forest.

Dr. Pete Heinzelmann spoke about Mt. Sequoyah Woods. He said there are two main things that he thinks are important in relation to Mount Sequoyah Woods, the first is what do we consider to be of value to our community, number one is the people and second is our natural heritage. The growth of Fayetteville is causing us to lose our natural heritage. Dr. Heinzelmann spoke about the rapid change in Fayetteville since the 1970's, he said buildings can be built but forests can not. Mt. Sequoyah Woods is hidden but is a great asset to this city. He showed slides of the tract of land, the surrounding area, and described the wildlife present in the forest.

Dr. Pete Heinzelmann introduced people involved in the Fayetteville Natural Heritage Association. This private organization was started to save places like Mt. Sequoyah Woods.

Kay Duval, a citizen, spoke about the Parks & Recreation 10-year master plan 2002, 67½ percent of the almost 1200 people surveyed said they would like the City set aside areas strictly for land preservation void of any plans for development. This topped the list greater than any request for organized recreation areas. Mt. Sequoyah Woods fits this description perfectly.

Karen Crocker, a citizen talked about the permission granted to the Fayetteville Natural Heritage Association to study the site by the director of Mt. Sequoyah, we have had people from the State Forestry Commission and the Natural Heritage Commission on the site. There were over 50 varieties of shrubs, grasses, wildflowers, seven kinds of oaks, four kinds of hickories, and other types of trees. Reports will be coming from these agencies. The Archeological Survey will also be visiting the site. There are three major areas of the site: the upper slope, the middle area, and the lower slope. The lower area could be more like a park, it is accessible from many different roads and is handicapped accessible.

Walt Eilers, a citizen and a member of the Fayetteville Natural Heritage Association, is helping with the fundraising campaign. The organization is committed to raise $300,000 over the next 2-3 years from residents, local organizations, businesses, and the faith community in Fayetteville. We will also be identifying conservation grants and submitting these grants for the balance of the $650,000.

Morris Henry, a citizen, told of stories of patients of his who choose to live here in Fayetteville and commute over three hours to their jobs simply because they love to live here.

Gerald Bowman, a citizen that lives on Mt. Sequoyah, stressed the point that if the City of Fayetteville does not buy this land than someone else will. It will probably be bought by a developer.

Tim Caffrey, a citizen, talked about how Fayetteville is in the mountains. Fayetteville is different because it is a city in nature, in these 70 acres we have a natural zoological park, a natural botanical garden, and a chunk of the Ozarks. Public spaces are as essential to the vitality of the city as street and utility infrastructure. A city without public spaces is not a city at all.

Rob Leflar, political chair of the Ozark Headwaters Group of the Sierra Club, was there to speak on behalf of the Sierra Club. The Trees & Trails Task Force that was created two years ago has put green space protection much higher on the City's agenda than ever before. They have identified a number of areas that are important for protection. The Sierra Club supports the creation of a revenue stream to purchase green space. He read a resolution adopted by the Sierra Club.

Gary Lowery, a citizen, wants to see Mt. Sequoyah preserved but not at the expense of other projects of the City. He said the citizens of the City of Fayetteville originally purchased this property for the United Methodist Church Assembly and donated that land

and other benefits to the Assembly for its purpose in use to bring in people for retreats as a revenue generator. He thinks some of the old deed restrictions need to be reviewed by the City. He suggested that instead of Mayor Coody negotiating with this property that our land agent and city attorney do the negotiations. He said that you can not say that there is not a financial interest or financial gain by the Mayor. He asked the Mayor to recluse himself from this. He said the citizens of Fayetteville bought this property at $115,000 now they want $1.3 million for 70 acres and the original acres was 400.

Mayor Coody said he would be glad for the city attorney and land agent to negotiate this property. He said development takes up land values more than preservation.

Wade Colwell, the chair of the Fayetteville Parks & Recreation Advisory Board said the board met last night and a motion was made and passed in support of the acquisition of this land under the condition that this acquisition does not take away from existing programs that have been planned for the Parks budget at this point in time.

Bob Caulk, a citizen, said he and his wife support this resolution. They think it is very important to set aside the natural areas throughout the city for preservation for current and future residents to enjoy. They said it is very important that this be done as a public/private partnership.

Mayor Coody cuts off the people expressing their opinions and asks for a show of hands of who is opposed to the resolution being passed and who is in favor.

Mayor Coody asked Chief. Bosch about costs the Fire Department might incur this year.

Chief Bosch said Fire Station No. 7 is scheduled in this year's budget. He said the Mt. Sequoyah project won't impact the fire station project at all.

Mayor Coody asked Steve Davis about budgeting or taking any money out of any current or existing programs. What is the likelihood of that?

Steve Davis says that if the City is successful in selling some land than half of the purchase price would be covered by the sale of existing lands.

Mayor Coody said he signed an offer and acceptance from the University of Arkansas for Council approval for $370,000.00 for some acreage that we bought last year. I think that if the Trees and Trails Task Force will dedicate that $175,000.00 to this project then we are almost halfway there right now. We also have properties that we have collected that we can access and see what is marketable and I feel certain we can pick this up without any impact on our general fund or fire department budget. Mayor Coody asked that the city attorney and land agent negotiate with Mount Sequoyah.

Kit Williams, City Attorney said that really is not part of what the city attorney does. He has never negotiated for the City on anything like that, and Ed Connell our land agent has done that many times. I do not think that it would be proper for me to get involved in

that. My brothers and I own about 40 acres of other woods on Mount Sequoyah, so I do not think it would be appropriate for me to negotiate. You have staff that has years of experience in doing this kind of negotiation.

Alderman Davis said he is a member of the Mount Sequoyah Board of Directors so he will abstain from discussion on this.

Alderman Marr said 99% of the calls he had received were in support of this. Those that weren't had issues about budget funding. I don't think it is in our best interest for us to pass this up permanently.

Alderman Thiel said she supports this. She supports acquiring greenway easements instead of buying property out right. Right now the City does not have a Land Trust to hold land. The Methodist Assembly will retain use of this land whereas if is sold to an individual they will not have that use. I think there should be some value placed on that as far as a reduction in price. We are elected officials and we are here to represent the citizens of Fayetteville and to spend their money wisely. I hope we will do a better job of maintaining our green spaces. The Task Force was told that any parcel that we were interested in the city had a policy that it had to be appraised and the City could only give that appraised price. We are not following that policy; we are not having an appraisal done on this property. I don't know how we can use a policy historically for a long time and then abandon it. I am concerned about that.

Mr. Williams said his understanding is if this resolution is passed tonight an independent appraisal will be done.

Mayor Coody said they wanted to make sure the Council was on board before they did the appraisal otherwise they would be wasting their money. The danger in doing another appraisal from Mount Sequoyah's appraisal is if the appraisal comes in lower, then Mount Sequoyah could sell it to someone else. If it comes in higher then Mount Sequoyah could say they want the higher price for the property.

Alderman Jordan said he has received several calls in support and some against this resolution. People in my ward are concerned about fire protection. I support the preservation of green space. These decisions sometimes are hard. I have always been environmentally friendly but I have never put green space preservation above public safety. He spoke of a call he received from a citizen that said when someone's house catches on fire out here I would like for you to drive out and explain to their family how you preserve green space in Ward 1 while houses in Ward 4 burn. We as a city need to have long range strategic planning not only for fire stations but for green space preservation as well. We must come together and develop this.

Mayor Coody said it does not matter whether we buy this land or not the fire station is on track. If this resolution passes the contract will come back to the Council for final approval.

Alderman Marr moved to approve the resolution. Alderman Reynolds seconded. Upon roll call the motion passed 7-0-1. Alderman Davis abstained.

RESOLUTION 05-03 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

ELECTION OF VICE MAYOR

Mr. Williams explained the position of Vice Mayor.

Alderman Reynolds nominated Alderman Davis as Vice Mayor.

Upon roll call the nomination passed unanimously.

PARK IMPACT FEES: An ordinance accepting the Duncan Associates Impact Fee Study for Parks and for Ordinance 4199 to be amended as stipulated in the study.

Mr. Williams read the ordinance.

Alderman Thiel moved to suspend the rules and go to the second reading. Alderman Reynolds seconded. Upon roll call the motion passed unanimously.

Mr. Williams read the ordinance.

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

Mr. Williams read the ordinance.

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

ORDINANCE 4454 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

RZN 02-41.00: An ordinance approving RZN 02-41.00 as submitted by Norman Malden for property located at 1504 W. Cato Springs Road. The property is zoned C-1, Neighborhood Commercial and contains approximately 0.33 acres. The request is to rezone to R-2, Medium Density Residential.

Mr. Williams read the ordinance.

Alderman Jordan said he would like to allow the citizens from that area to have time to make comments.

Alderman Davis said he would like the staff to explain why they oppose this.

Tim Conklin, Planning said the applicant looked at acquiring two lots that is located within the C-1 zoning on Cato Springs Road. We had concerns about just zoning the property from commercial to residential for two lots for one apartment complex with commercial on the east and west sides. We thought that leaving it at C-1 would be more appropriate at this location. We made a recommendation; the Planning Commission disagreed with the staff's recommendation and voted to recommend approval to rezone this piece to multi-family. Staff is not changing its recommendation.

Alderman Thiel said when we visited this site, I was under the impression it was a larger parcel.

Mr. Conklin said it is two lots.

Alderman Reynolds said is this the lot that has the burned out on it.

Mr. Conklin said it is the lot that has the condemned house.

Norman Malden, a citizen, said both lots together are 100x150 foot. There is not much commercial that you are going to put on that size on Cato Springs Road. He said he has spoke to the neighbors that surround the lots and they do not have a problem with the rezoning.

Alderman Jordan moved to suspend the rules and go to the second reading. Alderman Davis seconded. Upon roll call the motion passed unanimously.

Mr. Williams read the ordinance.

THE ORDINANCE WAS LEFT ON THE SECOND READING.

LAND PURCHASE: A resolution approving the acquisition of three parcels of property, totaling 21.35 acres, in the area of Razorback Road and Dowell Cemetery for conservation and preservation.

Tim Conklin talked to the Council about this resolution and about the property. The Trees and Trails Task Force recommends this purchase as part of the tree ordinance lawsuit settlement. He thanked the Task Force and the citizens for their time on this.

Mary Alice Serafini, a citizen, spoke of her approval in purchasing this property.

Katana Bell, a citizen, said her husband and her own three acres to the west of the property. She asked what this land is going to be used for; her concern is parking and traffic. They are concerned about the impact on the wildlife. If there are going to be trails then that would invite people basically into her back yard so is the City going to provide a privacy fence.

Connie Edmonston, Parks & Recreation, said to date there has been no discussion as to developing that piece. If we do have interest in developing it there would be public meetings and discussion.

Alderman Rhoads asked what does conservation and preservation mean.

Ms. Edmonston said to keep it in its natural state.

Alderman Rhoads asked does that mean it will never be turned into a park.

Ms. Edmonston said it is a greenway; it can be a type of a park.

Alderman Marr said on Council Tour one of the questions we asked was if it would be developed for future trail use. I thought we would look at this for future development on trails.

Mr. Conklin said there was more criteria than just trails and trees. It ranked high for its visibility.

Alderman Thiel said there are trails in there now. Somewhere down the line there probably will be trails. Alderman Thiel said, would you rather have R-2 Multifamily or a park that is going to be preserved.

Ms. Bell said she likes the idea that it is going to be preserved; our concerns are parking and the wildlife.

Terry Easton, a citizen, said her property also adjoins the property. She does not think this property is suitable to become a major park. She stands fully in favor at this point in time of this purchase.

Alderman Rhoads said that is what his question was if we say conservation and preservation does that mean leave it just as it is or does it mean eventually put upgraded walking paths, parking, etc.

Ms. Easton said from a professional standpoint conservation and preservation means if you purchase a piece of property, you leave it alone. There is a well that should be covered and closed off if the City purchases this site. The historic aspect of that home site needs to be preserved.

Alderman Reynolds said how do we put this in a safe if we purchase it so that it will not be sold in the future.

Mr. Williams said if this land is purchased using the settlement proceeds rather than city money, the settlement did stipulate that this money was to purchase land to be preserved, therefore selling this would be in violation of the settlement. Mr. Williams said conversation easements can protect land from future sales.

Gary Lowery, a citizen, said Alderman Thiel's suggestion that we place the land that we value into a preservation and conversation trust is good. I suggest you set one up.

Alderman Jordan said he thinks this is a prime area for the city to preserve.

Melissa Terry, a citizen, read the part of the lawsuit settlement that addressed the criteria for land purchase with the lawsuit money. She stresses her support for buying this piece of property.

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

RESOLUTION 06-03 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

MEETING TIMES: A resolution amending the Rules of Order and Procedure for the Fayetteville Mayor/City Council Section A. City Council Meetings Subsection 1. Regular Meetings.

Alderman Marr said we need to take action to improve the effectiveness and timeliness of our meetings. One of his concerns is that a lot of citizens are not able to stay until all hours of the night just to hear discussion on an item. There are a lot of people that would not consider running for office because of the length of the meetings. He said that the agenda session needs to be used as a working session to ask questions on issues and become more effective. He thinks we need to keep our comments brief but he does not desire to use time limits on speakers. One concern on starting earlier is if people can get here because of their work schedules. He is trying to provide an environment where all citizens can participate but he does not feel the majority of average citizens can participate at midnight. He is proposed that the meeting time be pushed forward to 5:30 pm.

Alderman Davis said starting at 5:30 pm will limit the number of people that will be able to participate. We need to make better use of committees. A lot of people do not think this will slow down the time or make us get through earlier, they feel it will just extend the meetings an hour longer. I feel we need to keep people on the subject. We need to come to the Council meetings better prepared.

Alderman Thiel said she can not support changing the time to 5:30 pm because it would be difficult for the Staff and the Council to get here on time. We need to do something about the length of the meetings. The Chair needs to keep us on the subject.

Alderman Rhoads said he would support this. He said it might be easier if it was 6:00 pm.

Alderman Reynolds said some of the problem is the way the Council receives their mail. It seems we need to pick our mail up every day at the City to stay current.

Mayor Coody said we do have deadlines on the agenda's.

Alderman Jordan said he does not want to see time limits. He thinks that at the Agenda Session issues that are hot topics need to be moved to the front of the agenda.

There was a discussion as to if the City Council can be at the meetings on time if they are changed to 5:30 pm.

Alderman Davis said he cannot be at the meeting on time if it starts at 5:30 pm. He would have a hard time getting here before 6:30 pm.

Alderman Reynolds said the Staff by the time they get off would not have time to get dinner before the meeting.

Jeff Erf, a citizen, asked what the objective of resolution was, is it to shorten the meetings or have them finish earlier. City Council has a hard time keeping focused and keeping people on the topic.

Alderman Lucas said this would give people the perception that we are trying to do something about it.

Alderman Thiel said it is unfortunate that some people are allowed more time and then we are basically stopping discussion on others. Everyone should be given the same amount of time to speak.

Mayor Coody said the public is not the problem.

A citizen explained the system another city uses. They use a timer and give each speaker three minutes to speak, they fill out a card at the beginning of the meeting and state whether they are for or against the issue, then they have three minutes to speak on the topic.

Gary Lowery, a citizen said if you are going to have an order of procedure you need to stick to it no matter who is speaking.

Alderman Marr moved to amend the resolution to begin the meetings at 6:00 P.M. Alderman Reynolds seconded. Upon roll call the amendment to the resolution passed 7-1. Alderman Davis voting nay.

A resident said he does not think this is going to work. You don't need to limit the number of people that are going to speak, but the time they speak.

Alderman Davis said if the time is moved, there will be times that he will be late.

Alderman Rhoads said the Council needs to think about things they can change to make the meetings more effective.

Alderman Marr moved to approve the resolution. Alderman Rhoads seconded. Upon roll call the motion passed 5-3. Aldermen Thiel, Davis, and Jordan voting nay.

RESOLUTION 07-03 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

ALPINE HOLDINGS: An ordinance waiving the requirements of formal competitive bidding and authorizing the city to lease 20,000 square feet of warehouse space from Alpine Holdings for $4,000 per month to store solid waste residential carts until they can be distributed.

Mr. Williams read the ordinance.

Alderman Thiel asked how long are we going to have to store the carts.

Gary Dumas, Director of Operations said sometime toward the end of February depending on when the trucks arrive.

Alderman Marr asked if the truck provider can share in the cost because of their delay in not getting the trucks to us, was there a penalty in the contract for not meeting the contract terms. He asked that we check on a cost share on this additional expense

Mr. Boettcher, Water and Wastewater Director, said he did not think we can hold them accountable for the late delivery.

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

Mr. Williams read the ordinance.

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

Mr. Williams read the ordinance.

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

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

ORDINANCE 4455 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

The meeting adjourned at 9:05 pm.

FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

Date: May 12, 2003

To: The Mayor and Council

From: Hugh Earnest, Chief Administrative Officer
Chris Bosch, Fire Chief

Subject: Fire Station #7 Site.

Background
We have taken the liberty of attaching our earlier memo of April 4th as background for this discussion. Much has occurred in the interim. Mr. John Nock is in the process of purchasing the McIlroy property on Rupple. He, along with Mr. McIlroy, are concerned with the location of the parcel on Rupple that we have expressed an interest in. Accordingly, he is also in the process of purchasing an approximately 4 acre parcel immediately north of the McIlroy property.

Current Situation
Mr. Nock and city staff are in agreement that all parties' interests will be best met by a city acquisition of a 2 acre portion of the four acre site as shown on the attached map. Mr. Nock's plans for development on the acreage to the South will allow us a secondary point for ingress and egress. He has also agreed to sell the 2 acre site at the appraised price per acre that the city secured on the McIlroy property. That amount is $70,852/acre which is the amount shown on the referenced appraisal.

Recommendation
This opportunity for purchase best meets the needs and requirements of all parties. It offers the Fire Department a site that is of equal or superior value for our specific requirements. It is our recommendation that the city council authorize the staff to proceed with an offer and acceptance on this particular parcel. We expect that it will be possible to formally present the offer and acceptance on or before June 6th. We have also secured permission from the property owners to begin the necessary site evaluation prior to construction. That evaluation by city staff will begin on Wednesday, May 14th.

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

FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

Date: April 24, 2003

To: The Mayor and Council

From: Hugh Earnest, Chief Administrative Officer
Chris Bosch, Fire Chief (CB)

Subject: Property Acquisition for Fire Station #7

Background
Construction of a Fire Station on the West Side of I-540 has been listed as part of the City Capital Improvement Program and has been a priority for several years. City staff has been working to secure a suitable site for construction of the station. Fire Department personnel identified the Rupple Road and Wedington intersection as the preferred area for location of the station. Accordingly, we have been working with Mr. Hayden McIlroy and his agents in order to secure a site. Our focus has been on the three parcels shown on the map included with this memo. Appraisals were secured for the parcels and copies of those are also included. The appraisals on the two parcels on Wedington are valued at $217,734/acre (West parcel) and $178,723/acre (East parcel). The parcel on Rupple south of Wedington was appraised at $70,852/acre

Current Situation
We have been unable to negotiate a satisfactory price with Mr. McIlroy for either of the parcels on Wedington. The Rupple Road location is also, from a Fire Department planning perspective, a suitable location and is within an acceptable price range. Accordingly, On April 9, 2003 our Property Acquisition Office presented an Offer and Acceptance Contract for $158,000 to WHM Land Investments Inc. for the purchase of the 2.23 acre parcel on Rupple Road. The contract was presented with the understanding that it would expire at 5:00 p.m. on April 17, 2003. No response was received.

Recommendation
We are requesting that the City Council authorize the City Attorney to seek the power of Eminent Domain for the referenced parcel. We do remain hopeful that such an action will prove to be unnecessary and we intend to continue discussions with all parties. However, given the importance of securing an acceptable site, the authorization empowering the City Attorney to proceed is appropriate and necessary.

113 WEST MOUNTAIN 72701 479-521-7700
FAX 479-575-8267

May 13, 2003

To Whom It May Concern:

I, Darl Feagin, and my wife Betty, give our permission for City Staff including surveyors, architects, etc. to come onto our property to make their investigative assessments.

Darl Feagin

Darl Feagin

TENTATIVE AGENDA
FOR
CITY COUNCIL MEETING
MAY 20, 2003

A meeting of the Fayetteville City Council will be held on May 20, 2003 at 6:00 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 May 6, 2003 meeting minutes and approval of the January 7, 2003 meeting minutes.

2. **Arkansas Forestry Commission Grant:** A resolution authorizing the Fayetteville Parks and Recreation Division to apply for an Urban Forestry Assistance Grant in the amount of $20,000.00 through the Arkansas Forestry Commission.

3. **Citizen's Survey:** A resolution approving a proposal from the Survey Research Center (SCR) at the University of Arkansas in the amount of $23,639.64 with a not-to-exceed cost of $25,000.00 for the development and implementation of a Citizen Survey.

4. **Fayetteville Public Library as City Library:** A resolution establishing the Fayetteville Public Library as an independent Municipal Library; and ending the Interlocal Agreement for a joint City/County Library system with Washington County, Arkansas.

B. OLD BUSINESS:

1. **RZN 03-14.00 (Williams):** An ordinance rezoning that property described in rezoning petition RZN 03-14.00 as submitted by James Williams for property located at the northeast corner of Mt. Comfort Road and Shiloh Drive, Fayetteville, Arkansas from R-2, Medium Density Residential and A-1, Agricultural to C-1, Neighborhood Commercial.

2. **WHM Land Investments, Inc. Condemnation:** A resolution authorizing the City Attorney to seek condemnation and possession of certain lands owned by WHM Land Investment, Inc. to secure the necessary land on which to construct the West Fayetteville Fire Station.

3. **Unified Development Code:** An ordinance repealing Title XV, Unified Development Ordinance (originally adopted by Ordinance 4100 on June 16, 1998) of the Code of Fayetteville and adopting and enacting an amended Title XV Unified Development Code.

C. NEW BUSINESS:

1. **Fayetteville Public Facilities Board:** A resolution ratifying the resolution of the Fayetteville Public Facilities Board Authorizing the issuance of Fayetteville Public Facilities Board Multifamily Housing Revenue Bonds (Grandview Apartments Project), Series 2003 in a principal amount not to exceed $3,700,000.

2. **Mobile Vision:** A resolution awarding Bid #03-34 to Mobile Vision, Inc. in the amount of 66,884.00 for the purchase of 17 in-car video systems, and the upgrade of the 144X zoom camera.

3. **C-PZD 03-2.00 (Lowe's Home Center):** An ordinance establishing a Commercial Planned Zoning District titled C-PZD 03-2.00 located at the southwest corner of Finger Road and Highway 62; amending the official zoning map of the City of Fayetteville; and according to the Associated Development Project as approved by the Planning Commission.

4. **VAC 03-7.00 (Bencor):** An ordinance approving VAC 03-7.00 to vacate and abandon a drainage easement located on property at the northeast corner of Sixth Street and South School Avenue as depicted on the attached map and legal description.

5. **VAC 03-8.00 (Wallace):** An ordinance approving VAC 03-8.00 to vacate and abandon a drainage easement located on property at the Lot 98 of Covington Park as depicted on the attached map and legal description.

6. **OMI Contract:** A resolution approving amendment No. 9 to the OMI contract providing for a net increase in fiscal 2003 of $36,209.00 to purchase equipment and perform services implementing a modified sludge disposal plan for the last 6 months of 2003. **No budget adjustment is requested.**

7. **OMI Hamestring Lift Station:** A resolution to approve an out-of-scope amendment with Operations Management International, Inc. in the amount of $250,000.00 to upgrade the Hamestring Sewer Lift Station. **No budget adjustment is requested.**

8. **Carter Burgess Architects/Engineers, Inc.**: A resolution approving a contract with Carter Burgess Architects/Engineers, Inc. in the amount of $42,536.00 for design and engineering services associated with the Lake Fayetteville spillway pedestrian bridge project; and approving a ten percent project contingency.

9. **Hotel & Restaurant Bonds (Series 2003):** An ordinance authorizing the issuance and sale of not to exceed $6,620,000 of Hotel and Restaurant Gross Receipts Tax Refunding Bonds, Series, 2003, by the City of Fayetteville, Arkansas for the purpose of refunding the City's outstanding hotel and restaurant gross receipts tax bonds, Series 1998; authorizing the execution and delivery of a trust indenture pursuant to which the Series 2003 Bonds will be issued and secured; authorizing the execution and delivery of an official statement pursuant to which the Series 2003 bonds will be offered; authorizing the execution and delivery of a bond purchase agreement providing for the sale of the Series 2003 Bonds; authorizing the execution and delivery of an escrow deposit agreement providing for the redemption of the Series 1998 bonds; authorizing the execution and delivery of a continuing disclosure agreement; and prescribing other matters relating thereto.

D. INFORMATIONAL:

1. **Council Tour: May 19, 2003**

2. **Item # 9 Hotel & Restaurant Bonds (Series 2003):**
   Additional Information:
   The Preliminary Official Statement, Trust Indenture, Bond Purchase Agreement, Escrow Deposit Agreement, and Continuing Disclosure Agreement documents that are related to this Agenda Item are available for review in the City Clerk's Office.

STAFF REVIEW FORM - FINANCIAL OBLIGATION

Arkansas Forestry Commission Grant
A. 2. Page 1

X AGENDA REQUEST
CONTRACT REVIEW
XX GRANT REVIEW

For the Fayetteville City Council Meeting of: May 20, 2003

FROM:

Connie Edmonston	Parks and Recreation	Operations
Name	Division	Department

ACTION REQUIRED: Resolution to apply for grant funds from the Urban and Community Forestry Assistance Program through the Arkansas Forestry Commission.

COST TO CITY: * The chipper & box truck will be submitted in the 2004 Capital Plan.

75,000 - 2004*	$ -	
Cost of this request	Category/Project Budget	Program Category / Project Name
	$ -	
Account Number	Funds Used to Date	Program / Project Category Name
	$ -	
Project Number	Remaining Balance	Fund Name

BUDGET REVIEW: N/A Budgeted Item ____ Budget Adjustment Attached

Budget Manager — 4.29-03 Date

CONTRACT/GRANT/LEASE REVIEW:

Accounting Manager — 4/29/03 Date
Internal Auditor — 4/29/03 Date
City Attorney — 4/30/03 Date
Purchasing Manager — 5/1/03 Date

STAFF RECOMMENDATION: Approval of Resolution.

Division Head — 4-24-03 Date
Department Director — 5-2-03 Date
Finance & Internal Services Dir. — 5-2-03 Date
Chief Administrative Officer — 5-4-03 Date
Mayor — 5-5-03 Date

Received in Mayor's Office 5/1/03 Date

Cross Reference:

Previous Ord/Res#: ____

Orig. Contract Date: ____

Orig. Contract Number: ____

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

Arkansas Forestry Commission Grant
A. 2. Page 2

Staff Review Form - Page 2

Description Urban Forestry Grant Meeting Date May 20, 2003

Comments:

Reference Comments:

Budget Manager

Accounting Manager

City Attorney

Purchasing Manager

ADA Coordinator

Internal Auditor

Grants Coordinator

RESOLUTION NO. _____

A RESOLUTION AUTHORIZING THE FAYETTEVILLE PARKS AND RECREATION DIVISION TO APPLY FOR AN URBAN FORESTRY ASSISTANCE GRANT IN THE AMOUNT OF TWENTY THOUSAND DOLLARS ($20,000.00) THROUGH THE ARKANSAS FORESTRY COMMISSION.

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

Section 1. That the City Council of the City of Fayetteville, Arkansas hereby authorizes the Fayetteville Parks and Recreation Division to apply for an Urban Forestry Assistance Grant in the amount of Twenty Thousand Dollars ($20,000.00) through the Arkansas Forestry Commission.

PASSED and **APPROVED** this 20th day of May, 2003.

APPROVED:

By: _____
DAN COODY, Mayor

ATTEST:

By _____
SONDRA SMITH, City Clerk

DRAFT

FAYETTEVILLE
ARKANSAS

TO: Mayor Coody and City Council

THRU: Gary Dumas, Director of Operations

FROM: Connie Edmonston, Parks & Recreation Director C.E.

DATE: April 28, 2003

SUBJECT: Urban Forestry Grant

Background
The City of Fayetteville has received grant funds from the Urban and Community Forestry Assistance Program through the Arkansas Forestry Commission for the past four years for an assessment of the urban forestry management needs, tree inventory, and a comprehensive Urban Forestry Management Plan.

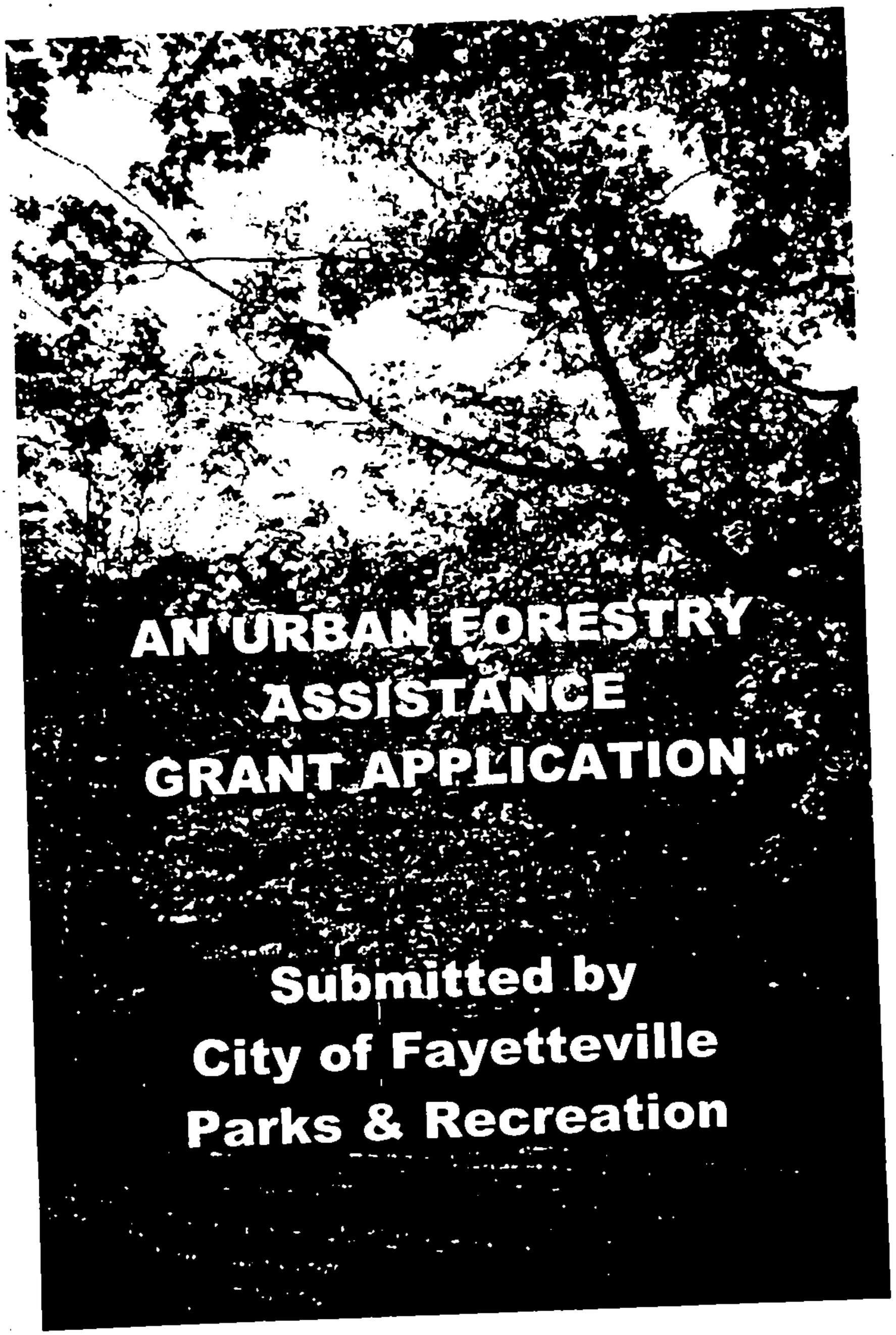
Current Status
Parks and Recreation is requesting funds from the Arkansas Forestry Commission to cover the cost of a new chipper with the City's match of the box truck with an aerial lift, plus the associated staff time required to administer the purchase of the equipment and to perform operational and safety training for the crews utilizing the equipment.

The truck and chipper will be shared by the Parks and Recreation Division and the Transportation Division. Parks and Recreation will utilize the equipment to implement a cyclic pruning schedule in parks and other city owned and maintained property. The Transportation Division will utilize the equipment while implementing a plan to perform Crown Cleaning and Crown Raising on trees within city rights-of-way. We are requesting the maximum grant of $20,000 with a $77,620 match of equipment and personnel. Costs of in-kind personnel totaling $1,620 and safety and operational training of $1,000 will be included in the annual operating budget. Matching funds of $75,000 will be provided in the 2004 Capital Improvements Plan. This is a reimbursable grant that requires a 50-50 match. This grant will assist the city in the continuation and further development of a concerted Urban Forestry Management Program. Grant award date is July 1, 2003. Projects are to be completed by May 31, 2004.

Recommendation
Parks and Recreation is requesting approval through a Resolution to apply for grant funding from the Urban and Community Forestry Assistance Program administered through the Arkansas Forestry Commission.

Attachment:
Grant Application

WEST MOUNTAIN 72701 479-444-3471
FAX 479-521-7714


AN URBAN FORESTRY
ASSISTANCE
GRANT APPLICATION
Submitted by
City of Fayetteville
Parks & Recreation

EVILLE

April 23, 2003

Doug Akin, Urban Forester
Arkansas Forestry Commission
3821 W Roosevelt Rd
Little Rock AR 72204

RE: Urban Forestry Grant Application 2003

Dear Mr. Akin:

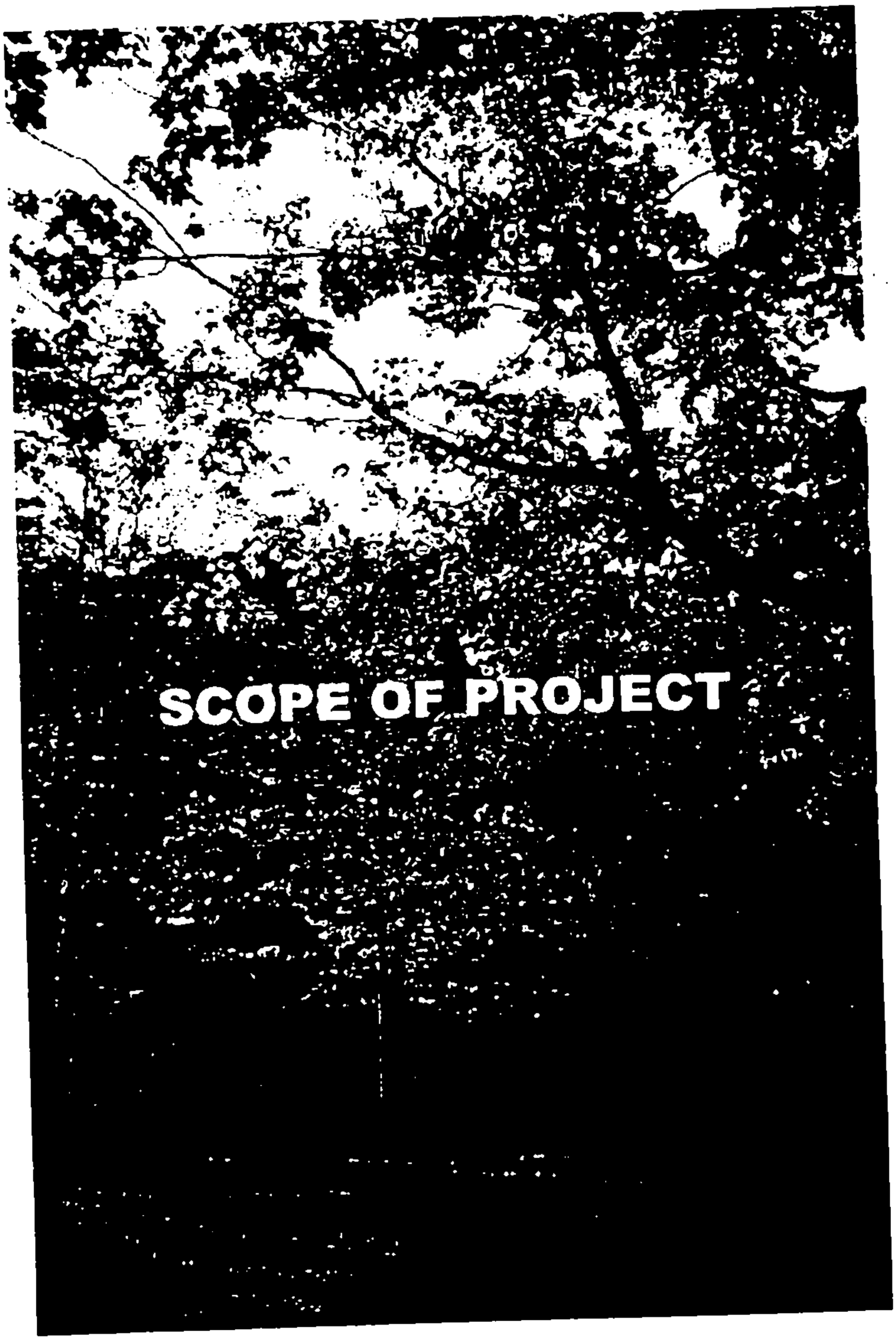
The City of Fayetteville is pleased to submit this request for your review. We look forward to your partnership in our efforts to continue and further develop a concerted Urban Forestry Management Program. As Mayor of the City of Fayetteville, I fully support the environmental and social values of a program which will protect current trees and aid in the renewal of the urban forest. It is our desire that this project will become a model in which other cities will duplicate and improve environmental quality.

Our proposal requests $20,000 in Urban Forestry Assistance funds. We envision building upon our collaborative success by developing our urban forestry management program with you.

Sincerely,

Mayor Dan Coody

113 WEST MOUNTAIN 72701 479-444-3471
FAX 479-521-7714


SCOPE OF PROJECT

"Each generation takes the Earth as trustees.
We ought to bequeath to posterity as many forests and orchards as we have exhausted and consumed."

J. Sterling Morton

Project Scope

Since the early 1990's, the City of Fayetteville has shown concern and commitment towards the urban forest. The creation of the Tree and Landscape Committee, the adoption of a Tree Protection and Preservation Ordinance and the allocation of $60,000 in Capital Improvement Funds towards the planting and maintenance of public trees has been achieved. Beginning in 1999, a concerted effort has been made to develop a comprehensive management plan for maintaining and improving our Urban Forest;

- In 1999, the city was awarded an Urban and Community Forestry Grant for an assessment of our city's urban forestry management needs. This was initiated to increase awareness of Urban Forestry and to encourage the City Council to support a comprehensive movement toward the development of the program.
- From this assessment came the impetus for a street tree inventory that began in 2001 and was completed in 2002. The city's street trees were inventoried along with planting spaces in certain neighborhoods of the city.
- Currently, a comprehensive Urban Forestry Management Plan is being developed based on the state of the trees inventoried and from the organizational and budgetary information gathered from the city's administration.
- The year 2003 brought about a reorganization of the city which placed the responsibility of Urban Forestry with the Parks and Recreation Division, a division that could support the program with additional staff time and a larger operational budget. This reorganization also brought the creation of a right-of-way program within the Transportation Division. They will assist in the pruning of trees within the roadway corridors.

Through review of the Urban Forestry Management Plan draft, currently under development by Burditt and Associates of Houston, Texas, the Management Plan anticipates staffing and equipment needs for in-house maintenance of street trees. As stated in the Plan, "To accomplish the task of maintaining a programmed maintenance pruning scheduled for city street trees, it is estimated that the following minimum personnel/resources will be required:

- A 3-man crew equipped with chipper trucks (one with attached aerial bucket), chipper, pole saws, and necessary safety and climbing gear. "

Our grant application request is for assistance in purchasing the above recommended equipment; a box truck with aerial lift and a pull behind chipper. It is our request that the Urban and Community Forestry grant cover the cost of a new chipper with the City's match covering the cost of the aerial lift, box truck and the

associated staff time required to administer the purchase of the equipment and to perform operational and safety training for the crews using the equipment.

The truck and chipper will be shared by the Parks and Recreation Division and the Transportation Division. The Parks and Recreation Division will utilize the equipment to implement a cyclic pruning schedule within the City's Parks and other city owned and maintained property. The Transportation Division will utilize the equipment while implementing a plan to perform Crown Cleaning and Crown Raising on trees within City rights-of-way.

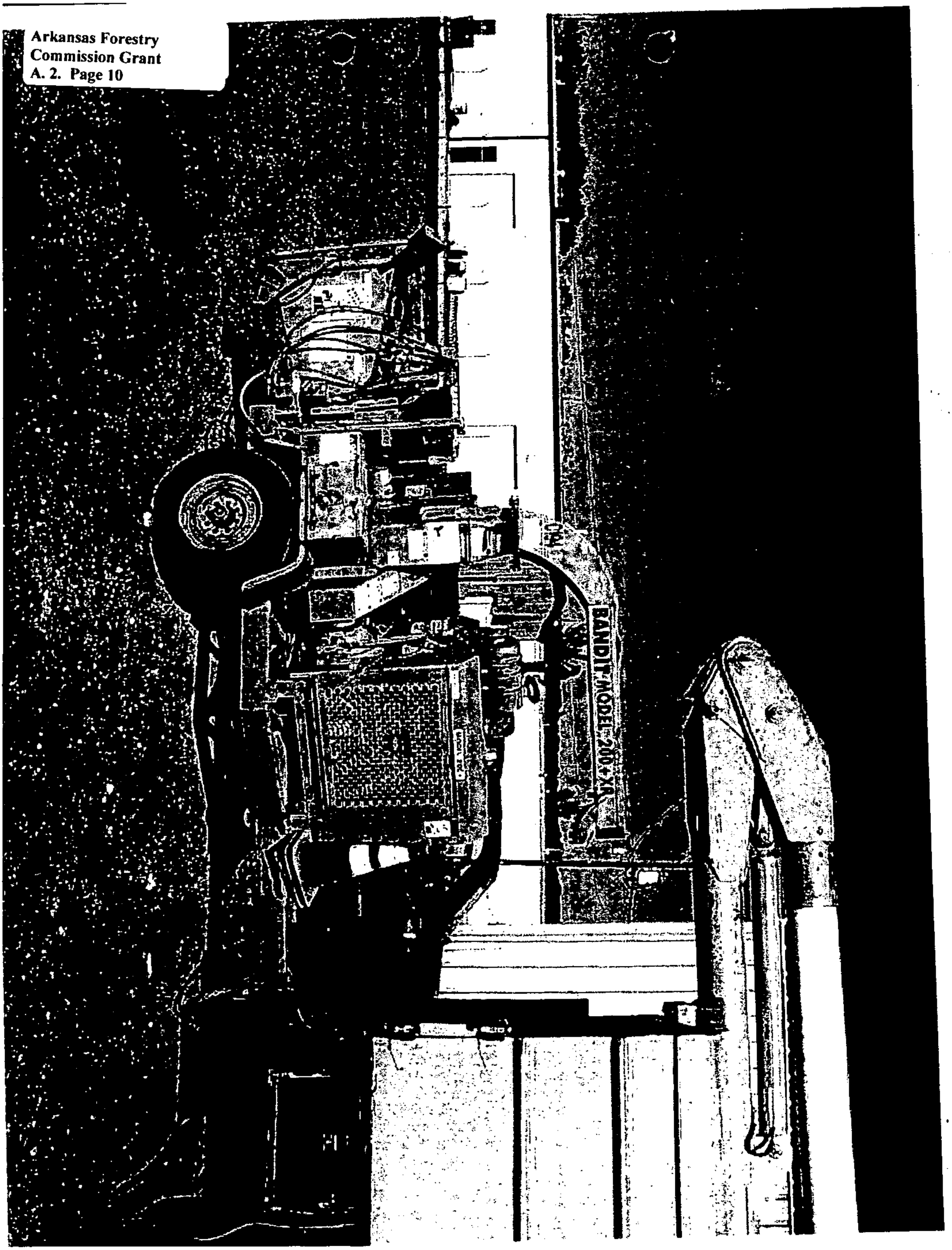
As part of this grant request, the City's Transportation Division has recently developed a pilot program to determine the efficiency of utilizing a chipper in their right-of-way program. A 4" throat chipper was rented for the crews to use. Prior to the use of the chipper, the crews took thirteen trips to the compost facility to dispose of approximately 2,600 lbs of branches. With the use of the chipper, only one trip to the compost facility was required to dispose of the same amount of material. With a larger diameter chipper, even more time could be saved when pruning or clearing larger branches. As well, a mobile chipper would save time at the compost facility where unchipped branches would have to be loaded by a separate crew into the tub grinder in order to reuse the branches as wood mulch. This efficiency in staff time, and the environmental benefit of producing wood mulch versus displacing branches into a land fill, would be greatly improved with the use of this equipment.

A compact, easily maneuverable 85 HP auto feed brush-chipper with 12-inch capacity is proposed to meet the demand of the pruning program. An appropriate hand fed chipper can save more than 200% in disposal running costs. By processing greenwaste on-site utilizing a wood chipper, a compacted product is produced which will reduce hauling costs while also generating an environmentally friendly matter which can be reutilized.

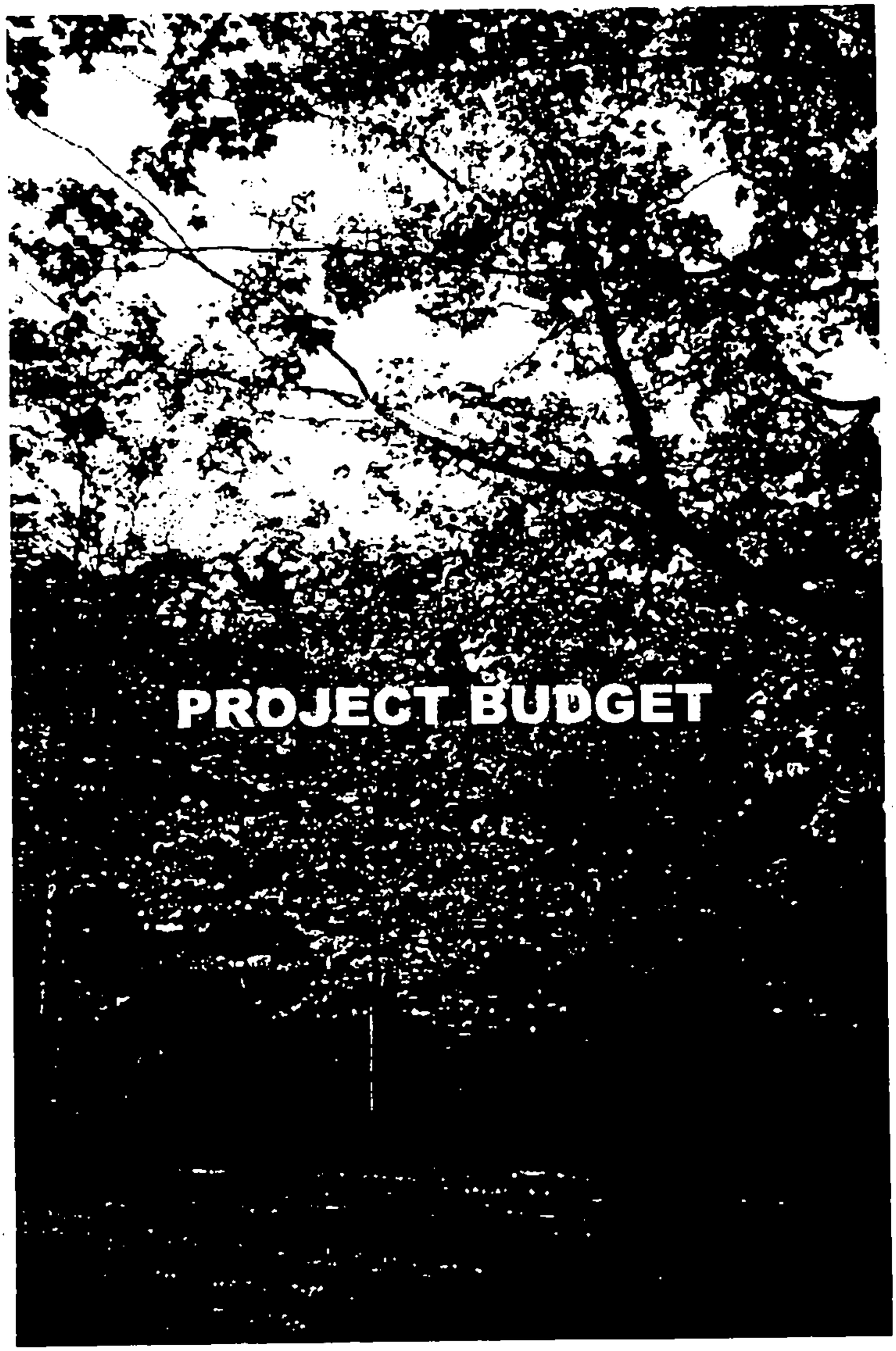
We are currently researching and preparing specifications for the purchase of an aerial lift truck with dump bin for use in conjunction with the chipper. The aerial lift will reach a working height of sixty feet. Many of the city's trees are of a size requiring a bucket truck as opposed to climbing which increases safety risks for employees.

Attached is the cost estimate for the equipment along with the amount of staff time necessary to enhance the pruning program. We would appreciate a favorable review of this grant request with the understanding that this request will assist in the continuation and further development of a concerted Urban Forestry Management Program.

Arkansas Forestry
Commission Grant
A. 2. Page 10

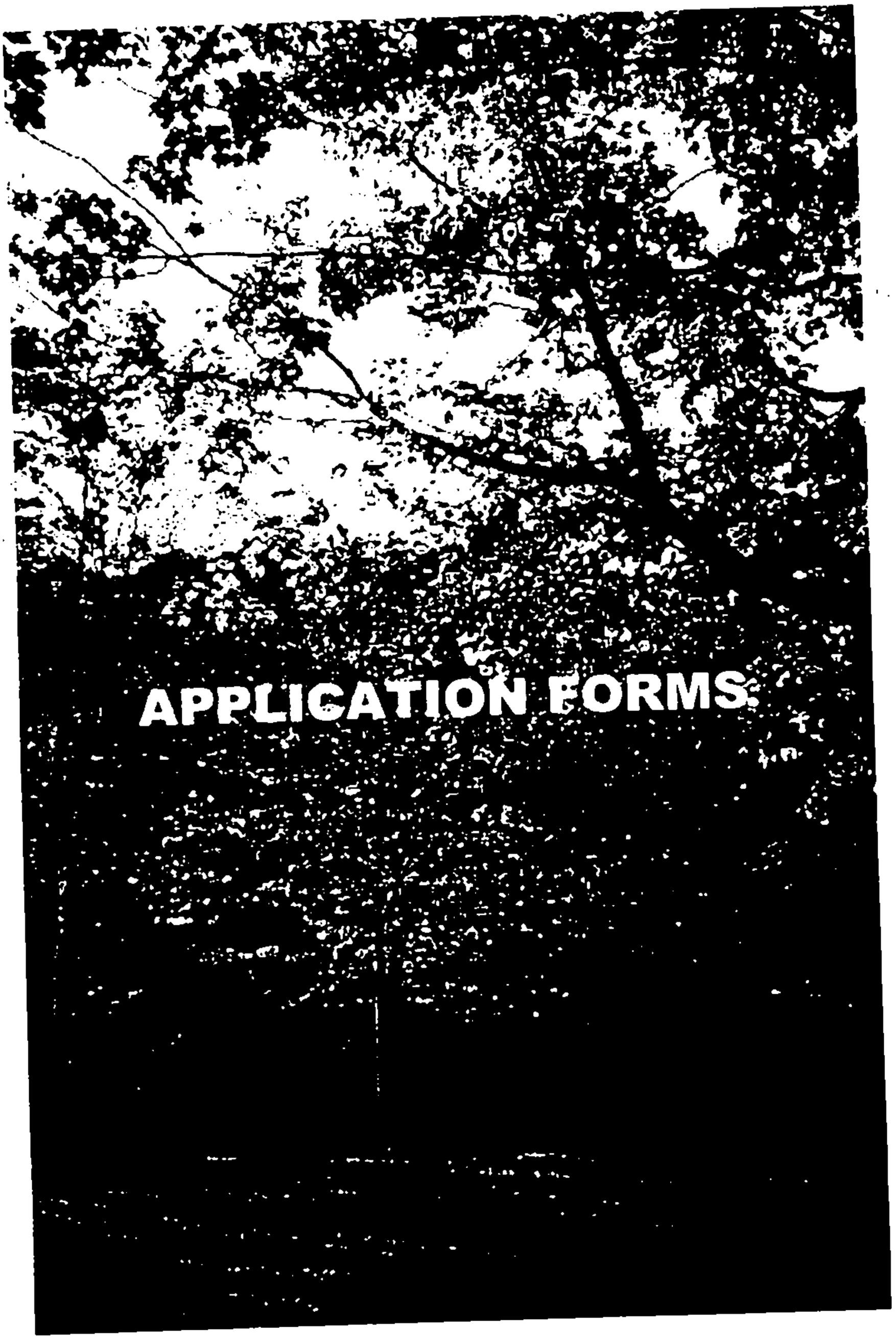


Arkansas Forestry
Commission Grant
A. 2. Page 12


PROJECT BUDGET

Urban and Community Forestry Assistance Grant
Proposal Budget

Categories	Federal Grant	Non-Federal Match		Total
		Cash	In-Kind	
Personnel (include fringe benefits)				
Salaries and Wages				
Administrative Personnel				
($27/hr @ 60 hrs)			$1,620.00	$1,620.00
Travel				
Equipment				
Box truck with aerial lift			$70,000.00	$70,000.00
12-inch capacity chipper	$20,000.00		$5,000.00	$25,000.00
Supplies				
Contractual				
Other				
Safety and operational training			$1,000.00	$1,000.00
TOTALS	**$20,000.00**		**$77,620.00**	**$97,620.00**


APPLICATION FORMS

APPLICATION FORM

ARKANSAS FORESTRY COMMISSION U&CFP GRANT

URBAN & COMMUNITY FORESTRY ASSISTANCE

Applicant: City of Fayetteville

Address: 113 W Mountain St

Fayetteville AR 72701

Contact person(s): Kim J. Hesse

Phone number(s): (479) 444-3469

Email address: khesse@ci.fayetteville.ar.us

Federal Employer ID No. (FEIN): 71-6018462

Brief description of project: Purchase of box truck and chipper to assist in the implementation of our Urban Forestry Management Program.

Project timetable: July 1, 2003-May 31, 2004

Federal Cost-Share requested: $ 20,000

Non-federal share:..... $ 77,620

Projected total expenditures: $ 97,620

*Any printed material will contain a statement to the effect that funding was made possible by a grant from the USFS and the AFC. Printed material must also contain a non-discrimination statement. A sign may be placed near grant projects for a period of 6 months.

(Signature of Authorized Contact Person) (Date

GOVERNOR'S BRIEFING FORM

STATE AGENCY: Arkansas Forestry Commission

Contact: Patti Erwin **Phone:** (479) 442-8627
APPLICANT: City of Fayetteville

Mayor: Dan Coody **County:** Washington

County Judge: Jerry Hunton

Elected Officials: Kit Williams, Attorney
Sondra Smith, Clerk
Aldermen:
Robert Reynolds,
Brenda Thiel,

Other Officials:
Kyle Cook, Don Marr,
Robert Rhoads, Bob Davis,
Shirley Lucas, Lioneld Jordan

Population (City): 58,047 **Population** (County): 162,023

If not government agency identify members and/or agents of organization:

Legislators (State Senator and Representatives): Senator, Sue Madison
State Representative, Jan Judy

Control Number: (assigned by the AFC)

Project Type: (assigned by the AFC)

Scope of Project: (i.e. population served, purpose, economic impact, etc.)

Purchase of box truck and chipper to assist in the implementation of an Urban Forestry Management Program for the City of Fayetteville, Arkansas.

Local Funds: $77,620

Federal Funds: $20,000

Estimated Total: $97,620

Project Timetable (dates):

Start of project:	July 1, 2003
Advertisement for bids:	January 15, 2004
Project completed:	May 31, 2004

Other:

APPLICATION FOR FEDERAL ASSISTANCE

2. DATE SUBMITTED	Applicant Identifier
April 26, 2003	City of Fayetteville

1. TYPE OF SUBMISSION:		3. DATE RECEIVED BY STATE	State Application Identifier
Application ☐ Construction ☑ Non-Construction	Preapplication ☐ Construction ☐ Non-Construction	4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
City of Fayetteville	Municipality
Address *(give city, county, State, and zip code):*	Name and telephone number of person to be contacted on matters involving this application *(give area code)*
113 W. Mountain St., Fayetteville, AR 72701	Kim J. Hesse (479) 444-3469

6. EMPLOYER IDENTIFICATION NUMBER *(EIN):*
7 1 – 6 0 1 8 4 6 2

7. TYPE OF APPLICANT: *(enter appropriate letter in box)* C

A. State
B. County
C. Municipal
D. Township
E. Interstate
F. Intermunicipal
G. Special District
H. Independent School Dist.
I. State Controlled Institution of Higher Learning
J. Private University
K. Indian Tribe
L. Individual
M. Profit Organization
N. Other (Specify) _____

8. TYPE OF APPLICATION:
☑ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es) ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other*(specify):*

_____

9. NAME OF FEDERAL AGENCY:
USDA Forest Service

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER:
☐☐ – ☐☐☐

TITLE:

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:
Box truck and chipper purchase for Urban Forestry Management Program

12. AREAS AFFECTED BY PROJECT *(Cities, Counties, States, etc.):*
Fayetteville City Limits

13. PROPOSED PROJECT

Start Date	Ending Date
7/1/03	5/31/04

14. CONGRESSIONAL DISTRICTS OF:

a. Applicant	b. Project
3rd Congressional District	Same

15. ESTIMATED FUNDING:

a. Federal	$ 20,000.00
b. Applicant	$ 77,620.00
c. State	$ .00
d. Local	$ .00
e. Other	$ .00
f. Program Income	$ .00
g. TOTAL	$ 97,620.00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON:

DATE _____

b. No. ☐ PROGRAM IS NOT COVERED BY E. O. 12372
☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?
☐ Yes If "Yes," attach an explanation. ☑ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED.

a. Type Name of Authorized Representative	b. Title	c. Telephone Number
Dan Coody	Mayor	(479) 575-8330
d. Signature of Authorized Representative		e. Date Signed

INSTRUCTIONS FOR THE SF-424

Public reporting burden for this collection of information is estimated to average 45 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0043), Washington, DC 20503.

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item:	Entry:
1.	Self-explanatory.
2.	Date application submitted to Federal agency (or State if applicable) and applicant's control number (if applicable).
3.	State use only (if applicable).
4.	If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5.	Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6.	Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7.	Enter the appropriate letter in the space provided.
8.	Check appropriate box and enter appropriate letter(s) in the space(s) provided: -- "New" means a new assistance award. -- "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date. -- "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9.	Name of Federal agency from which assistance is being requested with this application.
10.	Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.
11.	Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

Item:	Entry:
12.	List only the largest political entities affected (e.g., State, counties, cities).
13.	Self-explanatory.
14.	List the applicant's Congressional District and any District(s) affected by the program or project.
15.	Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16.	Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17.	This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18.	To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

Arkansas Forestry Commission Grant
A. 2. Page 21

BUDGET INFORMATION - Non-Construction Programs

OMB Approval No. 0348-0044

SECTION A - BUDGET SUMMARY

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1. U&CF	10-664	$	$	$ 20,000.00	$ 77,620.00	$ 97,620.00
2.						0.00
3.						0.00
4.						0.00
5. Totals		$ 0.00	$ 0.00	$ 20,000.00	$ 77,620.00	$ 97,620.00

SECTION B - BUDGET CATEGORIES

6. Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY (1)	(2)	(3)	(4)	Total (5)
a. Personnel	$	$	$	$ 1,620.00	$ 1,620.00
b. Fringe Benefits					0.00
c. Travel					0.00
d. Equipment			20,000.00	75,000.00	95,000.00
e. Supplies					0.00
f. Contractual					0.00
g. Construction					0.00
h. Other				1,000.00	1,000.00
i. Total Direct Charges *(sum of 6a-6h)*	0.00	0.00	20,000.00	77,620.00	97,620.00
j. Indirect Charges					0.00
k. TOTALS *(sum of 6i and 6j)*	$ 0.00	$ 0.00	$ 20,000.00	$ 77,620.00	$ 97,620.00
7. Program Income	$	$	$	$	$ 0.00

Arkansas Forestry Commission Grant A. 2. Page 23

SECTION C - NON-FEDERAL RESOURCES

(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS
8. Urban & Community Forestry Assistance	$ 77,620.00	$	$	$ 77,620.00
9.				0.00
10.				0.00
11.				0.00
12. TOTAL *(sum of lines 8-11)*	$ 77,620.00	$ 0.00	$ 0.00	$ 77,620.00

SECTION D - FORECASTED CASH NEEDS

	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. Federal	$ 0.00	$	$	$	$
14. Non-Federal	0.00				
15. TOTAL *(sum of lines 13 and 14)*	$ 0.00	$ 0.00	$ 0.00	$ 0.00	$ 0.00

SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT

(a) Grant Program	FUTURE FUNDING PERIODS (Years)			
	(b) First	(c) Second	(d) Third	(e) Fourth
16.Urban & Community Forestry Assistance	$	$	$	$
17.				
18.				
19.				
20. TOTAL *(sum of lines 16-19)*	$ 0.00	$ 0.00	$ 0.00	$ 0.00

SECTION F - OTHER BUDGET INFORMATION

21. Direct Charges:	22. Indirect Charges:
23. Remarks:	

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INSTRUCTIONS FOR THE SF-424A

Public reporting burden for this collection of information is estimated to average 180 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0044), Washington, DC 20503.

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.

General Instructions

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A, B, C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A, B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a-k of Section B.

Section A. Budget Summary Lines 1-4 Columns (a) and (b)

For applications pertaining to a *single* Federal grant program (Federal Domestic Assistance Catalog number) and *not requiring* a functional or activity breakdown, enter on Line 1 under Column (a) the Catalog program title and the Catalog number in Column (b).

For applications pertaining to a *single* program *requiring* budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the Catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the Catalog program title on each line in *Column* (a) and the respective Catalog number on each line in Column (b).

For applications pertaining to *multiple* programs where one or more programs *require* a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

Lines 1-4, Columns (c) through (g)

For new applications, leave Column (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

For continuing grant program applications, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

For supplemental grants and changes to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

Line 5 - Show the totals for all columns used.

Section B Budget Categories

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1-4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

Line 6a-i - Show the totals of Lines 6a to 6h in each column.

Line 6j - Show the amount of indirect cost.

Line 6k - Enter the total of amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)-(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

Line 7 - Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount. Show under the program

INSTRUCTIONS FOR THE SF-424A (continued)

narrative statement the nature and source of income. The estimated amount of program income may be considered by the Federal grantor agency in determining the total amount of the grant.

Section C. Non-Federal Resources

Lines 8-11 Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.

Column (a) - Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

Column (b) - Enter the contribution to be made by the applicant.

Column (c) - Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.

Column (d) - Enter the amount of cash and in-kind contributions to be made from all other sources.

Column (e) - Enter totals of Columns (b), (c), and (d).

Line 12 - Enter the total for each of Columns (b)-(e). The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.

Section D. Forecasted Cash Needs

Line 13 - Enter the amount of cash needed by quarter from the grantor agency during the first year.

Line 14 - Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15 - Enter the totals of amounts on Lines 13 and 14.

Section E. Budget Estimates of Federal Funds Needed for Balance of the Project

Lines 16-19 - Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section need not be completed for revisions (amendments, changes, or supplements) to funds for the current year of existing grants.

If more than four lines are needed to list the program titles, submit additional schedules as necessary.

Line 20 - Enter the total for each of the Columns (b)-(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

Section F. Other Budget Information

Line 21 - Use this space to explain amounts for individual direct object class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

Line 22 - Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Line 23 - Provide any other explanations or comments deemed necessary.

OMB Approval No. 0348-0040

ASSURANCES - NON-CONSTRUCTION PROGRAMS

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0040), Washington, DC 20503.

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.

NOTE: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant, I certify that the applicant:

1. Has the legal authority to apply for Federal assistance and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project cost) to ensure proper planning, management and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States and, if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§4728-4763) relating to prescribed standards for merit systems for programs funded under one of the 19 statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. §794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§290 dd-3 and 290 ee 3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and, (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally-assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply, as applicable, with provisions of the Hatch Act (5 U.S.C. §§1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§276a to 276a-7), the Copeland Act (40 U.S.C. §276c and 18 U.S.C. §874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§327-333), regarding labor standards for federally-assisted construction subagreements.

10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§1451 et seq.); (f) conformity of Federal actions to State (Clean Air) Implementation Plans under Section 176(c) of the Clean Air Act of 1955, as amended (42 U.S.C. §§7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended (P.L. 93-523); and, (h) protection of endangered species under the Endangered Species Act of 1973, as amended (P.L. 93-205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. §470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. §§469a-1 et seq.).

14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. §§2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§4801 et seq.) which prohibits the use of lead-based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act Amendments of 1996 and OMB Circular No. A-133, "Audits of States, Local Governments, and Non-Profit Organizations."

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations, and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE Mayor
APPLICANT ORGANIZATION City of Fayetteville	DATE SUBMITTED April 26, 2003

Certification Regarding Debarment, Suspension, and Other Responsibility Matters - Primary Covered Transactions

This certification is required by the regulations implementing Executive Order 12549, Debarment and Suspension, 7 CFR Part 3017, Section 3017.510, Participants' responsibilities. The regulations were published as Part IV of the January 30, 1989 Federal Register (pages 4722-4733). Copies of the regulations may be obtained by contacting the Department of Agriculture agency offering the proposed covered transaction.

(BEFORE COMPLETING CERTIFICATION, READ INSTRUCTIONS ON REVERSE)

(1) The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:

(a) are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) have not within a three-year period preceding this proposal been convicted of or had a civil judgement rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

(2) Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

City of Fayetteville

Organization Name — PR/Award Number or Project Name

Mayor Dan Coody

Name(s) and Title(s) of Authorized Representative(s)

Signature(s) — Date

Instructions for Certification

1. By signing and submitting this form, the prospective primary participant is providing the certification set out on the reverse side in accordance with these instructions.

2. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out on this form. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

3. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

4. The prospective primary participant shall provide immediate written notice to the department or agency to whom this proposal is submitted if at any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

5. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the department or agency to which this proposal is being submitted for assistance in obtaining a copy of those regulations.

6. The prospective primary participant agrees by submitting this form that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

7. The prospective primary participant further agrees by submitting this form that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transactions," provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

8. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.

9. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

10. Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

UNITED STATES DEPARTMENT OF AGRICULTURE

CERTIFICATION REGARDING
DRUG-FREE WORKPLACE REQUIREMENTS (GRANTS)
ALTERNATIVE I - FOR GRANTEES OTHER THAN INDIVIDUALS

This certification is required by the regulations implementing Sections 5151-5160 of the Drug-Free Workplace Act of 1988 (Pub. L. 100-690, Title V, Subtitle D; 41 U.S.C. 701 *et seq.*), 7 CFR Part 3017, Subpart F, Section 3017.600, Purpose. The January 31, 1989, regulations were amended and published as Part II of the May 25, 1990 **Federal Register** (pages 21681-21691). Copies of the regulations may be obtained by contacting the Department of Agriculture agency offering the grant.

(Before completing Certification, read instructions on page 2)

Alternative I

A. The grantee certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an ongoing drug-free awareness program to inform employees about --

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will --

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency in writing, within ten calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted –

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

B. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address, city, county, State, zip code)

Fayetteville City Limits

Fayetteville, Arkansas 72701

Washington County

Check ☐ if there are workplaces on file that are not identified here.

City of Fayetteville
Organization Name

Award Number or Project Name

Dan Coody, Mayor
Name and Title of Authorized Representative

Signature Date

INSTRUCTIONS FOR CERTIFICATION

1. By signing and submitting this form, the grantee is providing the certification set out on pages 1 and 2.

2. The certification set out on pages 1 and 2 is a material representation of fact upon which reliance is placed when the agency awards the grant. If it is later determined that the grantee knowingly rendered a false certification, or otherwise violates the requirements of the Drug-Free Workplace Act, the agency, in addition to any other remedies available to the Federal Government, may take action authorized under the Drug-Free Workplace Act.

3. Workplaces under grants, for grantees other than individuals, need not be identified on the certification. If known, they may be identified in the grant application. If the grantee does not identify the workplaces at the time of application, or upon award, if there is no application, the grantee must keep the identity of the workplace(s) on file in its office and make the information available for Federal inspection. Failure to identify all known workplaces constitutes a violation of the grantee's drug-free workplace requirements.

4. Workplace identifications must include the actual address of buildings (or parts of buildings) or other sites where work under the grant takes place. Categorical descriptions may be used (e.g., all vehicles of a mass transit authority or State highway department while in operation, State employees in each local unemployment office, performers in concert halls or radio studios).

5. If the workplace identified to the agency changes during the performance of the grant, the grantee shall inform the agency of the change(s), if it previously identified the workplaces in question (see paragraph three).

6. Definitions of terms in the Nonprocurement Suspension and Debarment common rule and Drug-Free Workplace common rule apply to this certification. Grantees' attention is called, in particular, to the following definitions from these rules:

   "Controlled" substance means a controlled substance in Schedules I through V of the Controlled Substances Act (21 U.S.C. 812) and as further defined by regulation (21 CFR 1308.11 through 1308.15);

   "Conviction" means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes;

   "Criminal drug statute" means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, use, or possession of any controlled substance;

   "Employee" means the employee of a grantee directly engaged in the performance of work under a grant, including: (i) all "direct charge" employees; (ii) all "indirect charge" employees unless their impact or involvement is insignificant to the performance of the grant; and, (iii) temporary personnel and consultants who are directly engaged in the performance of work under the grant and who are on the grantee's payroll. This definition does not include workers not on the payroll of the grantee (e.g., volunteers, even if used to meet a matching requirement; consultants or independent contractors not on the grantee's payroll; or employees of subrecipients or subcontractors in covered workplaces)

UNITED STATES DEPARTMENT OF AGRICULTURE
COOPERATIVE STATE RESEARCH, EDUCATION, AND EXTENSION SERVICE

NOTICE TO APPLICANTS - CERTIFICATION/DISCLOSURE REQUIREMENTS RELATED TO LOBBYING

Section 319 of Public Law 101-121 (31 U.S.C.), signed into law on October 23, 1989, imposes new prohibitions and requirements for disclosure and certification related to lobbying on recipients of Federal contracts, grants, cooperative agreements, and loans. Certain provisions of the law also apply to Federal commitments for loan guarantees and insurance; however, it provides exemptions for Indian tribes and tribal organizations.

Effective December 23, 1989, current and prospective recipients (and their subtier contractors and/or subgrantees) will be prohibited from using Federal funds, other than profits from a Federal contract, for lobbying Congress or any Federal agency in connection with the award of a particular contract, grant, cooperative agreement or loan. In addition, for each award action in excess of $100,000 (or $150,000 for loans) on or after December 23, 1989, the law requires recipients and their subtier contractors and/or subgrantees to: (1) certify that they have neither used nor will use any appropriated funds for payment to lobbyists; (2) disclose the name, address, payment details, and purpose of any agreements with lobbyists whom recipients or their subtier contractors or subgrantees will pay with profits or **nonappropriated** funds on or after December 23, 1989; and (3) file quarterly updates about the use of lobbyists if materials changes occur in their use. The law establishes civil penalties for noncompliance.

If you are a current recipient of funding or have an application, proposal, or bid pending as of December 23, 1989, the law will have the following immediate consequences for you:

- You are prohibited from using appropriated funds (other than profits from Federal contracts) on or after December 23, 1989, for lobbying Congress or any Federal agency in connection with a particular contract, grant, cooperative agreement, or loan;

- You are required to execute the attached certification at the time of submission of an application or before any action in excess of $100,000 is awarded; and

- You will be required to complete the lobbying disclosure form if the disclosure requirements apply to you.

Regulations implementing Section 319 of Public Law 101-121 have been published as an Interim Final Rule by the Office of Management and Budget as Part III of the February 26, 1990, **Federal Register** (pages 6736-6746).

UNITED STATES DEPARTMENT OF AGRICULTURE

CERTIFICATION REGARDING LOBBYING - CONTRACTS, GRANTS, LOANS AND COOPERATIVE AGREEMENTS

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan or cooperative agreement;

(2) . If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

City of Fayetteville
Organization Name

Award Number or Project Name

Mayor Dan Coody
Name and Title of Authorized Representative

Signature

Date

STAFF REVIEW FORM

X AGENDA REQUEST
____ CONTRACT REVIEW
____ GRANT REVIEW

For the Fayetteville City Council Meeting of: May 20, 2003

FROM:

Kevin Springer	Budget & Research	Finance & Internal Services
Name	Division	Department

ACTION REQUIRED: Approval of a proposal from the Survey Research Center (SRC) at the University of Arkansas for the development and implementation of a Citizen's Survey. The cost of the proposal is $23,639.64 with a not-to-exceed cost of $25,000.00.

COST TO CITY:

$ 25,000.00	$ 34,100	Services and Charges
Cost of this request	Category/Project Budget	Program Category / Project Name
1010.1330.5315.00	$ 1,454	Budget & Research
Account Number	Funds Used to Date	Program / Project Category Name
	$ 32,646	General
Project Number	Remaining Balance	Fund Name

BUDGET REVIEW: X Budgeted Item ____ Budget Adjustment Attached

Budget Manager — 4-30-03 Date

CONTRACT/GRANT/LEASE REVIEW:

Tammy Ogilvie for Marsha Fortenberry — 5/2/03 Date — Accounting Manager

Nancy Smith — 5/2/03 Date — Internal Auditor

D. Jeff White — 5/2/03 Date — City Attorney

P Ulici — 5/2/03 Date — Purchasing Manager

STAFF RECOMMENDATION: Staff recommends approval of the proposal from SRC. 5/2/03 P.H.

K. Springer — Date — Division Head

Dept — 5-2-03 Date — Department Director

Finance — 5-2-03 Date — Finance & Internal Services Dir.

Hugh Form — 5-6-03 Date — Chief Administrative Officer

Dan Coody — 5/6/03 Date — Mayor

Cross Reference

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

Previous Ord/Res#: _____

Orig. Contract Date _____

Orig. Contract Number _____

Citizen's Survey
A. 3. Page 2

Staff Review Form - Page 2

Description Citizen's Survey - UofA Survey Research Center Meeting Date May 20, 2003

Comments: Reference Comments:

Budget Manager

Accounting Manager

City Attorney

Purchasing Manager

Internal Auditor

Finance & Internal Services Director

Chief Administrative Officer

RESOLUTION NO. _____

A RESOLUTION APPROVING A PROPOSAL FROM THE SURVEY RESEARCH CENTER (SRC) AT THE UNIVERSITY OF ARKANSAS IN THE AMOUNT OF TWENTY-THREE THOUSAND SIX HUNDRED THIRTY-NINE DOLLARS AND SIXTY-FOUR CENTS ($23,639.64) WITH A NOT-TO-EXCEED COST OF TWENTY-FIVE THOUSAND DOLLARS ($25,000.00) FOR THE DEVELOPMENT AND IMPLEMENTATION OF A CITIZEN SURVEY.

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

Section 1. That the City Council of the City of Fayetteville, Arkansas hereby approves a proposal from the Survey Research Center (SRC) at the University of Arkansas in the amount of Twenty-Three Thousand Six Hundred Thirty-Nine Dollars and Sixty-Four Cents ($23,639.64) with a not-to-exceed cost of Twenty-Five Thousand Dollars ($25,000.00) for the development and implementation of a citizen survey.

PASSED and **APPROVED** this 20th day of May, 2003.

APPROVED:

By: _____
DAN COODY, Mayor

ATTEST:

By: _____
SONDRA SMITH, City Clerk

DRAFT

FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

TO: Mayor Dan Coody and City Council

THRU: Hugh Earnest, Chief Administrative Officer
Stephen Davis, Finance & Internal Services Director

FROM: Kevin Springer, Budget Manager

DATE: April 29, 2003

SUBJECT: **2003 Citizen's Survey - Proposal from the University of Arkansas (Survey Research Center)**

Background

During 2001, the Budget & Research Division mailed out a citizen's survey to 1,200 households. The purpose and benefit was to use the survey results as an informational and a public relations tool between the government and its citizenry. This report assisted City Council and upper management in determining citywide goals and to fulfill the need for gauging how well the City performs in its operations and programs.

The goal after this survey was completed, was to send out additional surveys biennially. By performing a survey every other year, a benchmark can be developed to show how newly formed programs are benefiting citizens.

Current Status

City staff has been in the process of conducting a Citizen's Survey for 2003. In looking at the whole process, it has been determined that it would be in the City's best interest to contract out the development and implementation of the survey. This is due to several reasons that are listed below.

- Accuracy: A consultant who specializes in surveys is skilled in instrument and sampling designs, statistical reweighting of data, and data analysis.

- Credibility: A consultant is perceived as unbiased and will have a neutral interpretation of results.

- Cost: A consultant will have the skills and tools available to develop and conduct the survey with the most efficient use of time. A consultant will also have an employee base that can perform at a lower hourly rate of cost.

- Staff Time: Currently, staff does not have the required time to conduct a Citizen's Survey in 2003. 2003 is the year that the 2004-2008 Capital Improvements Program process is performed. In addition, City Council has requested that the 2004 Annual Budget process be started a month sooner than normal and that a zero-based budgeting process be started for three City departments.

To meet the needs of the City in contracting out a Citizen's Survey, City staff has been in contact with the Survey Research Center (SRC) at the University of Arkansas. The Director of SRC, Molly Longstreth, Ph.D, has met with staff and has submitted a proposal to perform a Citizen's Survey for the City of Fayetteville. The proposal is attached to this memo for your information and consideration.

Purchasing Considerations

The City of Fayetteville is exempt from bidding procedures for this proposal. This is due to State Law §19-11-251 allowing agreements between Intergovernmental Agencies such as the University of Arkansas.

Budget Considerations

The cost of contracting out the survey development and implementation will be $23,639.64. In addition to the base cost, staff is requesting an additional $1,360.36 (5.7%) of contingency to be included, making the total requested amount for approval of $25,000.

Currently there is sufficient funding available in the Budget & Research Division to fund the requested $25,000 without using additional General Fund balance. This is due to six months of staff vacancies that occurred in 2003.

Recommendations

Staff recommends approval of the proposal from the University of Arkansas' Survey Research Center for $23,639.64 with a not to exceed amount of $25,000. If you have any questions concerning this survey proposal or the Citizen's Survey process in general, please feel free to contact either myself, Stephen Davis, or Hugh Earnest. Thank you for your attention to this matter.

UNIVERSITY of ARKANSAS
1871

123 Hotz Hall • Fayetteville, Arkansas 72701-1201 • (501) 575-4222 • (501) 575-2474 (FAX) • src@uark.edu

Survey Research Center

MEMORANDUM

DATE: April 29, 2003

FROM: Molly Longstreth, Ph.D.
Director

TO: Hugh Earnest, Chief Administrative Officer
Stephen Davis, Finance and Internal Services Director
Kevin Springer, Budget Manager
City of Fayetteville

The proposal with the revised schedule and budget is attached. If you have questions or need additional information, please let me know. Thank you, again, for this opportunity.

The University of Arkansas is an equal opportunity/affirmative action institution.

UNIVERSITY of ARKANSAS
1871

123 Horr Hall • Fayetteville, Arkansas 72701-1201 • (501) 575-4222 • (501) 575-2474 (FAX) • src@uark.edu

Survey Research Center

Proposal to Survey Citizens of Fayetteville for the City of Fayetteville, Arkansas

April 10, 2003; Revised April 23, 2003

The staff at the Survey Research Center (SRC) are pleased to have the opportunity to propose methods for surveying the citizens of Fayetteville, Arkansas for the City of Fayetteville.

Research Design

Telephone survey

Table 1 provides estimate costs to conduct telephone surveys of citizens including initial letters, for the numbers of completed interviews needed to assure estimated sampling errors of ± 5 percent. Additional Fayetteville households will be screened in order to augment the number of surveys completed by African American and Hispanic/Latino households. The interviews are scheduled to take 15 minutes. In addition, the data will be analyzed with at least one multivariate analysis so as to indicate with more confidence phenomena of interest. Table 1 shows the cost of the survey.

Questionnaire Design & Field Testing

The costs estimated herein presume that the SRC would work with officials of the City of Fayetteville to design a questionnaire that addresses the City's objectives for the survey. It is presumed that the 2003 questionnaire will draw on the instrument that the City of Fayetteville used to survey its citizens in 2001. With City officials the SRC would develop additional and/or alternative questions to solicit opinions on issues germane to the current objectives.

The estimates include the costs of SRC critiques of the questionnaire, in consultation with the City. In addition, the SRC, in conjunction with the City, would develop the letter, introductory scripts and any desired press releases. The questionnaire and related correspondence must be reviewed by the UA Institutional Review Board (IRB), a process the SRC would facilitate. The IRB reviews the questionnaire and associated correspondence for its suitability for the people who will be surveyed. If the City has the equivalent of the institutional review board, similar to federal government agencies, the SRC would contribute, but presumes the City would facilitate that review process.

If time allows, the questionnaire would be tested in at least four ways. SRC staff will critique it. Experienced interviewers would administer it to each other and critique it. Thirdly, a few community members would be asked to review it and their instantaneous responses (stream

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of consciousness) would be recorded and analyzed. A convenience sample of community members, chosen for their average or modest reading skills, would be paid an incentive for testing the questionnaire. The SRC would field test approximately 25 questionnaires before beginning the survey. These findings would be shared with City personnel for review. Adjustments to the telephone interview would be made to correct errors or implement desired changes.

Prior to the start of telephoning, a letter would be mailed to all sample members for whom addresses are available informing them of the nature of the survey and their important role in taking it. The letter establishes credibility for the survey and prepares recipients to receive the call when it comes. City residents are more amenable to answering telephone surveys if they are aware of the survey. The letter is even more effective than general publicity in informing citizens of the survey. The estimates for interviews with initial letters presume that addresses would match with 30 percent of the randomly generated Fayetteville telephone numbers (Table 1). These estimates presume that the letters would be printed on City of Fayetteville letterhead and mailed in City envelopes.

Please note that the letters will be sent to approximately one-third of the 3,065 sample members in Column 2. The remaining sample of 4,397 will be called only. These compose the screening sample.

The effectiveness of the research design depends partially on personalizing the mailings. Therefore, the SRC prints the envelopes, rather than using labels and affixes stamps rather than using a machine stamp. Furthermore it is optimal if the City's representative(s) can personally sign the letters. If not, a printed signature may be used.

Because the letter increases response rates, the time needed to conduct each survey is reduced. For these estimates, net savings are gained in each case. The larger the sample size, the larger the savings.

In addition to the pre-interview letter, it is also recommended that the City, in conjunction with the SRC, prepare a press release or set of press releases so as to inform the 70 percent of residents who would not receive pre-interview letters of the survey and its purposes.

Sample

For telephone surveys of approximately 373 citizens, the estimated sampling error is $\pm$ 5 percent if a simple random sample is drawn. The estimates in this proposal presume that a random sample of telephone numbers would be purchased. Initial reports indicate that the coverage of Fayetteville with these numbers would exceed 95 percent.

In order to garner the desired number of completed interviews, each telephone number would be called as many as six times. The SRC cannot guarantee response rates, however optimistic we may be about them. Although the SRC follows methods demonstrated to improve response rates, subject to the client's preferences, we can only carefully follow the agreed-upon research design.

Only adults (people age 18 or older) would be interviewed. To improve the gender ratio, these estimates include costs of selecting household respondents based on the last birthday. To select by the last birthday, the interviewer asks to speak with the adult in the household who is at home, and who was the last to celebrate a birthday.

Oversampling Minority Ethnicity Populations

According to the *2000 Census of Population*[1] African American and Hispanic/Latino residents compose approximately 5 percent each of Fayetteville's population. It is likely that citizens from these two groups hold opinions on the survey topics that differ from those held by citizens of the majority ethnicity.

Both African American and Hispanic/Latino respondents tend to under-respond to surveys. Because they compose a small fraction of the population and they respond to surveys in percentages lower than their representation in the population, it may be desirable to select proportionately more household from these two groups to survey. In order to "over-sample" African American and Hispanic/Latino residents of Fayetteville, several factors are considered. To obtain an estimated sampling error of ± 15 percent, approximately 42 people need to be surveyed. This would provide 22 African American and 22 Latino/Hispanic completed responses. Without the additional screening, it is estimated that 11 African American and 4 Hispanic/Latino residents would complete the survey. In order to obtain surveys from the additional 18 Hispanic/Latino and 11 African American households it is likely to be necessary to call 4,397 additional telephone numbers.

These numbers will be screened only. Any household members who identify themselves as African American or Hispanic/Latino will be interviewed until the desired number of completed interview is obtained. Please note, however, these estimates guarantee only that the SRC will call all of these numbers at least six times, if appropriate. The SRC cannot guarantee that 22 surveys will be completed by African American and 22 by Hispanic/Latino Fayetteville

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[1] *Census of Population 2000.* U. S. Department of Commerce, Bureau of the Census, DP-1. Profile of General Demographic Characteristics: 2000. Data Set: Census 2000 Summary File 1 (SF1) 100-Percent Data Geographic Area: Fayetteville township, Washington County, Arkansas. Washington, DC.
http://factfinder.census.gov/servlet/QTTable?ds_name=D&geo_id=06000US0514391283&qr_name=DEC_2000_SF1_U_DP1&_lang=en.

residents however diligent the effort.

Hispanic/Latino respondents would be interviewed by bi-lingual interviewers. All interviewers are trained to forward Spanish-speaking respondents to the Spanish-speaking interviewers. It is also possible that the SRC may be able to have a significant number of African American interviewers who would handle many of the interviews with African American respondents if it is possible to identify African American citizens in advance.

Survey Publicity

The SRC recommends that the City announce the survey in the issues of any of its publications or other appropriate communications media that would be published prior to or coincidentally with the survey. The SRC would gladly provide information needed in the announcement.

Deliverables

Communication about progress would be made to the principal investigator every week during the period of telephoning or mailing. After the study, the SRC would provide a Data Report. It would include a simple codebook and frequencies of the variables. The data would be delivered in ascii, Excel, SPSS or other mutually agreeable electronic format. Costs of a report interpreting the frequencies are included in Table 1. The report would include up to two charts or figures and up to six or so bivariate analyses. Please note that the latter pertains to tables rather than variables. If numerous groups are represented in one report, however, the means of responses would be reported for each group.

Multivariate analyses.

In addition, the SRC will devote approximately 40 hours to analyzing the findings using multiple variables to explain topic(s) of interest to the City. The form the analyses would take depend primarily upon the questions of interest. The SRC will work with the principal investigators from the City of Fayetteville to develop the questions of interest congruent with possible analyses and to prioritize the analyses desired.

Table 1
Cost estimates of telephone survey implemented with an initial letter, over-sampling of African American and Hispanic citizens and a multivariate statistical analysis

1	2
	Telephone survey
Completions	402
Estimated sampling error	LE +/- .05
Sample size for mail & phone	3065
Sample size for oversample	4397
Total sample size	7462
Questionnaire Length (min.)	15
Letter	Yes, partially
Multivariate analyses	Yes
WAGES	
Hourly rate pre-July 1	$9.71
Total Production Hours	540
Total wages pre-July 1	$5,240.22
Hourly rate post-July 1	$10.20
Total Production Hours	540
Total wages post-July 1	$5,504.66
Total Wages	$10,744.87
STAFF SALARIES	
Hourly rate pre-July 1	$39.07
Staff time (Hours)	123
Total staff pre-July 1	$4,803.90
Hourly rate post-July 1	$40.24
Staff time (Hours)	123
Total staff post-July 1	$4,947.76
Total Salaries	$9,751.66
DIRECT MATERIALS & SUPPLIES COSTS	
Printing costs	$100.00
Postage	$488.07
Stationary & envelopes	$0.00
Long Distance	$0.00
Travel	$0.00
Sample	$996.23
Translating	$320.00
Ad in Hispanic newspaper	$40.00

Respondent incentives	$50.00
Interviewer rewards	$59.46
Other materials, equipment & supplies	$1,019.34
Total Materials & Supplies	$3,143.10
Total Indirect Costs (26 percent)(UA)	$0.00
TOTAL SURVEY	$23,639.64

Table 2. Proposed Time Line for Survey of Citizens of Fayetteville

	Telephone Survey	
	15-minute survey, with initial letter and screen for additional African American and Hispanic residents	
	Weeks	Dates
Design questionnaire	5	May 15 – June 20
Evaluate questions and revise questionnaire	2	June 16- June 24
Submit questionnaire and letter for IRB review	2	June 20
Program telephone interviewing system and test	2	June 27 – 11
Conduct field tests and review responses	1.5	July 14 – July 18
Address, print and sign letters and mail	1	July 7 – July 15
Conduct interviews	4	July 20 – Aug 18
Clean and analyze data and write report	6	Aug 19 – Sept 26
Revisions and final report	2	Sept 29 – Oct 24

STAFF REVIEW FORM - NON-FINANCIAL OBLIGATION

X AGENDA REQUEST

For the Fayetteville City Council Meeting of: May 20, 2003

FROM:

Louise Schaper	Library	General Government
Name	Division	Department

ACTION REQUIRED: Approve a resolution establishing the Fayetteville Public Library as an independent City library and ending the interlocal agreement (Resolution 10-01, February 6, 2001) with Washington County for a joint county/city library system.

SUMMARY EXPLANATION:

STAFF RECOMMENDATION: Staff recommends approval of the resolution.

Louise R Schaper — Division Head — 5/1/03 Date

Received in Mayor's Office 4/30/03 Date

D.P. Watt — City Attorney — 4/30/03 Date

_____ — Department Director — _____ Date

Stephen Dues — Finance & Internal Services Dir. — 5-1-03 Date

Hugh Earnest — Chief Administrative Officer — 4-30-03 Date

Dan Coody — Mayor — 5/1/03 Date

Cross Reference:

Previous Ord/Res#: Res# 10-01

Orig. Contract Date: _____

Orig. Contract Number: _____

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

RESOLUTION NO. _____

A RESOLUTION ESTABLISHING THE FAYETTEVILLE PUBLIC LIBRARY AS AN INDEPENDENT MUNICIPAL LIBRARY; AND ENDING THE INTERLOCAL AGREEMENT FOR A JOINT CITY/COUNTY LIBRARY SYSTEM WITH WASHINGTON COUNTY, ARKANSAS.

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

Section 1. That the City Council of the City of Fayetteville, Arkansas hereby establishes the Fayetteville Public Library as an independent municipal library.

Section 2. That the City Council of the City of Fayetteville, Arkansas hereby repeals Resolution 10-01, passed February 6, 2001, thus ending the Interlocal Agreement for a joint City/County Library System with Washington County, Arkansas.

Section 3. That this Resolution shall become effective at Midnight on December 31, 2003.

PASSED and **APPROVED** this 20th day of May, 2003.

APPROVED:

By: _____
DAN COODY, Mayor

ATTEST:

By: _____
SONDRA SMITH, City Clerk

DRAFT

DEPARTMENTAL CORRESPONDENCE

TO: Mayor Dan Coody
FROM: Louise Schaper, Library Director
DATE: April 28, 2003

SUBJECT: Establishing the Fayetteville Public Library as an independent city library and ending the Interlocal agreement for joint county/city library system.

Background

The Fayetteville Public Library (FPL) was established in 1916 as a membership-based organization. Since that time, the FPL has experienced much change in partnerships, memberships and governance. To conform with Act 402 of 1997, the Fayetteville City Council passed resolution 10-01 on February 6, 2001 approving Fayetteville's participation in a joint county/city library system. The services provided to the FPL by the Washington County Library System (WCLS) are (1) online catalog; (2) interlibrary loans and (3) courier.

On October 1, 2002, Fayetteville voters endorsed independent funding for FPL, by approving a 1 mill library property tax, replacing county library millage collected in Fayetteville city limits. After this referendum, the library staff began studying a variety of scenarios for continued service with Washington County libraries.

Staff recommended that, based primarily on the need to control key operational technologies in the new library building, that the interlocal agreement be ended and that FPL becomes an independent city library. This means that FPL will procure and install its own online system and do its own interlibrary loans. Funding is earmarked for any capital expenditures. FPL will continue to provide free and reciprocal access to library collections for everyone in Washington County and has already begun talks with the WCLS to reach this goal of continued service.

Current Status

On April 21, 2003 the Fayetteville Public Library (FPL) Board of Trustees approved the following resolution:

The Fayetteville Public Library Board of Trustees, express sincere appreciation to the Washington County Library System Board and staff for its dedicated and long-time provision of centralized library services to the Fayetteville Public Library. We also recognize that because of the new library building it is necessary for the FPL to have control of its technology and workflow in order to operate efficiently and ensure the high level of customer service and library collections expected by users.

While change has been a constant in our library system in recent years, library services have substantially expanded and improved during this time. We welcome this new phase in the growth of library services and the opportunities presented for new models of cooperation with area libraries. We are committed to providing free and reciprocal access to library collections for everyone in Washington County and will work with the WCLS board to reach this goal of continued service.

Accordingly, the Fayetteville Public Library Board of Trustees recommends the dissolution of the February 6, 2001 interlocal agreement between Washington County and the City of Fayetteville for participation in a joint county/city library system.

This separation would take effect on January 1, 2004. Until that time, the FPL will remain a full member of the Washington County Library System according to the terms of the February 6, 2001 agreement.

We direct the library staff to notify the Arkansas State Library of this change in status for the purpose of procuring State Aid to Libraries.

Recommendation

We recommend that the City Council end the 2001 interlocal agreement prior to June 2003 so that FPL can apply to the State Library for direct aid to libraries by the June 30 deadline.

STAFF REVIEW FORM - NON-FINANCIAL OBLIGATION

x AGENDA REQUEST

For the Fayetteville City Council Meeting of: May 6, 2003

FROM:

Dawn Warrick	Planning	CP&E
Name	Division	Department

ACTION REQUIRED: Ordinance Approval

SUMMARY EXPLANATION:

RZN 03-14.00: Submitted by James Williams for property located at the northeast corner of Shiloh Drive and Mount Comfort Road and contains approximately 0.77 acres. The western tract of property (0.20 acres) is currently zoned R-2, Medium Density Residential and the eastern tract (0.57 acres) is proposed to be annexed into the City with a zoning desination of A-1, Agricultural. The request is to rezone both tracts to C-1, Neighborhood Commercial.

STAFF RECOMMENDATION: Approval

Division Head — 4/18/03 Date

City Attorney — 4/21/03 Date

Department Director — 4-18-03 Date

Finance & Internal Services Dir. — 4-22-03 Date

Chief Administrative Officer — 4-22-03 Date

Mayor — 4/22/03 Date

Received in Mayor's Office 4/22/03 PM

Cross Reference:

Previous Ord/Res#: _____

Orig. Contract Date: _____

Orig. Contract Number: _____

New Item: Yes No

ORDINANCE NO. _____

AN ORDINANCE REZONING THAT PROPERTY DESCRIBED IN REZONING PETITION RZN 03-14.00 AS SUBMITTED BY JAMES WILLIAMS FOR PROPERTY LOCATED AT THE NORTHEAST CORNER OF MT. COMFORT ROAD AND SHILOH DRIVE, FAYETTEVILLE, ARKANSAS FROM R-2, MEDIUM DENSITY RESIDENTIAL AND A-1, AGRICULTURAL TO C-1, NEIGHBORHOOD COMMERCIAL.

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

Section 1: That the zone classification of the following described property is hereby changed as follows:

From A-1, Agricultural and R-2, Medium Density Residential to C-1, Neighborhood Commercial as shown in Exhibit "A" attached hereto and made a part hereof.

Section 2. That the official zoning map of the City of Fayetteville, Arkansas, is hereby amended to reflect the zoning change provided in Section 1 above.

PASSED AND APPROVED this _____ day of _____, 2003.

APPROVED:

By: _____
DAN COODY, Mayor

ATTEST:

By: _____
Sondra Smith, City Clerk

DRAFT

EXHIBIT "A"
RZN 03-14.00

A PART OF THE NORTHWEST QUARTER (NW1/4) OF THE SOUTHWEST QUARTER (SW1/4) OF SECTION FIVE (5), AND A PART OF THE NORTHEAST QUARTER (NE1/4) OF THE SOUTHEAST QUARTER (SE1/4) OF SECTION SIX (6), ALL IN TOWNSHIP SIXTEEN (16) NORTH, RANGE THIRTY (30) WEST, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS: BEGINNING AT THE NORTHWEST CORNER OF SAID NORTHWEST QUARTER (NW1/4) OF THE SOUTHWEST QUARTER (SW1/4) OF SECTION FIVE (5), SAID POINT BEING AN EXISTING ARKANSAS STATE SURVEY MONUMENT; THENCE N89°28'27"E ALONG THE NORTH LINE OF SAID NORTHWEST QUARTER (NW1/4) OF THE SOUTHWEST QUARTER (SW1/4) OF SECTION FIVE (5) 287.81 FEET TO A SET IRON ON THE NORTHWESTERLY RIGHT-OF-WAY OF INTERSTATE 540; THENCE LEAVING THE NORTH LINE OF SAID NORTHWEST QUARTER (NW1/4) OF THE SOUTHWEST QUARTER (SW1/4) OF SECTION FIVE (5) AND RUNNING ALONG SAID NORTHWESTERLY RIGHT-OF-WAY S50°54'00"W 159.38 FEET TO AN EXISTING ALUMINUM RIGHT-OF-WAY MONUMENT; THENCE CONTINUING ALONG SAID RIGHT-OF-WAY S78°38'00"W 173.83 FEET TO THE INTERSECTION OF THE NORTHERLY RIGHT-OF-WAY OF INTERSTATE 540 AND THE EASTERLY RIGHT-OF-WAY OF MT. COMFORT ROAD, SAID POINT BEING AN EXISTING ALUMINUM RIGHT-OF-WAY MONUMENT, SAID POINT ALSO BEING ON A 314.15 FOOT RADIUS CURVE CONCAVE TO THE SOUTHWEST; THENCE NORTHWESTERLY ALONG SAID CURVE AND RIGHT-OF-WAY OF SAID MT. COMFORT ROAD 201.72 FEET, THE CHORD FOR WHICH BEING N48°40'02"W 198.28 FEET, TO A SET IRON ON THE NORTH LINE OF SAID NORTHEAST QUARTER (NE1/4) OF THE SOUTHEAST QUARTER (SE1/4) OF SECTION SIX (6); THENCE N89°34'27"E 155.15 FEET TO THE POINT OF BEGINNING, CONTAINING 0.77 ACRES, MORE OR LESS, WASHINGTON COUNTY, ARKANSAS.

DRAFT

FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

113 W. Mountain St.
Fayetteville, AR 72701
Telephone: (479) 575-8267

PLANNING DIVISION CORRESPONDENCE

TO: Mayor Dan Coody
Fayetteville City Council
FROM: Dawn Warrick, Zoning & Development Administrator, AICP
THRU: Tim Conklin, AICP, Community, Planning & Engineering Services Director
DATE: April 14, 2003

RZN 03-14.00: Rezoning (Williams, pp 363) was submitted by James Williams for property located at the northeast corner of Mt. Comfort Road and Shiloh Drive and contains approximately 0.77 acres. The western tract of property (0.20 acres) is currently zoned R-2, Medium Density Residential and the eastern tract (0.57 acres) is proposed to be annexed into the City with a zoning designation of A-1, Agricultural. The request is to rezone both tracts to C-1, Neighborhood Commercial.

BACKGROUND:
Property Description: The subject property is located at the northwest corner of Shiloh Drive (outer road for I-540) and Porter Road/Mt. Comfort Road. This site is frequently the location of a fireworks stand in the summer due to its location surrounded by the City, but located within the county which permits the sale of fireworks at certain times of the year. Property to the north was recently developed for office usage. Other adjoining uses include the interstate to the east, residential to the west and office and residential to the south. This area is classified as Community Commercial on the Future Land Use map.

The subject property is identified in the City's adopted annexation policy within the General Plan 2020 as an island which should be annexed.

Proposal: The applicant proposes to develop the subject property with a gas station and convenience store. Connection to sewer services provided by the City of Fayetteville requires that the property be located within the corporate City limits.

CURRENT STATUS:
On April 14, 2003, the Planning voted 7-0-0 to forward this item to the City Council with a recommendation for approval.

RECOMMENDATION:
Staff recommends approval of the requested rezoning.

FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

PC Meeting of April 14, 2003

113 W. Mountain St.
Fayetteville, AR 72701
Telephone: (479) 575-8267

PLANNING DIVISION CORRESPONDENCE

TO: Fayetteville Planning Commission
FROM: Dawn Warrick, Zoning & Development Administrator, AICP
THRU: Tim Conklin, AICP, Community, Planning & Engineering Services Director
DATE: April 14, 2003

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RECOMMENDATION:

Staff recommends approval of the requested rezoning based on the findings included as part of this report.

PLANNING COMMISSION ACTION:	**Required** **YES**	
	O Approved	**O Denied**
Date: **April 14, 2003**		
CITY COUNCIL ACTION:	**Required** **YES**	
	O Approved	**O Denied**
Date: **May 6, 2003 (1st reading if recommended)**		

Comments: _____

_____

_____

BACKGROUND:

Property Description: The subject property is located at the northwest corner of Shiloh Drive (outer road for I-540) and Porter Road/Mt. Comfort Road. This site is frequently the location of

a fireworks stand in the summer due to its location surrounded by the City, but located within the county which permits the sale of fireworks at certain times of the year. Property to the north was recently developed for office usage. Other adjoining uses include the interstate to the east, residential to the west and office and residential to the south. This area is classified as Community Commercial on the Future Land Use map.

The subject property is identified in the City's adopted annexation policy within the General Plan 2020 as an island which should be annexed.

Proposal: The applicant proposes to develop the subject property with a gas station and convenience store. Connection to sewer services provided by the City of Fayetteville requires that the property be located within the corporate City limits.

Request: The applicant is requesting that the subject property is annexed into the City of Fayetteville. A rezoning request for C-1, Neighborhood Commercial zoning accompanies this annexation request.

SURROUNDING LAND USE AND ZONING

Direction	Land Use	Zoning
North	Residential / Office	R-2, Medium Density Residential / C-1, Neighborhood Commercial
South	Residential / Mixed	R-2, Medium Density Residential / R-O, Residential Office
East	I-540 / U of A Experimental Farm	Outside City
West	Residential	R-2, Medium Density Residential / R-1, Low Density Residential

INFRASTRUCTURE:

The subject property is surrounded by Mt. Comfort Road on the south/southwest, Shiloh Drive on the east and I-540 on the south/southeast. All of these streets are classified as higher level streets on the Master Street Plan; Mt. Comfort Road as a minor arterial, Shiloh as a collector and I-540 as a freeway/expressway.

Water and sewer services are available to serve a future development in this location.

LAND USE PLAN: General Plan 2020 designates this site Community Commercial. Rezoning this property to C-1, Neighborhood Commercial is consistent with the land use plan and compatible with surrounding land uses in the area.

FINDINGS OF THE STAFF

1. A determination of the degree to which the proposed zoning is consistent with land use planning objectives, principles, and policies and with land use and zoning plans.

Finding: **The proposed rezoning is consistent with the General Plan 2020 which identifies the site within a Community Commercial node. Provision of services for the nearby residential areas as well as to highway travelers may be accommodated by the proposed rezoning and accompanying annexation.**

2. A determination of whether the proposed zoning is justified and/or needed at the time the rezoning is proposed.

Finding: **The rezoning is justified in that it is consistent with land use planning objectives identified in the General Plan 2020. Proximity to the interstate makes a residential use of the property less desirable. Combining the already zoned R-2 portion of the subject property with the area under consideration for annexation at the corner will allow for a reasonably sized development site. The property is located within the Design Overlay District which will require the applicant to process a large scale development in order to obtain approvals necessary to develop the property.**

3. A determination as to whether the proposed zoning would create or appreciably increase traffic danger and congestion.

Finding: **Additional traffic generated by a commercial development on this site would likely be greater than a residential use would create, however the many different means of accessing the site will provide opportunities. Review of access locations during the large scale development process will be very important for this property.**

4. A determination as to whether the proposed zoning would alter the population density and thereby undesirably increase the load on public services including schools, water, and sewer facilities.

Finding: **The proposed rezoning will not alter population density. Findings from various service providers within the city are as follows:**

Engineering **- The proposed rezoning is located at the northeast corner of Mt. Comfort Road and Shiloh Drive. Mt. Comfort is classified as a Minor Arterial and Shiloh Drive is a Collector Street.**

The proposed rezoning to C-1 may or may not result in additional traffic danger and congestion for this area. Access to the developed site and the circulation network within the development shall be reviewed in detail as part of the subdivision or large scale development process. The layout,

connectivity, circulation plan, ingress and egress provisions will be reviewed in detail as information becomes available.

Fire – **Fire station #2 to this location is 2.2 miles with a 3 minute 44 second response time. Water supply for fire protection will be required for new development.**

Police – **We do not believe there will be any adverse effects to public safety should these properties be rezoned as requested. We also have no objection to ANX 03-2.00.**

5. If there are reasons why the proposed zoning should not be approved in view of considerations under b (1) through (4) above, a determination as to whether the proposed zoning is justified and/or necessitated by peculiar circumstances such as:

   a. It would be impractical to use the land for any of the uses permitted under its existing zoning classifications;

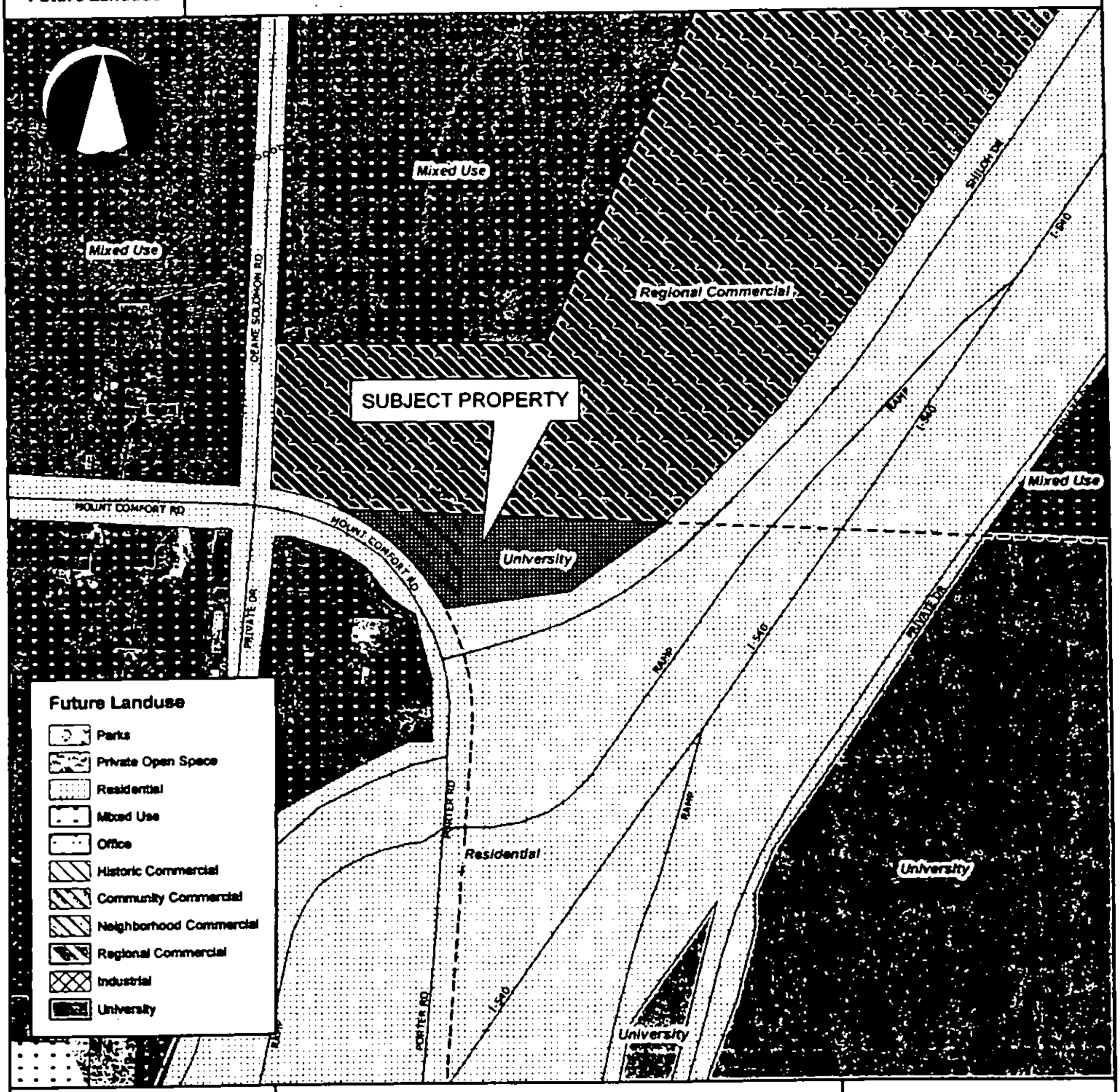
   b. There are extenuating circumstances which justify the rezoning even though there are reasons under b (1) through (4) above why the proposed zoning is not desirable.

Finding: **N/A**

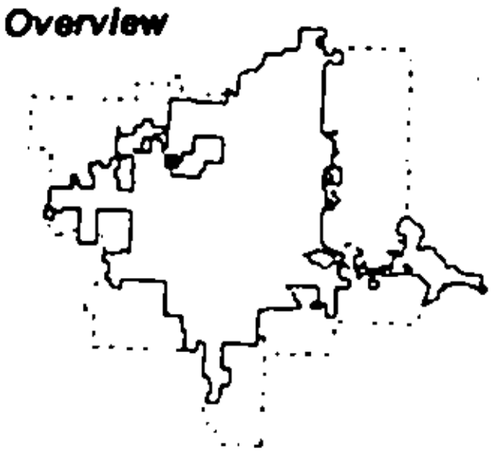
RZN03-14.00

WILLIAMS

Future Landuse



Overview



Legend

Subject Property
RZN03-14.00

Streets
Existing
Planned

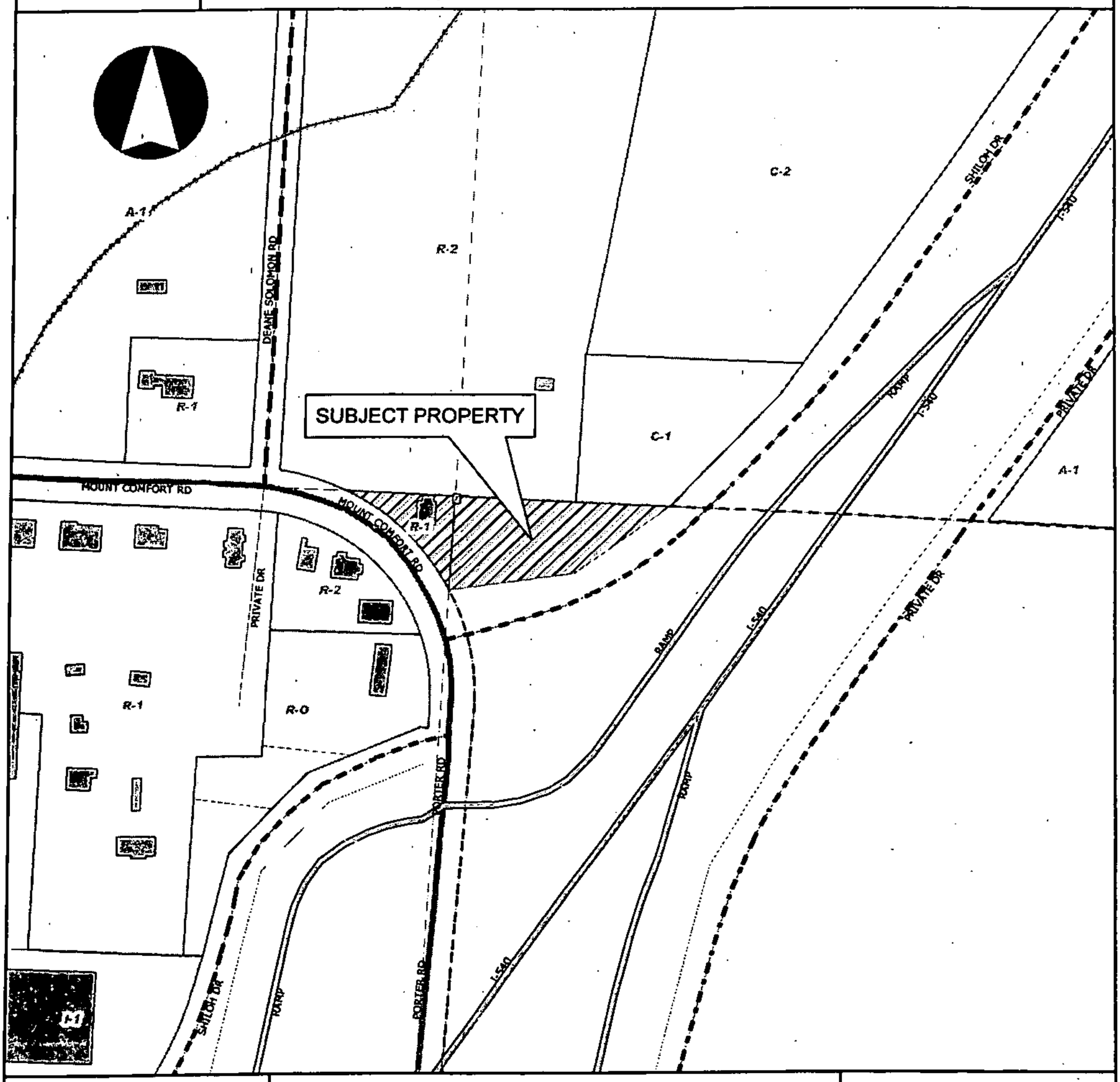
Boundary
Planning Area
Overlay District
City Limits

0 75 150 300 450 600 Feet

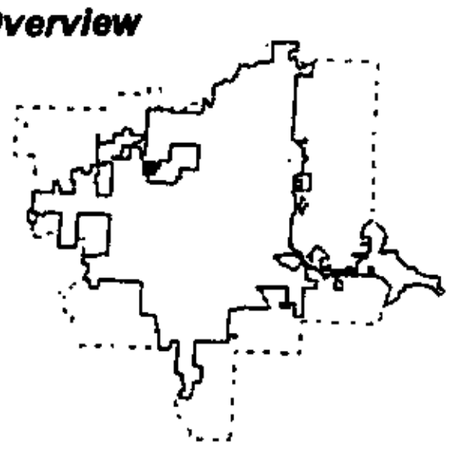
RZN03-14.00

Close Up View

WILLIAMS



Overview



Legend

Subject Property
RZN03-14.00

Streets
Existing
Planned

Boundary
Planning Area
Overlay District
City Limits
Outside City

Master Street Plan
Freeway/Expressway
Principal Arterial
Minor Arterial
Collector
Historic Collector

0 75 150 300 450 600
Feet

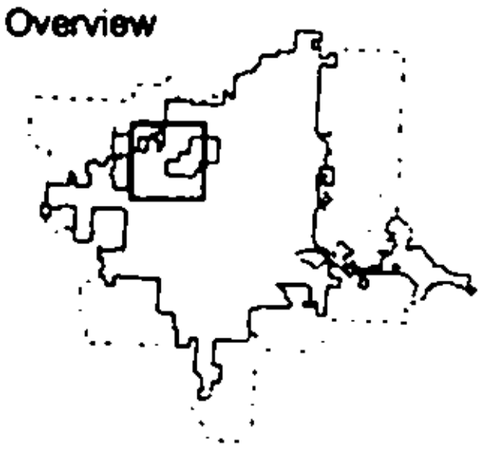
RZN03-14.00

One Mile View

WILLIAMS

SUBJECT PROPERTY

Overview



Legend

Subject Property

RZN03-14.00

Streets

Existing

Planned

Boundary

Planning Area

Overlay District

City Limits

Outside City

Master Street Plan

Freeway/Expressway

Principal Arterial

Minor Arterial

Collector

Historic Collector

0 0.1 0.2 0.4 0.6 0.8 Miles

RZN 03-14.00: Rezoning (Williams, pp 363) was submitted by James Williams for property located at the northeast corner of Mt. Comfort Road and Shiloh Drive and contains approximately 0.77 acres. The western tract of property (0.20 acres) is currently zoned R-2, Medium Density Residential and the eastern tract (0.57 acres) is proposed to be annexed into the City with a zoning designation of A-1, Agricultural. The request is to rezone both tracts to C-1, Neighborhood Commercial.

Hoover: The next item is RZN 03-14.00 which is the same piece of property. Dawn, would you like to tell us about the Rezoning?

Warrick: Sure. This is the same piece of property that we were discussing with the Annexation with the addition of a small tract to the west which is currently zoned R-2 and has a small home on it. That contains approximately.2 acres. With regard to findings that are necessary in order for the Planning Commission to consider a Rezoning: The proposed Rezoning is consistent with the General Plan 2020. This area is designated as community commercial and the applicant in this case is requesting a C-1 zoning designation. The potential development that has been discussed for this particular site is a gas station and convenience store, which is a use that is permitted in the C-1 zoning district. Staff believes that the Rezoning is justified and that it is consistent with land use planning, the General Plan 2020. It's proximity to the interstate makes the residential use of the property less desirable. Combining the already zoned R-2 portion of the subject property and the area that is under consideration for Annexation will allow for a reasonably sized development site. Like I mentioned before, the property is located within the Design Overlay District which will require the applicant to process a Large Scale Development so that the Planning Commission will have an opportunity to review the development plans. With regard to traffic danger and congestion, one of your findings, additional traffic will most likely be generated by this commercial development and it would likely be a larger traffic generator than a residential use on this site. The applicant's purchase of the adjoining property to the west does allow for some additional opportunities with regard to direct access to the site. Adjoining streets, Mount Comfort/Porter Road is I believe a minor arterial in this location and then Shiloh Drive, which is the outer road to the Interstate is a principal arterial in this location. This is a tricky corner with regard to traffic. We will look at that very closely at the time of development proposal when we are looking at the Large Scale. The location of access drives to the site will be very important and staff will work with the applicant and with Subdivision Committee and Planning Commission when we get to that point to hopefully work out the best solution with regard to accessing the site safely. With regard to altering population density staff found that this proposed Rezoning will not alter population density. With regard to provision of service from various providers within the city, we had no

objections or concerns from Fire, Police or Engineering. The Fire Marshall reports that from fire station #2 to this location it is approximately 2.2 miles with a 3 minute 44 second response time. I believe that covers the findings that you are required to make. Staff is recommending in favor of the requested Rezoning to C-1.

Hoover: Thank you Dawn. Does the applicant have a presentation?

Williams: Not at this time.

Hoover: I will open it up to public comment. Mr. Kneiss, would you like to address us on the traffic again?

Kneiss: The same issues as I stated before.

Hoover: Thank you. Are there any other members of the audience that would like to comment on this Rezoning? Seeing none, I will bring it back to the Commission.

Shackelford: Dawn, you mentioned that the traffic would be looked at in the Large Scale Development. Clarify for me, this is less than an acre but a Large Scale Development will be required because it is in the Overlay District, is that correct?

Warrick: That is correct.

Shackelford: So we will see this project again as a LSD?

Warrick: Yes you will.

Shackelford: Thank you.

Conklin: I just wanted to mention one other thing about the traffic. When Duncan & Associates looked at a road impact fee the size of the site, and I am not sure how it is going to be developed, I think one of the plans are to develop it into a gasoline service station. Typically a convenience type store or gas station didn't typically generate a lot of additional traffic. It was more for the convenience of the people within the area. I do realize that this is on I-540 so there may be some additional traffic coming off of the interstate but the impact fees that were looked at based on land use and how much traffic is generated from a small gas station/convenience store were very minimal because studies have shown that people that are using those facilities live in that neighborhood or live in those areas and they are already traveling on Mount Comfort/Porter Road. We do have two

schools out in that area and it is not generating brand new trips. I just wanted to add that.

Hoover: Dawn, I have a question. You mentioned another street other than Mount Comfort and I don't see it on our map.

Warrick: Porter Road becomes Mount Comfort Road in that location and I think I also mentioned Shiloh Drive which is the outer road adjacent to the east property line.

Hoover: Thank you.

Bunch: Within a one mile radius to the south of this there is a section of Shiloh that is awaiting completion pending funding from various other traffic generators in the area. Would this project have any impact on the bridge on Shiloh that we are gradually accumulating money and hopefully someday we will build that will ease traffic on Shiloh?

Conklin: Actually Shiloh Drive is in our CIP program. You are talking about Shiloh Drive between Mount Comfort and Wedington?

Bunch: Yes.

Conklin: That is within our CIP program. I have talked to the property owner south of where it dead ends and I think that developer is just going to wait until the city does the CIP project before that bridge is constructed. That is in our CIP.

Bunch: Is this project close enough to be considered a traffic generator to make a contribution? I imagine that it would be extremely small even if there was one.

Conklin: We are going to have to take a look at it. Once again, based upon our impact fee consultants, if it is a small convenience type store or gas station, it would have a very minimal impact on traffic. Most of the studies have shown that traffic that is generated by those facilities are within those areas. The only thing that I am a little unclear of is with regard to it being adjacent to I-540 and that may change some of the study's findings but typically a gas station convenience store in these areas or residential areas have a minimal impact on traffic.

Bunch: Thank you.

Hoover: Are there any other comments or motions?

MOTION:

Ostner: I think this is a good thing to rezone this to C-1. I will move that we approve RZN 03-14.00.

Hoover: I have a motion by Commissioner Ostner, do I have a second?

Allen: I will second.

Hoover: Thank you Commissioner Allen. Is there anymore discussion? Seeing none, would you call the roll Renee?

Roll Call: Upon the completion of roll call the motion to forward RZN 03-14.00 was approved by a vote of 7-0-0.

Thomas: The motion carries seven to zero.

STAFF REVIEW FORM - FINANCIAL OBLIGATION

X AGENDA REQUEST
____ CONTRACT REVIEW
____ GRANT REVIEW

For the Fayetteville City Council Meeting of: May 6, 2003

FROM:

Holly Jones, Land Agent	Engineering	Community, Planning & Engineering Services
Name	Division	Department

ACTION REQUIRED: A resolution to allow City Attorney to begin condemnation proceedings on 2.20 acres, more or less, being a Part of Tract 7 of WHM Land Investments, Inc.. The property in question to be used as the location of the proposed Fire Station #7 for which an offer has been made.

COST TO CITY:

$158,000.00	$ 950,100 -	Fire Station #7 -- Escrow
Cost of this request	Category/Project Budget	Program Category / Project Name
4470.9470.5804.00	$ -	
Account Number	Funds Used to Date	Program / Project Category Name
01015	$ 950,100 -	
Project Number	Remaining Balance	Fund Name

BUDGET REVIEW: X Budgeted Item ____ Budget Adjustment Attached

Budget Manager — Date: 4-25-03

CONTRACT/GRANT/LEASE REVIEW:

Accounting Manager — Date: 4/26/03
Internal Auditor — Date: 4/25/03
City Attorney — Date: 4/25/03
Purchasing Manager — Date:

STAFF RECOMMENDATION:

Division Head — Date:
Department Director — Date: 4/23/03
Finance & Internal Services Dir. — Date: 4-24-03
Chief Administrative Officer — Date: 4-23-03
Mayor — Date: 4/28/03

Received in Mayor's Office — Date:

Cross Reference:

Previous Ord/Res#:

Orig. Contract Date:

Orig. Contract Number:

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

RESOLUTION NO. _____

A RESOLUTION AUTHORIZING THE CITY ATTORNEY TO SEEK CONDEMNATION AND POSSESSION OF CERTAIN LANDS OWNED BY WHM LAND INVESTMENT, INC. TO SECURE THE NECESSARY LAND ON WHICH TO CONSTRUCT THE WEST FAYETTEVILLE FIRE STATION

WHEREAS, the City of Fayetteville desires and needs to build a new Fire Station in western Fayetteville; and

WHEREAS, Fire Chief Chris Bosch has determined that a parcel of land (described in Exhibit A) on Rupple Road near Wedington Road is the best location for the new West Fayetteville Fire Station; and

WHEREAS, the owner of these lands have declined to accept the fair market value for these lands, as determined by a professional appraisal; and

WHEREAS, the City needs to begin construction of the new West Fayetteville Fire Station without further delay to improve fire protection for the homes, schools and businesses in West Fayetteville.

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

Section 1. That the City Council of the City of Fayetteville, Arkansas, hereby authorizes the City Attorney to file a condemnation suit forthwith seeking court ordered possession of certain lands owned by WHM Land Investment, Inc. in order to allow the construction of the West Fayetteville Fire Station without further delay.

PASSED and **APPROVED** this the 6th day of May, 2003.

APPROVED:

By: _____
DAN COODY, Mayor

DRAFT

ATTEST:

By: _____
SONDRA SMITH, City Clerk

FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

Date: April 24, 2003

To: The Mayor and Council

From: Hugh Earnest, Chief Administrative Officer
Chris Bosch, Fire Chief (CB)

Subject: Property Acquisition for Fire Station #7

Background
Construction of a Fire Station on the West Side of I-540 has been listed as part of the City Capital Improvement Program and has been a priority for several years. City staff has been working to secure a suitable site for construction of the station. Fire Department personnel identified the Rupple Road and Wedington intersection as the preferred area for location of the station. Accordingly, we have been working with Mr. Hayden McIlroy and his agents in order to secure a site. Our focus has been on the three parcels shown on the map included with this memo. Appraisals were secured for the parcels and copies of those are also included. The appraisals on the two parcels on Wedington are valued at $217,734/acre (West parcel) and $178,723/acre (East parcel). The parcel on Rupple south of Wedington was appraised at $70,852/acre

Current Situation
We have been unable to negotiate a satisfactory price with Mr. McIlroy for either of the parcels on Wedington. The Rupple Road location is also, from a Fire Department planning perspective, a suitable location and is within an acceptable price range. Accordingly, On April 9, 2003 our Property Acquisition Office presented an Offer and Acceptance Contract for $158,000 to WHM Land Investments Inc. for the purchase of the 2.23 acre parcel on Rupple Road. The contract was presented with the understanding that it would expire at 5:00 p.m. on April 17, 2003. No response was received.

Recommendation
We are requesting that the City Council authorize the City Attorney to seek the power of Eminent Domain for the referenced parcel. We do remain hopeful that such an action will prove to be unnecessary and we intend to continue discussions with all parties. However, given the importance of securing an acceptable site, the authorization empowering the City Attorney to proceed is appropriate and necessary.

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

OFFER AND ACCEPTANCE CONTRACT

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

SEE ATTACHED EXHIBIT "A"
FOR PROPERTY DESCRIPTION

2. **Purchase Price**: Subject to the following conditions, the City of Fayetteville shall pay for the property at closing, the total and cash payment of **$ 158,000.00** .

3. **Contingent Earnest Money Deposit**: The City of Fayetteville herewith tenders a check for **$ 3,200.00** to **WHM Land Investments, Inc.**, as earnest money, which shall apply on the purchase price. This offer of purchase is contingent upon approval of the City Council of the City of Fayetteville, Arkansas, and, if they do not so approve, the earnest money deposit will be returned to the City of Fayetteville by WHM Land Investments, Inc.. If title requirements are not fulfilled or WHM Land Investments, Inc. fails to fulfill any obligations under this contract, the earnest money shall be promptly refunded to the City of Fayetteville. If the City of Fayetteville fails to fulfill their obligations under this contract or, after all conditions have been met, the City of Fayetteville fails to close this transaction, the earnest money may, at the option of WHM Land Investments, Inc., become liquidated damages to WHM Land Investments, Inc.

4. Conveyance will be made to the City of Fayetteville by general Warranty Deed, except it shall be subject to recorded instruments and easements, if any, which do not materially affect the value of the property. Such conveyance shall include mineral rights owned by WHM Land Investments, Inc..

5. WHM Land Investments, Inc. shall furnish a policy of title insurance in the amount of the purchase price from a title insurance company as selected by the City of Fayetteville. The City of Fayetteville and WHM Land Investments, Inc. shall share equally in the cost of the title insurance.

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

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

8. The closing date shall be within **Forty-five (45)** days after approval of this offer by the City Council. If such date of closing falls on a weekend or holiday, it will be held the following working day.

9. Possession of the property shall be delivered to the City of Fayetteville on the date of closing.

10. WHM Land Investments, Inc. hereby grant(s) permission for the City of Fayetteville or its employees or designates to enter the above described property and improvements for the purpose of inspection and/or surveying.

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

12. Risk of loss or damage to the property by fire or other casualty occurring up to the time of closing is assumed by WHM Land Investments, Inc..

13. WHM Land Investments, Inc. shall disclose to the City of Fayetteville any and all environmental hazards of which WHM Land Investments, Inc. has actual knowledge. Upon acceptance of all conditions and terms of this Offer and Acceptance, the City of Fayetteville and WHM Land Investments, Inc. shall share equally the costs of any and all testing for the existence of environmental hazards. Should the existence of environmental hazards be known or determined, WHM Land Investments, Inc. shall cure such, at their expense; or, in the alternative, at the City of Fayetteville's discretion, the City of Fayetteville may cure such

OFFER AND ACCEPTANCE CONTRACT

environmental hazard, and WHM Land Investments, Inc. shall indemnify the City of Fayetteville for all costs associated with said cure.

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

15. This agreement, when executed by both the City of Fayetteville and WHM Land Investments, Inc. shall contain the entire understanding and agreement of the parties with respect to the matters referred to herein and shall supersede all price or contemporaneous agreements, representations and understanding with respect to such matters, and no oral representations or statements shall be considered a part hereof.

16. This contract expires, if not accepted by WHM Land Investments, Inc. on or before the 17th day of April, 2003.

17. The City of Fayetteville shall submit this fully executed Offer and Acceptance Contract to the City Council for their approval within forty-five (45) days of acceptance by WHM Land Investments, Inc.

18. **NOTICE: THE CITY OF FAYETTEVILLE ASSERTS AND WHM Land Investments, Inc. HEREBY ACKNOWLEDGES THAT THIS OFFER IS EXPRESSLY CONTINGENT UPON THE APPROVAL OF THIS OFFER OF PURCHASE BY THE CITY COUNCIL OF FAYETTEVILLE AND THAT THE FAILURE OF THE COUNCIL TO SO APPROVE WILL MAKE ALL PORTIONS OF THIS OFFER NULL AND VOID, INCLUDING, BUT NOT LIMITED TO, THE RETURN TO CITY OF FAYETTEVILLE OF THE $3,200.00 EARNEST MONEY DEPOSIT.**

WHM Land Investments, Inc.
By: _____ Date: _____

_____
[Please Print or Type Name & Title]

AGENT OR WITNESS:

_____ Date: _____

City of Fayetteville, Arkansas,
A municipal corporation

Dan Coody Date: 4/9/03
Dan Coody, Mayor

Sondra Smith Date: 4/9/03
Sondra Smith, City Clerk

OFFER AND ACCEPTANCE CONTRACT

EXHIBIT "A"
PROPERTY DESCRIPTION

Part of Tract 7 of WHM Land Investments, Inc., a subdivision to the City of Fayetteville, Arkansas, as recorded on the final plat of said subdivision as found in the office of the Circuit Clerk and Ex-Officio recorder of Washington County, Arkansas, and being described as follows, to-wit: Beginning at a point which is North 86°59'51" West 436.92 feet and South 01°28'12" West 550.00 feet from the Northeast corner of the above described Tract 7 of WHM Land Investments, Inc. to the true point of beginning on the North line of an existing 25-foot utility easement, said Tract 7 being located in the NW¼ of the SE¼ and the SW¼ of the SE¼ of Section 12, Township 16 North, Range 31 West; thence running along the north line of said 25-foot utility easement the following bearings and distances: run South 57°17'15" East 175.00 feet to a curve to the left, having a radius of 250 feet and an arc length of 103.58 feet; thence South 87°40'16" East 164.00 feet to the East line of said Tract 7 and the West line of Rupple Road; thence along the West right of way line of Rupple Road North 02°19'44" East 262.00 feet; thence leaving said right of way line North 86°59'51" West 415.47 feet; thence South 01°09'58" West 145.75 feet to the point of beginning, containing 2.2 acres, more or less. Subject to existing 20-foot easements on the East and West sides of Tract 7.

SIGNED FOR IDENTIFICATION:

WHM Land Investments, Inc.
By:

_____ Date:_____

_____
[Please type or Print Name & Title]

Dan Coody Date: 4/9/03
Dan Coody, Mayor

Sondra Smith Date: 4/9/03
Sondra Smith, City Clerk

OFFER AND ACCEPTANCE CONTRACT
Page 4 of 4

ACKNOWLEDGMENT

STATE OF TEXAS)
) ss.
COUNTY OF)

BE IT REMEMBERED, that on this date, before the undersigned, a duly commissioned and acting Notary Public within and for said County and State, personally appeared _____, to me well known as the person(s) who executed the foregoing document, and who stated and acknowledged that he/she/they is/are _____ of _____ and is/are duly authorized to execute the foregoing instrument for and in the name and behalf of said WHM Land Investments, Inc., and further stated and acknowledged that he/she/they had so signed, executed and delivered said instrument for the consideration, uses and purposes therein mentioned and set forth.

WITNESS my hand and seal on this _____ day of _____, 2003.

_____
Notary Public

MY COMMISSION EXPIRES:

_____

ACKNOWLEDGMENT

STATE OF ARKANSAS)
) ss.
COUNTY OF WASHINGTON)

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

WITNESS my hand and seal on this 9 day of APRIL, 2003.

LANA ROYLES
NOTARY PUBLIC
WASHINGTON COUNTY, ARKANSAS

Lana Broyles
Notary Public

MY COMMISSION EXPIRES:
4-1-08

Borrower na File No. 90
Property Address +/-2.23 Acres-Tract 7 WHM Land Investments, Inc. - Rupple Rd.
City Fayetteville County Washington State AR Zip Code 72703
Lender City of Ffayetteville

APPRAISAL AND REPORT IDENTIFICATION

This appraisal conforms to one of the following definitions:

- ☐ Complete Appraisal (The act or process of estimating value, or an opinion of value, performed without invoking the Departure Rule.)
- ☒ Limited Appraisal (The act or process of estimating value, or an opinion of value, performed under and resulting from invoking the Departure Rule.)

This report is one of the following types:

- ☐ Self Contained (A written report prepared under Standards Rule 2-2(a) of a Complete or Limited Appraisal performed under STANDARD 1.)
- ☐ Summary (A written report prepared under Standards Rule 2-2(b) of a Complete or Limited Appraisal performed under STANDARD 1.)
- ☒ Restricted (A written report prepared under Standards Rule 2-2(c) of a Complete or Limited Appraisal performed under STANDARD 1 for client use only.)

Comments on Standards Rule 2-3

I certify that, to the best of my knowledge and belief:

- The statements of fact contained in this report are true and correct.
- The reported analyses, opinions, and conclusions are limited only by the reported assumptions and limiting conditions, and are my personal, impartial, and unbiased professional analyses, opinions and conclusions.
- I have no (or the specified) present or prospective interest in the property that is the subject of this report, and no (or the specified) personal interest with respect to the parties involved.
- I have no bias with respect to the property that is the subject of this report or the parties involved with this assignment.
- My engagement in this assignment was not contingent upon developing or reporting predetermined results.
- My compensation for completing this assignment is not contingent upon the development or reporting of a predetermined value or direction in value that favors the cause of the client, the amount of the value opinion, the attainment of a stipulated result, or the occurrence of a subsequent event directly related to the intended use of this appraisal.
- My analyses, opinions and conclusions were developed and this report has been prepared, in conformity with the Uniform Standards of Professional Appraisal Practice.
- I have made a personal inspection of the property that is the subject of this report.
- No one provided significant real property appraisal assistance to the person signing this certification.

Comments on Appraisal and Report Identification

Note any departures from Standards Rules 1-2, 1-3, 1-4, plus any USPAP-related issues requiring disclosure:

None noted

APPRAISER:

Signature: Don L. Cramer
Name: Don L. Cramer
Date Signed: March 21, 2003
State Certification #: CR0216
or State License #:
State: AR
Expiration Date of Certification or License: 6/30/03

SUPERVISORY APPRAISER (only if required):

Signature:
Name:
Date Signed:
State Certification #:
or State License #:
State:
Expiration Date of Certification or License:

☐ Did ☐ Did Not Inspect Property

LAND APPRAISAL REPORT

File No. 900[redacted]

IDENTIFICATION

Borrower na Census Tract _____ Map Reference _____
Property Address +/-2.23 Acres-Tract 7 WHM Land Investments, Inc. - Ruppie Rd.
City Fayetteville County Washington State AR Zip Code 72703
Legal Description Approximately 2.23 Acres or +/- 97,139 sq. ft. of the WHM Land Investments, Inc. Tract 7
Sale Price $ na Date of Sale n/a Loan Term n/a yrs. Property Rights Appraised ☒ Fee ☐ Leasehold ☐ De Minimis PUD
Actual Real Estate Taxes $ n/a (yr) Loan charges to be paid by seller $ n/a Other sales concessions None
Lender/Client City of Ffayetteville Address 125 West Mountain 72701
Occupant Vacant Appraiser Don L. Cramer Instructions to Appraiser Estimate the Market Value of the Subject +/- 2.23 acres of land.

NEIGHBORHOOD

Location	☒ Urban	☐ Suburban	☐ Rural
Built Up	☐ Over 75%	☒ 25% to 75%	☐ Under 25%
Growth Rate ☐ Fully Dev.	☐ Rapid	☒ Steady	☐ Slow
Property Values	☐ Increasing	☒ Stable	☐ Declining
Demand/Supply	☐ Shortage	☒ In Balance	☐ Oversupply
Marketing Time	☐ Under 3 Mos.	☒ 4-6 Mos.	☐ Over 6 Mos.

Present Land Use 25% 1 Family 25% 2-4 Family ___% Apts. ___% Condo ___% Commercial ___% Industrial 50% Vacant ___% _____
Change in Present Land Use ☒ Not Likely ☐ Likely (*) ☐ Taking Place (*)
(*) From _____ To _____
Predominant Occupancy ☒ Owner ☐ Tenant 50 % Vacant
Single Family Price Range $ 60,000 to $ 175,000 Predominant Value $ 125,000
Single Family Age New yrs. to 40 yrs. Predominant Age 3 yrs.

	Good	Avg.	Fair	Poor
Employment Stability	☐	☒	☐	☐
Convenience to Employment	☐	☒	☐	☐
Convenience to Shopping	☐	☒	☐	☐
Convenience to Schools	☐	☒	☐	☐
Adequacy of Public Transportation	☐	☒	☐	☐
Recreational Facilities	☐	☒	☐	☐
Adequacy of Utilities	☐	☒	☐	☐
Property Compatibility	☐	☒	☐	☐
Protection from Detrimental Conditions	☐	☒	☐	☐
Police and Fire Protection	☐	☒	☐	☐
General Appearance of Properties	☐	☒	☐	☐
Appeal to Market	☐	☒	☐	☐

Comments including those factors, favorable or unfavorable, affecting marketability (e.g. public parks, schools, view, noise): There are no apparent adverse factors which would affect the subject's marketability. The subject has access to all necessary supporting facilities including schools, recreation, and employment. The subject property has adequate or super adequate utility access for redevelopment purposes.

SITE

Dimensions Subject site is irregular = 2.23 Sq. Ft. or Acres ☒ Corner Lot
Zoning classification Residential - 1.5 Present Improvements ☐ do ☐ do not conform to zoning regulations
Highest and best use ☒ Present use ☐ Other (specify) Residential Subdivision Development

	Public	Other (Describe)
Elec.	☒	
Gas	☒	
Water	☒	
San. Sewer	☒	
	☐	Underground Elect. & Tel.

OFF SITE IMPROVEMENTS
Street Access ☒ Public ☐ Private
Surface Asphalt
Maintenance ☒ Public ☐ Private
☐ Storm Sewer ☐ Curb/Gutter
☐ Sidewalk ☐ Street Lights

Topo Level
Size 2.23 Ac.
Shape Irregular
View Average
Drainage Average
Is the property located in a HUD Identified Special Flood Hazard Area? ☒ No ☐ Yes

Comments (favorable or unfavorable including any apparent adverse easements, encroachments, or other adverse conditions): No apparent adverse easements, encroachments, or other apparent adverse conditions were noted.

MARKET DATA ANALYSIS

The undersigned has recited three recent sales of properties most similar and proximate to subject and has considered these in the market analysis. The description includes a dollar adjustment reflecting market reaction to those items of significant variation between the subject and comparable properties. If a significant item in the comparable property is superior to or more favorable than the subject property, a minus (-) adjustment is made thus reducing the indicated value of subject; if a significant item in the comparable is inferior to or less favorable than the subject property, a plus (+) adjustment is made thus increasing the indicated value of the subject.

ITEM	SUBJECT PROPERTY	COMPARABLE NO. 1		COMPARABLE NO. 2		COMPARABLE NO. 3	
Address	+/-2.23 Acres-Tract 7 WHM Lan Fayetteville	723 N 46th St. Fayetteville, AR		Lot 105 Meadowlands I & II Fayetteville, AR		Lot 98 Meadowlands I & II Fayetteville, AR	
Proximity to Subject	[redacted]	0.65 miles					
Sales Price	$ na	[redacted]	$ 166,000	[redacted]	$ 28,000	[redacted]	$ 32,000
Price Sq. Ft.	$ n/a	[redacted]	$ 1.62	[redacted]	$ 1.62	[redacted]	$ 2.44
Data Source	Inspection/WashRec	Washington Cty. Deed Recs.		Washington Cty. Deed Recs.		Washington Cty. Deed Recs.	
Date of Sale and Time Adjustment	DESCRIPTION: March 14, 2003	DESCRIPTION: 06/11/2002	+(-)$ Adjust: 0	DESCRIPTION: 10/22/2002	+(-)$ Adjust: 0	DESCRIPTION: 07/03/2002	+(-)$ Adjust: 0
Location	Average	Average		Average		Average	
Site/View	2.23/Average	2.35/Average	-8,500	0.40/Average	+80,000	0.30/Average	+80,000
Topography	Average	Average		Average		Average	
Visibility	Average	Average		Average		Average	
Accessibility	Average	Average		Average		Average	
Utilities	Average	Average		Good	+28,000	Good	+28,000
Sales or Financing Concessions	None						
Net Adj. (Total)	[redacted]	☐ + ☒ -	$ 8,500	☒ + ☐ -	$ 108,000	☒ + ☐ -	$ 108,000
Indicated Value of Subject	[redacted]	[redacted]	$ 157,500	[redacted]	$ 136,000	[redacted]	$ 140,000

RECONCILIATION

Comments on Market Data: See attached addenda.

Comments and Conditions of Appraisal: The subject has access to all necessary supporting facilities including schools, recreation, and employment. The subject is an estimated 2.23 acre site for purposes of acquiring and developing an area fire services facility. The subject area is currently being subdivided in several directions and proximity of the proposed fire services building will greatly enhance the area.

Final Reconciliation: All weight is given the Sales Comparison Approach, as it reflects buyer and seller actions in the market place. No weight is given the Cost Approach or the Income Approach because there are no improvements on the land, or measurable income to the land.

I ESTIMATE THE MARKET VALUE, AS DEFINED, OF SUBJECT PROPERTY AS OF March 14 20 03 to be $ 158,000

Don L. Cramer
Appraiser(s)

STATE LICENSING AND CERTIFICATION BOARD CERTIFIED GENERAL CG2171 DON L. CRAMER APPRAISALS, INC.

☐ Did ☐ Did Not Physically Inspect Property
Review Appraiser (if applicable)

[Y2K]

LAND APPRAISAL REPORT
MARKET DATA ANALYSIS

File No. 900108

MARKET DATA ANALYSIS

ITEM	SUBJECT PROPERTY	COMPARABLE NO. 4		COMPARABLE NO. 5		COMPARABLE NO. 6	
Address	+/-2.23 Acres-Tract 7 WHM Land Fayetteville	Lot 59 Meadowlands I & II Fayetteville, AR		Lot 55 Meadowlands I & II Fayetteville, AR		Lot 53 Meadowlands I & II Fayetteville, AR	
Proximity to Subject							
Sales Price	$ n/a		$ 40,000		$ 28,000		$ 30,000
Price Sq. Ft.	$ n/a		$ 1.85		$ 2.15		$ 2.41
Data Source	Inspection/WashRec	Washington Cty. Deed Recs.		Washington Cty. Deed Recs.		Washington Cty. Deed Recs.	
Date of sale and Time Adjustment	DESCRIPTION: March 14, 2003	DESCRIPTION: 09/10/2002	+(-)$ Adjust.: 0	DESCRIPTION: 02/28/2002	+(-)$ Adjust.: 0	DESCRIPTION: 06/05/2002	+(-)$ Adjust.: 0
Location	Average	Average		Average		Average	
Site/View	2.23/Average	0.50/Average	+80,000	0.30/Average	+80,000	0.29/Average	+80,000
opography	Average	Average		Average		Average	
Visibility	Average	Average		Average		Average	
Accessibility	Average	Average		Average		Average	
Utilities	Average	Good	+28,000	Good	+28,000	Good	+28,000
Sales or Financing Concessions	None						
Net Adj. (Total)		☒ + ☐ -	$ 108,000	☒ + ☐ -	$ 108,000	☒ + ☐ -	$ 108,000
Indicated Value of Subject			$ 148,000		$ 136,000		$ 136,000

COMMENTS

Comments: A diligent effort was made in the search for comparable sales that are the most similar, most recent, and closest in proximity to the subject property. The market was expanded back over one year to find the best sales. Those used in this report are the best available market data.The proposed Subject property is located adjacent to a developing residential subdivision which has the same Residential 1.5 zoning as the subject. Sale # 1 is considered to be the best comparable and requires the least adjustment, therefore is given the most consideration. Sales 2, 3, 4, 5 & 6 are listed for comparison and each are adjusted to compensate for size differences and for providing the differences in the sales having included the costs of street improvements and all utility extension costs. Each of the Sales 2, 3, 4, 5 & 6 are adjusted a similar amount for size & utility costs and are used as an example of comparison for square foot estimates to support Sale # 1.

While not exactly the same, the sales do form a realistic range of value for the subject. Most weight is given Sale 1, since it is the most similar and required the least adjustment.

Supplemental Addendum

File No. 900108

Property Address +/-2.23 Acres-Tract 7 WHM Land Investment, Inc. - Rupple Rd.			
City Fayetteville	County Washington	State AR	Zip Code 72703
Lender City of Ffayetteville			

• **Land; Market Data**

A diligent effort was made in the search for comparable sales that are the most similar, most recent , and closest in proximityto the subject property. The Market Data was researched for the past three years and the Comparables used extend over the past one year and are representative of the best sales available.The proposed subject property is located adjacent to a developing residential subdivision which has the same Residential 1.5 Zoning as the Subject. Sale # 1 is considered to be the best comparable and requires the least adjustment, therefore is given the greatest consideration. Sales 2, 3, 4, 5 & 6are listed for comparison and each are adjusted a similar amount to compensate for the average size differences and for the estimated costs for development of streets and utilities for the developed lots. Sales 2, 3, 4, 5, & 6 are provided as the closest square foot estimates to support Sale # 1.

DEFINITION OF MARKET VALUE: The most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller, each acting prudently, knowledgeably and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby: (1) buyer and seller are typically motivated; (2) both parties are well informed or well advised, and each acting in what he considers his own best interest; (3) a reasonable time is allowed for exposure in the open market; (4) payment is made in terms of cash in U.S. dollars or in terms of financial arrangements comparable thereto; and (5) the price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions* granted by anyone associated with the sale.

*Adjustments to the comparables must be made for special or creative financing or sales concessions. No adjustments are necessary for those costs which are normally paid by sellers as a result of tradition or law in a market area; these costs are readily identifiable since the seller pays these costs in virtually all sales transactions. Special or creative financing adjustments can be made to the comparable property by comparisons to financing terms offered by a third party institutional lender that is not already involved in the property or transaction. Any adjustment should not be calculated on a mechanical dollar for dollar cost of the financing or concession but the dollar amount of any adjustment should approximate the market's reaction to the financing or concessions based on the appraiser's judgement.

STATEMENT OF LIMITING CONDITIONS AND APPRAISER'S CERTIFICATION

CONTINGENT AND LIMITING CONDITIONS: The appraiser's certification that appears in the appraisal report is subject to the following conditions:

1. The appraiser will not be responsible for matters of a legal nature that affect either the property being appraised or the title to it. The appraiser assumes that the title is good and marketable and, therefore, will not render any opinions about the title. The property is appraised on the basis of it being under responsible ownership.

2. The appraiser has provided a sketch in the appraisal report to show approximate dimensions of the improvements and the sketch is included only to assist the reader of the report in visualizing the property and understanding the appraiser's determination of its size.

3. The appraiser has examined the available flood maps that are provided by the Federal Emergency Management Agency (or other data sources) and has noted in the appraisal report whether the subject site is located in an identified Special Flood Hazard Area. Because the appraiser is not a surveyor, he or she makes no guarantees, express or implied, regarding this determination.

4. The appraiser will not give testimony or appear in court because he or she made an appraisal of the property in question, unless specific arrangements to do so have been made beforehand.

5. The appraiser has estimated the value of the land in the cost approach at its highest and best use and the improvements at their contributory value. These separate valuations of the land and improvements must not be used in conjunction with any other appraisal and are invalid if they are so used.

6. The appraiser has noted in the appraisal report any adverse conditions (such as, needed repairs, depreciation, the presence of hazardous wastes, toxic substances, etc.) observed during the inspection of the subject property or that he or she became aware of during the normal research involved in performing the appraisal. Unless otherwise stated in the appraisal report, the appraiser has no knowledge of any hidden or unapparent conditions of the property or adverse environmental conditions (including the presence of hazardous wastes, toxic substances, etc.) that would make the property more or less valuable, and has assumed that there are no such conditions and makes no guarantees or warranties, express or implied, regarding the condition of the property. The appraiser will not be responsible for any such conditions that do exist or for any engineering or testing that might be required to discover whether such conditions exist. Because the appraiser is not an expert in the field of environmental hazards, the appraisal report must not be considered as an environmental assessment of the property.

7. The appraiser obtained the information, estimates, and opinions that were expressed in the appraisal report from sources that he or she considers to be reliable and believes them to be true and correct. The appraiser does not assume responsibility for the accuracy of such items that were furnished by other parties.

8. The appraiser will not disclose the contents of the appraisal report except as provided for in the Uniform Standards of Professional Appraisal Practice.

9. The appraiser has based his or her appraisal report and valuation conclusion for an appraisal that is subject to satisfactory completion, repairs, or alterations on the assumption that completion of the improvements will be performed in a workmanlike manner.

10. The appraiser must provide his or her prior written consent before the lender/client specified in the appraisal report can distribute the appraisal report (including conclusions about the property value, the appraiser's identity and professional designations, and references to any professional appraisal organizations or the firm with which the appraiser is associated) to anyone other than the borrower; the mortgagee or its successors and assigns; the mortgage insurer; consultants; professional appraisal organizations; any state or federally approved financial institution; or any department, agency, or instrumentality of the United States or any state or the District of Columbia; except that the lender/client may distribute the property description section of the report only to data collection or reporting service(s) without having to obtain the appraiser's prior written consent. The appraiser's written consent and approval must also be obtained before the appraisal can be conveyed by anyone to the public through advertising, public relations, news, sales, or other media.

WHM Land Inv.
Condemnation
B. 2. Page 14

APPRAISER'S CERTIFICATION: The Appraiser certifies and agrees that:

1. I have researched the subject market area and have selected a minimum of three recent sales of properties most similar and proximate to the subject property for consideration in the sales comparison analysis and have made a dollar adjustment when appropriate to reflect the market reaction to those items of significant variation. If a significant item in a comparable property is superior to, or more favorable than, the subject property, I have made a negative adjustment to reduce the adjusted sales price of the comparable and, if a significant item in a comparable property is inferior to, or less favorable than the subject property, I have made a positive adjustment to increase the adjusted sales price of the comparable.

2. I have taken into consideration the factors that have an impact on value in my development of the estimate of market value in the appraisal report. I have not knowingly withheld any significant information from the appraisal report and I believe, to the best of my knowledge, that all statements and information in the appraisal report are true and correct.

3. I stated in the appraisal report only my own personal, unbiased, and professional analysis, opinions, and conclusions, which are subject only to the contingent and limiting conditions specified in this form.

4. I have no present or prospective interest in the property that is the subject to this report, and I have no present or prospective personal interest or bias with respect to the participants in the transaction. I did not base, either partially or completely, my analysis and/or the estimate of market value in the appraisal report on the race, color, religion, sex, handicap, familial status, or national origin of either the prospective owners or occupants of the subject property or of the present owners or occupants of the properties in the vicinity of the subject property.

5. I have no present or contemplated future interest in the subject property, and neither my current or future employment nor my compensation for performing this appraisal is contingent on the appraised value of the property.

6. I was not required to report a predetermined value or direction in value that favors the cause of the client or any related party, the amount of the value estimate, the attainment of a specific result, or the occurrence of a subsequent event in order to receive my compensation and/or employment for performing the appraisal. I did not base the appraisal report on a requested minimum valuation, a specific valuation, or the need to approve a specific mortgage loan.

7. I performed this appraisal in conformity with the Uniform Standards of Professional Appraisal Practice that were adopted and promulgated by the Appraisal Standards Board of The Appraisal Foundation and that were in place as of the effective date of this appraisal, with the exception of the departure provision of those Standards, which does not apply. I acknowledge that an estimate of a reasonable time for exposure in the open market is a condition in the definition of market value and the estimate I developed is consistent with the marketing time noted in the neighborhood section of this report, unless I have otherwise stated in the reconciliation section.

8. I have personally inspected the interior and exterior areas of the subject property and the exterior of all properties listed as comparables in the appraisal report. I further certify that I have noted any apparent or known adverse conditions in the subject improvements, on the subject site, or on any site within the immediate vicinity of the subject property of which I am aware and have made adjustments for these adverse conditions in my analysis of the property value to the extent that I had market evidence to support them. I have also commented about the effect of the adverse conditions on the marketability of the subject property.

9. I personally prepared all conclusions and opinions about the real estate that were set forth in the appraisal report. If I relied on significant professional assistance from any individual or individuals in the performance of the appraisal or the preparation of the appraisal report, I have named such individual(s) and disclosed the specific tasks performed by them in the reconciliation section of this appraisal report. I certify that any individual so named is qualified to perform the tasks. I have not authorized anyone to make a change to any item in the report; therefore, if an unauthorized change is made to the appraisal report, I will take no responsibility for it.

SUPERVISORY APPRAISER'S CERTIFICATION: If a supervisory appraiser signed the appraisal report, he or she certifies and agrees that: I directly supervise the appraiser who prepared the appraisal report, have reviewed the appraisal report, agree with the statements and conclusions of the appraiser, agree to be bound by the appraiser's certifications numbered 4 through 7 above, and am taking full responsibility for the appraisal and the appraisal report.

ADDRESS OF PROPERTY APPRAISED: +/-2.23 Acres-Tract 7 WHM Land Investments, Inc. - Rupple Rd., Fayetteville, AR

APPRAISER:

Signature: Don L. Cramer
Name: Don L. Cramer
Date Signed: March 21, 2003
State Certification #: CR0216
or State License #:
State: AR
Expiration Date of Certification or License: 6/30/03

SUPERVISORY APPRAISER (only if required):

Signature:
Name:
Date Signed:
State Certification #:
or State License #:
State:
Expiration Date of Certification or License:

☐ Did ☐ Did Not Inspect Property

Form ACR — "TOTAL for Windows" appraisal software by a la mode, inc. — 1-800-ALAMODE

STAFF REVIEW FORM - NON-FINANCIAL OBLIGATION

x AGENDA REQUEST

For the Fayetteville City Council Meeting of: May 6, 2003

FROM:

Dawn Warrick	Planning	CP&E
Name	Division	Department

ACTION REQUIRED: Ordinance Approval

SUMMARY EXPLANATION:

An ordinance repealing Title XV, Unified Development Ordinance (Originally adopted by ordinance 4100, June 16, 1998) of the Code of Fayetteville and adopting and enacting an amended Title XV Unified Development Code.

STAFF RECOMMENDATION: Approval

Dawn Warrick — Division Head — 4/18/03 Date

Received in Mayor's Office — 4/22/03 Date

[signature] — City Attorney — 4/21/03 Date

[signature] — Department Director — 4-18-03 Date

Cross Reference:

Previous Ord/Res#: _____

[signature] — Finance & Internal Services Dir. — 4-22-03 Date

Orig. Contract Date: _____

Hugh Earnett — Chief Administrative Officer — 4-22-03 Date

Orig. Contract Number: _____

[signature] — Mayor — 4/22/03 Date

New Item: Yes No

ORDINANCE NO. _____

An ORDINANCE REPEALING TITLE XV, UNIFIED DEVELOPMENT ORDINANCE (ORIGINALLY ADOPTED BY ORDINANCE 4100, JUNE 16, 1998) OF THE CODE OF FAYETTEVILLE AND ADOPTING AND ENACTING AN AMENDED TITLE XV UNIFIED DEVELOPMENT CODE

WHEREAS, A.C.A. §14-55-207 authorizes cities to adopt by reference technical codes and regulations without setting forth the provisions of the code or parts thereof; and

WHEREAS, three copies of proposed Unified Develop Code, Title XV of the Code of Fayetteville are filed in the office of the City Clerk and have been available for the public to inspect and view prior to passage of this ordinance; and

WHEREAS, proper notice by publication in a newspaper of general circulation within Fayetteville stating that copies of the proposed Unified Development Code are available and open to public inspection in the City Clerk's office prior to the passage of this ordinance; and

WHEREAS, most of the current Unified Development Ordinance remains unchanged with the recodification of the Unified Development Code and the changes and amendments to the current Unified Development Ordinance incorporated within the proposed Unified Development Code have been publicly discussed and approved by the Fayetteville Planning Commission and the City Council Ordinance Review Committee.

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

Section 1. That the City Council of the City of Fayetteville, Arkansas hereby repeals and deletes Title 15, Unified Development Ordinance of the Code of Fayetteville initially adopted on June 16, 1998 and replaces it by enacting and adopting Title XV, Unified Development Code of the Code of Fayetteville attached hereto as Exhibit A and made a part hereof by reference.

Section 2. That the City Council of the City of Fayetteville, Arkansas hereby declares that Exhibit A., the Unified Development Code shall be codified as shown in Exhibit "A".

Section 3. That the City Council of the City of Fayetteville, Arkansas hereby reaffirms that any and all developmental rights, duties, conditions, obligations and entitlements already approved by Planning Staff or the Planning Commission and now existing pursuant to the terms of the Unified Development Ordinance adopted in 1998 (with all current amendments) shall remain valid and binding pursuant to those terms and conditions.

PASSED and **APPROVED** this 6th day of May, 2003.

APPROVED:

By: DRAFT
DAN COODY, Mayor

ATTEST:

By: _____
Sondra Smith, City Clerk

FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

113 W. Mountain St.
Fayetteville, AR 72701
Telephone: (501) 575-8267

PLANNING DIVISION CORRESPONDENCE

TO: **Mayor Dan Coody**
Fayetteville City Council
FROM: **Dawn Warrick, AICP, Zoning & Development Administrator**
THRU: **Tim Conklin, AICP, Director of Community, Planning & Engineering Svcs.**
DATE: **April 18, 2003**

ADM 03-6.00: Administrative Item (UDO) was submitted by the Planning Division of the City of Fayetteville for adoption of the codification of the Unified Development Ordinance, Title 15 of the City of Fayetteville Code of Ordinances with proposed amendments.

BACKGROUND

The current draft of Title 15, Unified Development Ordinance of the Code of the City of Fayetteville was adopted on June 16, 1998 by Ordinance No. 4100. Since that time, many ordinances have been adopted which revise the content of the UDO, including new zoning districts, revised Tree Preservation and Protection ordinance, and development impact fees.

The entire City Code is currently in the codification process. In order to provide accurate information to the citizens of Fayetteville, the Planning Division has completed the codification of Title 15 and is bringing it forward to the Planning Commission for approval. Title 15, the Unified Development Ordinance, includes 25 chapters: Chapter 150 through Chapter 175.

CURRENT STATUS

On March 24, 2003, the Planning Commission voted 9-0-0 to forward this item to the City Council with a recommendation for approval.

RECOMMENDATION

Staff recommends approval of the codified UDO, Title 15 of the City of Fayetteville Code of Ordinances.

FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

113 W. Mountain St.
Fayetteville, AR 72701
Telephone: 479-575-8267

PLANNING DIVISION CORRESPONDENCE

TO: Mayor Coody
Fayetteville City Council
FROM: Dawn T. Warrick, AICP, Zoning & Development Administrator
DATE: April 18, 2003
SUBJECT: Revisions to UDO / UDC draft

Please find attached several revised pages for insertion in your working copy of the draft Unified Development Code. These revisions were made after the copies of this document were run and distributed.

1. Remove and replace Chapter 151. Definitions
2. Remove and replace page CD157:1
3. Remove and replace page CD157:7
4. Remove and replace Chapter 159. Fees
5. Remove and replace page CD162:5
6. Remove and replace page CD163:9
7. Remove and replace Chapter 173. Building Regulations

TITLE XV. UNIFIED DEVELOPMENT ORDINANCE

Chapter 151. Definitions.

Sec. 151.01 Definitions.

CHAPTER 151. DEFINITIONS.

Sec. 151.01. Definitions. For the purpose of Title XV, Unified Development Ordinance, the following definitions shall apply to the divider sections, chapters, sections or subsections, unless the context clearly indicates or requires a different meaning.

A

Abbreviated Tree Preservation Plan. (Tree Preservation and Protection) A shorter, less formal tree preservation plan required of applicants seeking building, grading, or parking lot permits, but who are not subject to the requirements for large scale developments or subdivisions.

Accessory community structures (Manufactured Homes and Parks) (Manufactured Homes and Parks opened or expanded after 4-20-72) A structure or a portion of a structure for commercial use that is located in a manufactured home park and which is intended solely for the convenience of the residents or occupants of the manufactured home park.

Accessory structures. (Manufactured Homes and Parks) (Manufactured Homes and Parks opened or expanded, 4-20-72) Any structural addition to the manufactured home such as awnings, cabanas, carports, Florida rooms, porches, patio covers, and similar additions.

Accessory use or structure. (Zoning) A use or structure on the same lot with, and of a nature customarily incidental and subordinate to, the principal use or structure.

Act. (Wireless Telecommunications Facilities) The Communications Act of 1934, as it has been amended from time to time, including the Telecommunications Act of 1996, shall include any future amendments.

Active open space. (Development) An area intended for rigorous activity such as tennis, baseball, badminton, and other games requiring physical exertion.

Administrative determination. (Tree Preservation and Protection) Final action by the landscape administrator to either approve, conditionally approve or disapprove a tree preservation plan. Administrative determinations apply only to those projects which do not require Planning Commission approval.

Adult arcade. (Zoning) Any place to which the public is permitted or invited wherein coin-operated or slug-operated or electronically, electrically, or mechanically controlled image producing devices are maintained to show images to five or fewer viewers at one time, and where the images so displayed are distinguished or characterized by the depicting or describing of "specified sexual activities" or "specified anatomical area."

Adult bookstore or adult video store. (Zoning) A commercial establishment whose principal business purpose is to offer for sale or rental for any form of consideration any one or more of the following: books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, video cassettes, or video reproductions, slides or other visual representations which depict or describe "specified sexual activities" or "specified anatomical areas."

Adult cabaret (Zoning) A nightclub, bar, restaurant, or similar commercial establishment which regularly features:

(A) Persons who appear in a state of nudity; or

(B) Live performances which are characterized by the exposing of "specified sexual activities" or "specified anatomical areas;" or

(C) Films, motion pictures, video cassettes, slides, or other photographic reproductions which are characterized by the depiction of "specified sexual activities" or "specified anatomical areas."

Adult motion picture theater. (Zoning) A commercial establishment where, for any form of consideration, films, motion pictures, video cassettes, slides, or similar photographic reproductions are regularly shown, excluding those which are characterized by the exposure of "specified sexual activities" or "specified anatomical areas."

Adult theaters. (Zoning) A theater, concert hall, auditorium, or similar commercial establishment, which regularly features persons who appear in a state of nudity or live performances which are characterized by the exposure of "specified sexual activities" or "specified anatomical areas."

Airport. (Airport Zone) Fayetteville Airport (Drake Field).

Airport elevation. (Airport Zone) 1,251 feet above mean sea level.

Alley. (Development) A minor public way dedicated to public use for utility easements and vehicle access to the back or the side of properties abutting a street.

Alternative tower structure. (Wireless Telecommunications Facilities) Man-made trees, clock towers, bell steeples, light poles, and similar alternative design mounting structures that camouflage or conceal the presence of antennas or towers and are built for the express purpose of serving as a tower or for locating antennas.

Analysis report. (Tree Preservation and Protection) A report, which among other things, sets forth any alternative designs the applicant considered in arriving at the proposed design.

Antenna. (Wireless Telecommunications Facilities) Any structure or device used to collect or radiate electromagnetic waves, including both directional antennas, such as panels, microwave dishes and satellite dishes and omni-directional antennas, such as whips but not including satellite earth stations.

Applicant. (Tree Preservation and Protection) Any person, party, partnership, corporation or other business entity seeking the city's approval of a proposed tree preservation plan.

Approach surface. (Airport Zone) A surface longitudinally centered on the extended runway centerline, extending outward and upward from the end of the primary surface and at the same slope as the approach zone height limitation slope. In a plane the perimeter of the approach surface coincides with the perimeter of the approach.

Approach, transitional, horizontal and conical zones. (Airport Zone) Those zones as set forth in § 165.01.

Approval. (Physical Alteration of Land) A written authorization by the city engineer.

Area sign. (Signs) A sign to identify a common area containing a group of structures, or a single structure on a minimum site of five acres, such as a residential subdivision, residential office, commercial or industrial subdivision, apartment complex, manufactured home park, or shopping center located at the entrance or entrances of the area, and consisting of fence or wall or archway with letters or symbols affixed thereto or other supporting structure as approved by the zoning and development administrator.

As graded. (Physical Alteration of Land) The surface condition on completion of grading.

B

Banner. (Signs) Any sign printed or displayed upon cloth or other flexible material, with or without frames.

Base density. (Tree Preservation and Protection) The number of trees an applicant must plant based upon the quality and number of the trees proposed to be removed per acre.

Base flood. (Stormwater Management, Drainage and Erosion Control) The flood having a one percent chance of being equaled or exceeded in any given year, also referred to as the 100 year storm event.

Beacon. (Signs) A stationary or revolving light which flashes or projects illumination, single color or multi-colored, in any manner which is intended to attract or divert attention; except, however, this term is not intended to include any kind of lighting device which is required or necessary under the safety regulations described by the Federal Aviation Agency or similar agencies.

Bed and breakfast facility. (Zoning) A permanently owner occupied private home with a maximum of five guest rooms furnishing temporary lodging and breakfast to paying customers.

Board of Adjustment. (Airport Zone) The Board of Adjustment established by Chapter 33.

Bona fide agricultural purpose. (Tree Preservation and Protection) The aim or goal of facilitating the ongoing commercial pursuit of farming, dairying, pasturage, horticulture, viticulture, or the keeping or raising of livestock or poultry, not otherwise prohibited by city ordinance.

Buildable area. (Zoning) the portion of a lot remaining after required yards have been reserved.

Building official. (Building Regulations) A city building inspector.

Building permit. (Manufactured Homes and Parks) (Manufactured Homes and Parks opened or expanded after 4-20-72) A written permit issued by the enforcement officer permitting construction, erection, alternation, remodeling, or repair of a manufactured home park.

Bulletin board. (Signs) Any sign erected by a charitable, educational or religious institution or public body, which is erected upon the same property as said institution, for purposes of announcing events which are held on the premises.

C

Caliper. (Parking and Loading) A measurement of general tree size taken at a point located six inches above natural ground or root ball surface.

Caliper. (Tree Preservation and Protection) Any land with a slope of 15% or greater containing trees, woody shrubs and herbaceous plants that serve the function of sustaining the structural integrity of the soil, thus reducing the likelihood of erosion, slide, or slump.

Canopied Slopes. (Tree Preservation and Protection) Any land with a slope of 15% or greater containing trees, woody shrubs and herbaceous plants that serve th function of sustaining the structural integrity of the soil, thus reducing the likelihood of erosion, slide or slump.

Canopy. (Tree Preservation and Protection) The combined crowns of all trees on a tract of land.

Chief administrator. (Building Regulations) The mayor of the City of Fayetteville.

Chief appointing authority. (Building Regulations) The City Council.

Chief building official. (Building Regulations) Building Safety Division director.

City. (Stormwater Management, Drainage and Erosion Control) The City of Fayetteville, including staff and elected officials, or designee.

City Engineer. (Stormwater Drainage and Erosion Control) The city engineer or his appointed representatives, including assigned staff engineers, technicians and inspectors.

City of Fayetteville Landscape Manual. (Tree Preservation and Protection) A document having detailed instructions for preparing tree preservation plans and standards and specifications for tree protection, planting, maintenance and design.

City official. (Streets and Sidewalks) The mayor (or other official designated by the mayor, and authorized to issue the permits granted thereunder) of the city.

City Planning Commission. (Manufactured Homes and Parks) (Manufactured Homes and Parks opened or expanded after 4-20-72) That commission created for the city by Chapter 33.

Club or lodge. (Zoning) A building or portion of a building used by an association for the promotion of some common objective excepting clubs the chief activity of which is a service customarily carried on as a business.

Collector street. (Streets and Sidewalks) A street which in addition to serving abutting properties, intercepts minor streets, connects with community facilities and carries neighborhood traffic to the major arterial street system.

Co-location. (Wireless Telecommunications Facilities) Locating wireless communications equipment for more than one provider at a single communications facility, on a building, or on an alternative tower structure.

Commercial development. (Tree Preservation and Protection) Any development in an R-O, Commercial or Industrial Zone and any conditional use in any other zone which permits activities usually conducted within an R-O, Commercial or Industrial Zone.

Commercial driveway. (Streets and Sidewalks) An entrance on public property or exit from any commercial, business, or public establishment adjacent to a public street or highway.

Commercial tree pruner/service. (Tree Preservation or Protection) A person who performs work on trees for profit.

Common open space. (Development) Land within or related to a development, not individually owned or dedicated for public use, which is reserved for the exclusive use or enjoyment of the residents or occupants of the development and their guests.

Community storage structure. (Manufactured Homes and Parks) A structure located in a manufactured home park for the convenience of the residents to provide storage space for often used outdoor equipment, furniture, tools and other items which cannot be conveniently stored in the typical manufactured home.

Compact automobile. (Parking and Loading) Any vehicle less than six feet wide and 15 feet long.

Compaction. (Physical Alteration of Land) The densification of a fill by mechanical means.

Company flag. (Signs) A flag identifying a business or an organization where the flag is displayed.

Conditional use. (Zoning) A use permitted in certain zoning districts subject to certain conditions imposed by the Planning Commission after review of development plat.

Condominium. (Zoning) Two or more single-family dwelling units constructed in a series of attached units and submitted to a horizontal property regime under A.C.A. §8-13-102 et seq.

Conical surface. (Airport Zone) A surface extending outward and upward from the periphery of the horizontal surface at a slope of twenty-to-one for a horizontal distance of 4,000 feet.

Connection. (Water and Wastewater Impact Fees) The physical tie-in of a private water or wastewater service system to the City of Fayetteville's public water or wastewater system.

Conservation easement. (Tree Preservation and Protection) A formal, legally binding agreement between parties, usually a landowner and a private or public entity, providing for the preservation of land in its natural state.

Construction permit. (Stormwater Management, Drainage and Erosion Control) Stormwater management, drainage and erosion control permit issued by the city to an entity with the legal ability to construct the stormwater management system in accordance with the approved system design and permit conditions.

Construction. (Stormwater Management, Drainage and Erosion Control) Any on-site activity that would result in the creation of a new stormwater management system, including the building, assembling, expansion modification, or alteration of the existing contours of the property; the erection of buildings or other structures, any part thereof; or land clearing.

Contiguous woodlands. (Tree Preservation and Protection) A portion of canopy existing on the site of proposed development, which is a part of a larger, unbroken forest, whether or not it extends onto adjacent lots.

Contour intervals. (Development) Topographic map lines connecting points of equal elevations.

Controlled access highway. (Signs) Any state or federal numbered highway designated by ordinance as a controlled access highway by the City Council.

Cribbing. (Physical Alteration of Land) A framework of bars for support or strengthening.

Cut. (Physical Alteration of Land) See "Excavation."

D

Dance hall. (Zoning) Any building, premises, pavilion, or place of business wherein dancing is permitted, conducted or engaged in by the public in general, including but not limited to private clubs as defined by ordinance and/or the laws of the State of Arkansas, either for profit or not.

Dead-end street. (Development) A street having one end open to traffic and being permanently terminated by a vehicular turnaround.

Deciduous trees. (Physical Alteration of Land) Trees that shed their leaves annually. Small deciduous trees are no more than 40 feet tall at maturity while large deciduous trees exceed 40 feet in height at maturity.

Dedication. (Development) Land and improvements offered to the city, county, or state and accepted by them for public use, control, and maintenance.

Department of Law. (Building Regulations) The city attorney's offices.

Dependent manufactured home. (Manufactured Homes and Parks) (Manufactured Homes and Parks opened or expanded, 4-20-72) A manufactured home which does not have a flush toilet and bath or shower.

Detention. (Stormwater Management, Drainage and Erosion Control) The collection and temporary storage of stormwater with subsequent gradual release of the stormwater.

Develop. (Physical Alteration of Land) Permanently altering land by subjecting it to grading, removal of vegetation, or construction such as but not limited to buildings, parking lots, streets, and sidewalks.

Developer. (Stormwater Management, Drainage and Erosion Control) Any person(s), parties, partnerships, or corporations, private or public, engaging in activities described as development.

Developer. (Development) A person, firm or corporation undertaking to develop a subdivision or large scale development as set forth in the development regulations.

Development. (Stormwater Management, Drainage and Erosion Control) To make a site or area available for use by physical alteration. Development includes, but is not limited to, providing access to a site, clearing vegetation; grading; earth moving; providing utilities and other services such as parking facilities; stormwater management and erosion control systems; and sewage disposal systems; altering landforms; or construction of a structure on the land. Development shall also mean any of the following:

(A) Construction, installation, alteration, demolition, or removal of a structure, impervious surface, or stormwater management system, or

(B) Clearing, scraping, grubbing, or otherwise removing or killing the vegetation of a site; or

(C) Adding, removing, exposing, excavating, leveling, grading, digging, dumping, or otherwise disturbing the soil or rock of a site in a manner contrary to the requirements of the stormwater management, drainage and erosion control regulations.

Development. (Streets and Sidewalks) Shall include, but shall not be limited to, the construction of a new improvement, the construction of an addition to an existing improvement, or a parceling which results in the need for access and utilities.

Development plan. (Development) A drawing showing all proposed improvements to a piece of property such as streets, parking lots, buildings, drives, signs, utilities, drainage, grading and planting by size and location.

Development site. (Physical Alteration of Land) That portion of any lot or parcel subjected to grading, removal of vegetation, or construction such as, but not limited to, buildings, parking lots, streets and sidewalks.

Diameter breast height (DBH). (Tree Preservation and Protection) The diameter of a tree measured at a point four and one-half feet above the ground. If a tree splits into multi-trunks, the trunk is measured at its narrowest point below the split.

Directional sign. (Signs) A sign of a noncommercial nature which directs the reader to the location of public or educational institutions, or to the location of historical structures or areas, or the location of public parks or buildings.

Display surface area. (Signs) The net geometric area enclosed by the display surface of the sign including the outer extremities of all letters, characters and delineations; provided, however, "display surface area" shall not include the structural supports for free standing signs; provided further, that only one face of a double-faced sign shall be considered in determining the display surface area.

District or zoning district. (Signs) A section or sections of the incorporated area of the city for which the then effective zoning ordinance governing the use of buildings and land are uniform for each class of use permitted therein. References to individual zoning districts contained herein shall refer to the zoning district established by the City Council in Chapter 160.

Disturb. (Physical Alteration of Land) To alter the natural state.

Dormitory. (Zoning) A building or group of buildings designed or altered for the purpose of accommodating students or members of religious orders with sleeping quarters, with or without communal kitchen facilities, and administered by educational or religious institutions.

Drainage area. (Stormwater Management, Drainage and Erosion Control) The watershed area contributing surface and stormwater runoff to a stormwater management system.

Dripline. (Tree Preservation and Protection) An imaginary vertical line that extends downward from the outermost tips of the tree branches to the ground.

Drive-in restaurant or refreshment stand. (Zoning) Any place or premises used for sale, dispensing, or serving of food, refreshments, or beverages in automobiles, including those establishments where customers may serve themselves and may eat or drink the food, refreshments or beverages on the premises.

Dwelling, manufactured home. (Zoning) A detached residential dwelling unit designated for transportation on streets or highways on its own wheels or on flatbed or other trailers, and arriving at the site where it is to be occupied as a dwelling complete and ready for occupancy except for minor and incidental unpacking and assembly operations, location on jacks or other temporary or permanent foundation, connection to utilities, and the like. A travel trailer is not to be considered as a manufactured home.

Dwelling, multi-family. (Zoning) A residential building designed for or occupied by three or more families, with the number of families in residence not exceeding the number of dwelling units provided.

Dwelling, single-family. (Zoning) A detached residential dwelling unit other than a manufactured home, designed for and occupied by one family only.

Dwelling, two-family. (Zoning) A detached residential building containing two dwelling units, designed for occupancy by not more than two families.

Dwelling unit. (Zoning) One room, or rooms connected together, constituting a separate, independent housekeeping establishment for owner occupancy, or rental or lease on a weekly, monthly, or longer basis, and physically separated from any other rooms or dwelling units which may be in the same structure, and containing independent cooking and sleeping facilities.

E

Easement. (Development) A grant by the property owner to the public, a corporation or persons, for the use of a strip of land for specific purposes.

Enforcement officer. (Manufactured Homes and Parks) (Manufactured Homes and Parks opened or expanded, 4-20-72) The chief building inspector of the city, or his/her duly authorized representative.

Engineer. (Stormwater Management, Drainage and Erosion Control) A professional engineer registered in Arkansas, or other person exempted pursuant to the provisions of the Arkansas Code Annotated, who is competent in the fields of hydrology and stormwater management.

Erect. (Signs) To build, construct, attach, hang, place, suspend, or affix, and shall also include the painting of wall signs.

Erosion. (Stormwater Management, Drainage and Erosion Control) The removal of soil particles by the action of water, wind, ice or other geological agents.

Evergreen. (Physical Alteration of Land) A plant that retains leaves or needles year-round.

Excavation. (Physical Alteration of Land) The mechanical removal of earth material from water or land.

F

FAA. (Airport Zone) The Federal Aviation Administration.

Facilities emitting odors. (Zoning regulations) Any function that involves a process which emits or has the potential for emitting odor.

Facilities handling explosives. (Zoning) Any function that involves a process dealing with a product with explosive potential.

Fall zone. (Wireless Communications Facilities) The area within which a tower or antenna might cause damage to persons or property should the tower or antenna be knocked down, blown over or fall on its own.

Family. (Zoning) In single-family residential districts, a family is no more than three persons unless all are related and occupy a dwelling as a single housekeeping unit in the RSF-.5 (Residential Single-family – Half Acre), RSF - 1 (Residential Single-family - One acre), RSF - 2 (Residential Single-family – 2 Acre), RSF - 4 (Residential Single-family – 4 Units per Acre), and RSF - 7 (Residential Single-family – 7 Units per Acre) zoning districts. In all other zoning districts where residential uses are permitted, a family is no more than four persons unless all are related and occupy a dwelling as a single housekeeping unit. A family is when all persons are related by blood, marriage, adoption, guardianship or other duly-authorized custodial relationship. The definition of family does not include fraternities, sororities, clubs or institutional groups.

FCC. (Wireless Telecommunications Facilities) The Federal Communications Commission.

FEMA. (Physical Alteration of Land) Federal Emergency Management Agency.

Fill. (Physical Alteration of Land) A deposit of earth material placed by artificial means.

Filling station. (Zoning)

(A) Buildings and premises where gasoline, oil, grease, batteries, tires, and automobile accessories may be supplied and dispensed at retail, and where in addition the following services may be rendered and sales made, no other:

(1) Sale and servicing of spark plugs, batteries, and distributor parts;
(2) Tire servicing and repair, but no recapping or regrooving;
(3) Replacement of mufflers and tail pipes, water hose, fan belts, brake fluid, light bulbs, fuses, floor mats, seat covers, windshield wipers and wiper blades, grease retainers, wheel bearings, mirrors, and the like;
(4) Radiator cleaning and flushing;
(5) Washing and polishing, and sales of automotive washing and polishing materials;
(6) Greasing and lubrications;

(7) Providing and repairing fuel pumps, oil pumps, and lines;
(8) Minor servicing and repair of carburetors;
(9) Emergency wiring repairs;
(10) Adjusting and repairing brakes;
(11) Minor motor adjustments not involving removal of the head or crankcase or racing the motor;
(12) Sales of cold drinks, package foods, tobacco, and similar convenience goods for filling station customers, as accessory and incidental to principal operations;
(13) Provision of road maps and other information material to customer; provision of restroom facilities.

(B) Uses permissible at a filling station do not include major mechanical and body work, straightening of body parts, painting, welding, storage or automobiles not in operating condition, or other work involving noise, glare, fumes, smoke, or other characteristics to an extent greater than normally found in filling stations. A filling station is not a repair garage or a body shop.

Flashing sign. (Signs) An illuminated sign on which artificial or reflected lights is not maintained stationary and constant in intensity and color at all times when in use.

Flood or flooding. (Flood Damage Prevention) A general and temporary condition or partial or complete inundation of normally dry land areas from the overflow of flood waters, or the unusual and rapid accumulation or run-off of surface water from any source.

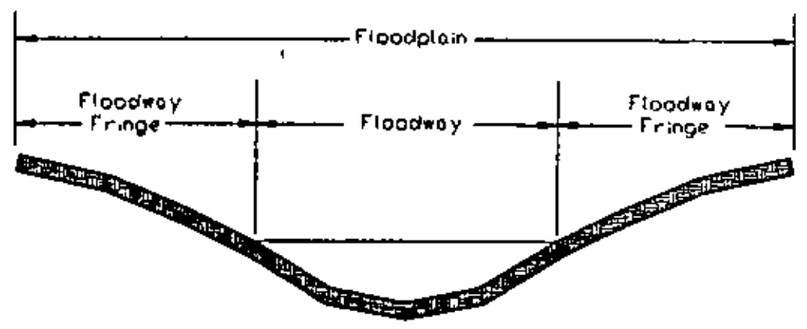
Flood boundary and floodway map. (Flood Damage Prevention) The official map on which the Federal Insurance Administration has delineated both the areas of flood hazards and the floodway.

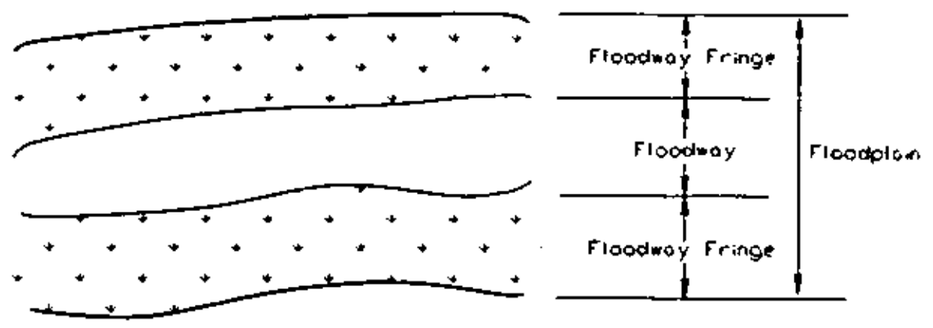
Flood Insurance Rate Map (FIRM). (Flood Damage Prevention) The official map on which the Federal Management Agency or Federal Insurance Administration has delineated both the areas of special flood hazards and the Floodway.

Flood Insurance Study. (Flood Damage Prevention) The official report provided by the Federal Insurance Administration that includes flood profiles, the FIRM, the Flood Boundary and Floodway Map, and the water surface elevation of the base flood.

Floodplain. (Stormwater Management, Drainage and Erosion Control) For a given flood event, that area of land that is temporarily covered by water and that adjoins a watercourse. In FEMA regulated, or established floodplains, the floodplains shall mean the area subject to inundation from any source during the regulatory event.

Floodplain or flood-prone area. (Flood Damage Prevention) Areas that are subject to, or are exposed to, flooding and flood damage.





Floodplain management. (Flood Damage Prevention) The operation of an overall program of corrective and preventive measures for reducing flood damage, including but not limited to, emergency preparedness plans, flood control works and floodplain management regulations.

Floodplain management regulations. (Flood Damage Prevention) Development code, building codes, health regulations, special purpose ordinances (i.e., grading ordinance and erosion control ordinance) and other applications of police power. The term describes such state or local regulations in any combination thereof, which provide standards for the purpose of flood damage prevention and reduction.

Flood-proofing. (Flood Damage Prevention) Any combination of structural and nonstructural additions, changes or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures and their contents.

Floodway. (Flood Damage Prevention) The channel of a river, or other watercourse, and the adjacent land area that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot. Also referred to as "Regulatory floodway."

Floodway. (Stormwater Management, Drainage and Erosion Control) The channel of a stream, plus any adjacent floodplain areas that must be kept free to encroachment so that the 100-year flood discharge can be conveyed without increases of more than specified amount in base elevations, either zero or one foot depending on specific location. This is an area of significant depths and velocities and therefore due consideration should be given to the effects of fill and loss of cross-sectional flow area is increased water surface elevations.

Forestation. (Tree Preservation and Protection) The act of planting trees.

Fraternity or sorority house. (Zoning) A building owned or leased by a general or local chapter of some regularly organized college fraternity or sorority, or by or on its behalf by a building corporation or association composed of members or alumni thereof, and occupied by the local chapter of such fraternity or sorority as a place of residence.

Freestanding sign. (Signs) A sign which is attached to or a part of a completely self-supporting structure. The supporting structure shall be set firmly in or below the ground surface and shall not be attached to any building or any other structure whether portable or stationary.

Functionally dependent use. (Flood Damage Prevention) A use which cannot perform its intended purpose unless it is located or carried out in close proximity to water.

G

Garage sales. (Zoning) An occasional sales activity, not to include activities described elsewhere as home occupations, but including activities generally referred to as garage sales, yard sales, rummage sales, white elephant sales, cleaning sales, or moving sales, where used goods are displayed or offered for sale to the general public in a residential area on the resident's premises.

Gas outlet. (Building Regulations) For the purpose of establishing gas permit fees for additions, alterations, repair, and new installations, a gas outlet shall be defined as any service line and/or pipe replacement or extension and a connection to any device and equipment that receives, stores, consumes, transfers, and/or discharges gas.

Grade. (Physical Alteration of Land) The percentage of rise or fall per 100 feet. Existing grade is the grade prior to grading. Rough grade is the stage at which the grade approximately conforms to the approved plan. Finish grade is the final grade of the site which conforms to the approved plan.

Grading. (Physical Alteration of Land) Any stripping, cutting, filling, or stockpiling of earth or land.

Ground cover. (Physical Alteration of Land) Plants with low, spreading habit that form a dense mat in time, preventing erosion.

Guyed towers. (Wireless Telecommunications Facilities) A communications tower that is supported, in whole or in part, by guy wires and ground anchors.

H

Hazard to air navigation. (Airport Zone) An obstruction determined to have a substantial adverse effect on the safe and efficient utilization of the navigable airspace.

Hazardous tree. (Tree Preservation and Protection) A tree or tree parts with high probability of falling or causing injury or property loss; also, a tree harboring insects or a disease that could be detrimental to surrounding trees.

Health officer. ((Manufactured Homes and Parks) (Manufactured Homes and Parks opened or expanded, 4-20-72) The legally designated health authority of the city or his authorized representative.

Height. (Airport Zone) Sea level elevation, unless otherwise specified.

Height. (Wireless Telecommunications Facilities) The vertical distance measured from the mean elevation of the finished grade to the highest point on the tower or other structure, even If said highest point is an antenna or antenna array.

Highest adjacent grade. (Flood Damage Prevention) The highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.

Historic discharge or volume. (Stormwater Management, Drainage and Erosion Control) The peak rate or volume at which stormwater runoff leaves a parcel of land in an undisturbed/natural site condition either by gravity or by the legally allowable discharge at the time of permit approval.

Historic Structure. (Flood Damage Prevention) Any structure that is:

(A) Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;

(B) Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district; or

(C) Individually listed on a state inventory of historic places which has been approved by the Secretary of the Interior.

Home occupation. (Zoning) An occupation, profession or avocation conducted in a dwelling unit on a part-time or full-time basis for which financial compensation is received and which generates motor vehicle traffic to the dwelling unit by patrons or clients of the occupation, profession or avocation conducted therein. A nontraffic generating occupation, profession or avocation conducted in a dwelling unit by one or more members of the family occupying the premises shall be considered a residential use and not a commercial use. The term home occupation shall include a child care facility handling not more than six children at one time.

Horizontal surface. (Airport Zone) A horizontal plane 150 feet above the established airport elevation, the perimeter of which in plane coincides with the perimeter of the horizontal zone.

Horsepower. (Building Regulations) The equivalent to 745 watts.

Housing Board. (Manufactured Homes and Parks) (Manufactured Homes and Parks opened or expanded, 4-20-72) The Housing Board established by the city.

House, lodging or rooming. (Zoning) A dwelling or building where lodging is provided for two or more persons for compensation, pursuant to previous arrangements, but which is not available to transients and with which no table board is furnished.

Hydroseed. (Physical Alteration of Land) A machine blown mixture of mulch, see and sometimes fertilizer.

I

Illuminated sign. (Signs) Any sign which has characters, letters, figures, designs or outline illuminated by electric lights or luminous tubes as a part of the sign proper.

Illumination, direct. (Signs) Illumination which is so arranged the light is directed into the eyes of the viewer from the light source.

Illumination, indirect. (Signs) Illumination so arranged that the light is reflected from the sign to the eyes of the viewer.

Impact Fee Administrator. (Water and Wastewater Impact Fees) The Zoning and development administrator or his designee

Impervious surface. (Stormwater Management, Drainage and Erosion Control) A surface that has been compacted or covered so that it is highly resistant to infiltration by water.

Improvements. (Development) Physical changes made to property to prepare it for development such as street grading, drainage structures, street surface, sidewalks, curbs, gutters, utility lines, bridges and similar items.

Independent manufactured home. ((Manufactured Homes and Parks) (Manufactured Homes and Parks opened or expanded, 4-20-72) A manufactured home which has a flush toilet and a bath or shower.

Intermittent stream. (Stormwater Management Drainage and Erosion Control) A stream that carries water part of the year is dry another part but receives flow from the groundwater table when it is high enough.

Invasive species. (Tree Preservation and Protection) Any species not indigenous to a region, which becomes established and displaces native species.

J

Joint identification sign. (Signs) A sign which serves as common or collective identification for a group of persons or businesses operating on the same subdivision or lot in a residential office, commercial or industrial district (e.g., shopping center, office complex, etc.) Such sign may name the person(s) or business included but carry no other advertising matter.

L

Land disturbance. (Tree Preservation and Protection) Clearing, scraping, grubbing, or otherwise removing or destroying the vegetation of a site, or adding, removing, exposing, excavating, leveling grading, digging, tunneling, trenching, burrowing, dumping, piling, dredging or application of toxic substance, storage of materials, and operation of equipment, or otherwise significantly disturbing the soil, mud, sand, or rock of a site.

Landscape administrator. (Tree Preservation and Protection) The person who is responsible for the administration of Tree Preservation and Protection, Chapter 167.

Landscape establishment guarantee. (Tree Preservation and Protection) A bond, irrevocable letter of credit, or other surety held by the city until the satisfactory conclusion of the three year landscape establishment period.

Landscape fabric. (Physical Alteration of Land) A barrier against soil erosion, allowing water to pass through while keeping soil in place.

Landscaping. (Zoning) The area within the boundaries of a given lot which consists of planting materials, including but not limited to trees, shrubs, ground covers, grass, flowers, decorative rock, bark, mulch, and other similar materials.

Large-scale development. (Development) The development of a lot or parcel larger than one acre. The term development shall include, but shall not be limited to, the construction of a new improvement, the construction of an addition to an existing improvement, or a parceling which results in the need for access and utilities.

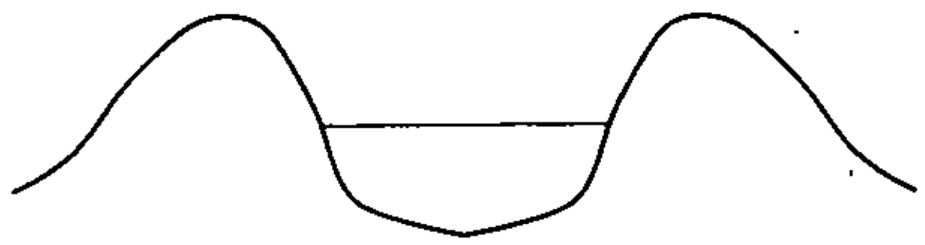
Larger than utility runway. (Airport Zone) A runway that is constructed for and intended to be used by propeller-driven aircraft of greater than 12, 500 pounds maximum gross weight and jet powered aircraft.

Lattice tower. (Wireless Telecommunications Facilities) A guyed or self-supporting three or four sided, open, steel frame structure used to support telecommunications equipment.

Lease. (Signs) An agreement by which a property owner conveys, usually for a specified rent, to other persons, permission to erect and maintain an advertising sign upon his property.

Less desirable species. (Tree Preservation and Protection) Low-priority trees or other woody shrubs listed in the City of Fayetteville *Tree Preservation, Protection, and Landscape Manual.*

Levee. (Flood Damage Prevention) A man-made structure, usually an earthen embankment, designed and constructed in accordance with sound engineering practices to contain, control, or divert the flow of water so as to provide protection from temporary flooding.



Levee

Levee system. (Flood Damage Prevention) A flood protection system which consists of a levee, or levees, and associated structures, such as closure and drainage devices, which are constructed and operated in accordance with sound engineering practices.

Loading space, off-street. (Zoning) Space logically and conveniently located for bulk pickups and deliveries, scaled to delivery vehicles expected to be used, and accessible to such vehicles when required off-street parking spaces are filled.

Lot. (Development) A portion of a subdivision or other parcel of land intended as a unit for transfer of ownership or for development.

Lot. (Signs) A parcel of land under one ownership whether described by metes and bounds or as a platted lot.

Lot. (Zoning) A parcel of land of at least sufficient size to meet minimum zoning requirements for use, coverage and area, and to provide such yards and other open spaces as are herein required. The term includes the words "plot" or "parcel". Such lot shall have frontage on an improved public street, and may consist of:

(A) A single lot of record;

(B) A portion of a lot of record;

(C) A combination of complete lots of record, of complete lots of record and portions of lots of record, or of portions of lots of record;

(D) A parcel of land described by metes and bounds; provided that in no case of division or combinations shall any residential lot or parcel be created which does not meet the requirements of the zoning regulations, Chapter 167.

Lot, corner. (Zoning) A lot located at the intersection of two or more streets. A lot abutting on a curved street or streets shall be considered a corner lot if straight lines drawn from the foremost points of the side lot lines to the foremost point of the lot meet at an interior angle of less than 135 degrees.

Lot, depth of. (Zoning) The distance between the midpoints of straight lines connecting the foremost points of the side lot lines in front and the rearmost points of the side lot lines in the rear.

Lot frontage. (Zoning) The front of a lot shall be construed to be the portion nearest the street.

Lot, interior. (Zoning) A lot other than a corner lot with only one frontage on a street.

Lot, through. (Zoning) A lot, other than a corner lot, with frontage on more than one street. Through lots abutting two streets may be referred to as double frontage lots.

Lot, width of. (Zoning) The distance between straight lines connecting front and rear lot lines at each side of the lot, measured across the rear of the required front yard, provided, however, that width between side lot lines at their foremost points (where they intersect with the street line) shall not be less than 80% of the required lot width except in the case of lots on the turning circle of a cul-de-sac, where the 80% requirement shall not apply.

Lot of record. (Zoning) A lot which is part of a subdivision recorded in the office of the county recorder or a lot or parcel described by metes bounds, the description of which has been so recorded.

Lowest floor. (Flood Damage Prevention) The lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access or storage in an area other than a basement area is not considered a building's lowest floor; provided, that such an enclosure is not built so as to render the structure in violation of the applicable nonelevation design requirements of this chapter.

M

Major developments. (Development) A suburban or urban major development shall be a large scale development or subdivision that satisfies either of the following conditions:

(A) It contains 40 acres or more.

(B) It contains 100 housing units or more.

Whether or not it is planned in one or more phases, the total possible development shall be considered when its first stage, phase, or parcel is presented for review.

Mall. (Signs) Any concentration of retail stores and/or service establishments which share customer parking areas and are located within an enclosure having public walkways whereby a customer in one store or establishment may walk to another store or establishment without leaving the enclosure.

Manufactured home. (Flood Damage Prevention) A factory-built, single-family structure that meets the National Manufactured Home Construction and Safety Standards Act (42 U.S.C. § 5401), commonly known as the HUD (U.S. Housing and Urban Development) code. For floodplain management purposes the term also includes park trailers, travel trailers, and other similar vehicles placed on a site for greater than 180 consecutive days. For insurance purposes the term "manufactured home" does not include park trailers, travel trailers, and other similar vehicles.

Manufactured home. (Manufactured Homes and Parks) A home built entirely in the factory under a federal building code, administered by the U.S. Department of Housing and Urban Development (HUD), which went into effect June 15, 1976.

Manufactured home. (Manufactured Homes and Parks opened or expanded after 4-20-72) A detached structure designed as a complete residential dwelling unit with a permanent chassis and capable of being transported on its own wheels, or on a trailer, and constructed to be ready for use upon being placed on a temporary or permanent foundation.

Manufactured home lot. (Manufactured Homes and Parks opened or expanded after 4-20-72) A plot of ground or a lot in a manufactured home park designed for the location for only one manufactured home.

Manufactured home pad. (Manufactured Homes and Parks opened or expanded after 4-20-72) That part of an individual manufactured home lot which has

been reserved for the placement of a manufactured home.

Manufactured home park. (Manufactured Homes and Parks) Any plot of ground of at least one acre in size upon which two or more manufactured homes, occupied for dwelling or sleeping purposes, are located.

Manufactured home park. (Manufactured Homes and Parks opened or expanded after 4-20-72) Any park, court, site, parcel or tract of land designed, maintained intended or used for the purpose of supplying a location or accommodations for two or more manufactured homes and shall include all buildings used or intended for use as part of the equipment thereof; whether or not a charge is made for the use of the court and its facilities.

Manufactured home park or subdivision. (Flood Damage Prevention) A parcel (or contiguous parcels) of land divided into two or more manufactured home lots for sale or rent.

Manufactured home space. (Manufactured Homes and Parks) A plot of ground within a manufactured home park, designed for the accommodation of one manufactured home.

Manufactured homes and trailer sales lot. (Manufactured Homes and Parks opened or expanded after 4-20-72) A lot on which unoccupied trailers are parked for purposes of inspection and sale.

Manufactured home court. (Zoning) Any plot of ground on which there are located or intended to be located two or more manufactured homes to be occupied for dwelling or sleeping purposes.

Mansard roof. (Signs) Any roof that has an angle greater than 45 degrees and which derives part of its support from the building wall and is attached to (but not necessarily a part of) a low slope roof and which extends along the full length of the front building wall or three-quarters of the length of a side building wall. For purposes of Signs, Chapter 174, a low slope roof shall mean any roof with a pitch less than three inches rise per 12 inches horizontal.

May. Is permissive.

Mean sea level. (Flood Damage Prevention) For purposes of the National Flood Insurance Program, the National Geodetic Vertical Datum (NGVD) of 1929 or other datum, to which base flood elevations shown on a community's Flood Insurance Rate Map are referenced.

Meter. (Building Regulations) For the purpose of establishing electrical permit fees for additions, alterations, repair, and new installments and to include farm buildings and owner/occupied dwellings a meter shall be defined as an apparatus to measure electrical power and an outlet shall be defined as a point on the wiring system at which current/voltage is switched, connected to a lighting fixture or receptacle, connected to utilization equipment, and connected to any equipment that receives, controls, stores, consumes, and/or transfers electricity.

Ministorage units. (Zoning) A structure or structures containing separate, individual, and private storage spaces of varying sizes leased or rented on individual leases for varying periods of time.

Mitigation. (Tree and Preservation and Protection) The planting of trees on-site in an effort to lessen the environmental damage caused by the injury or removal of trees during development.

Mobile home. (Zoning) A manufactured home built prior to June 15, 1976.

Monopole tower. (Wireless Telecommunications Facilities) A communications tower constructed without the use of guy wires and ground anchors and consisting of only a single pole.

Monument sign. (Sign) A freestanding sign with a maximum height of six feet above the surrounding finish grade and whose entire base is in contact with and supported by the ground.

Mulch. (Physical Alteration of Land) A layer of leaves, straw, bark, or other organic material spread around plants to retain moisture, and to control weeds or erosion.

N

Native woodlands. (Tree Preservation and Protection) A biological community of trees and woody shrubs native to the Ozark Plateau, covering an area of 10,000 square feet or greater. A list of species to the Ozark Plateau may be found in the City of Fayetteville *Tree Preservation, Protection, and Landscape Manual.*

Natural drainage ways. (Physical Alteration of Land) Ephemeral, intermittent and perennial streams. Chapter 169 is not concerned with ephemeral streams.

New construction. (Flood Damage Prevention) For floodplain management purposes, structures for which the "start of construction" commenced on or after the effective date of this development code.

New Development. (Water and Wastewater Impact Fees) Construction of a new single family

home and the construction or expansion of any other building or structure. The change in use of a building or structure that results in increased demand from water and wastewater facilities shall also be considered new development.

Nonconforming sign. (Signs) A sign existing on 12-19-72 which could not be built under the terms of the UDO.

Nonconforming use. (Airport Zone) Any pre-existing structure, object of natural growth, or use of land which does not conform to the provisions of Chapter 165 or an amendment thereto.

Nonconforming use. (Zoning) A use that lawfully occupied a building or structure or land on the effective date of the zoning ordinance, adopted June 29, 1970, and that does not conform to the use regulations of the district in which it is located.

Non-native woodlands. (Tree Preservation and Protection) A biological community of trees and woody shrubs, covering the area of 10,000 square feet or greater, descended from non-native species brought to the area during urban settlement. A list of typical non-native species may be found in the City of Fayetteville *Tree Preservation, Protection, and Landscape Manual.*

Nudity or state of nudity. (Zoning)

(A) The appearance of the bare human buttocks, anus, male genitals, female genitals or female breast.

(B) A state of dress which fails to opaquely cover a human buttock, anus, male genitals, female genitals, or areola of the female breast.

O

Obstruction. (Airport Zone) Any structure, growth or other object, including a mobile object, which exceeds a limiting height set forth in Chapter 165.

Off-site sign. (Signs) A sign which directs attention to a business, commodity, service, entertainment or attraction sold, offered or existing elsewhere than upon the same lot where such sign is displayed. The term of-site sign shall include an outdoor advertising sign (billboard) on which space is leased or rented by the owner thereof to others for the purpose of conveying a commercial or noncommercial message.

One-hundred year flood. (100-year)(Flood Damage Prevention) A flood which has a one percent annual probability of being equaled or exceeded. It is identical to the "base flood," which will be the term used throughout Chapter 168.

On-site sign. (Signs) A sign which directs attention to a business, commodity, service, entertainment or attraction sold, offered or existing on the same lot where such sign is displayed; provided, an on-site sign may also display a noncommercial message.

Operator's permit. (Manufactured Homes and Parks) (Manufactured Homes and Parks opened or expanded after 4-20-72) A written permit issued by the enforcement officer permitting the manufactured home park to operate under Chapter 175 and regulations promulgated thereunder.

Original tower height. (Wireless Telecommunications Facilities) Height of a tower, not including any antennas, on the date of the passage of this ordinance.

Outdoor advertising business. (Zoning) Provision of outdoor displays or display space on a lease or rental basis only.

Outdoor music establishment. (Zoning) Any business or establishment that has a garden, patio, rooftop or premises not wholly enclosed by solid walls and fully roofed in which amplified or loud music is played that could be audible at nearby residences or businesses.

Outfall. (Stormwater Management, Drainage and Erosion Control) The terminus of a storm drain, where the contents are released.

P

Parcel. (Development) An area under one ownership.

Parking informational sign. (Signs) A wall sign or a freestanding sign indicating the location of a motor vehicle parking lot and designating the persons authorized to park in said lot. The size of a parking information sign shall not exceed four square feet. The number of parking informational signs on a parking lot shall not exceed the number of entrances for the parking lot.

Parking lot. (Zoning) An off-street, surfaced, ground level open area, for the temporary storage of five or more motor vehicles.

Parking space, off-street. (Parking and Loading) A space adequate for parking an automanufactured with room for opening doors on both sides, together with properly related access to a public street or alley and maneuvering room.

Passive open space. (Development) An area intended for tranquil activities such as walking, sitting, observing and the less active games like shuffleboard and croquet.

Pavement width. (Development) The distance from inside edge of curb to inside edge of curb (Flow line to flow line).

Peak flow. (Stormwater Management, Drainage and Erosion Control) The maximum rae of flow of water at a given point and time resulting from a given storm event.

Peak flow attenuation. (Stormwater Management, Drainage and Erosion Control) The reduction of the peak discharge of storm runoff by storage and gradual release of that stored flow.

Percent minimum canopy. (Tree Preservation and Protection) The amount of existing tree canopy an applicant must preserve based on the zoning designation of the land to be developed.

Perennial stream. (Physical Alteration of Land) A stream that carries water year round.

Person. An individual, firm, limited or general partnership, corporation, company, business, association, joint stock association, organization, group of individuals, other legal entity or government entity, including a trustee, a receiver or assignee or a similar representative of any of them.

Personal use. (Wireless Telecommunications Facilities) "Personal use" refers to a non-commercial use by a resident of the subject property. If any revenues are generated from the operation of the tower, it will not be for personal use as such term is used.

Plan, General. (Development) The plan made and adopted by the Planning Commission and adopted by the City Council that includes studies and analysis of the population, housing and economics of the city and includes the future land use plan and the master street plan.

Plan, Future Land Use. (Development) A part of the general plan made and adopted by the Planning Commission and adopted by the City Council that establishes long-range planning policies and implementation strategies to manage and guide future growth and development, consisting of a map and text. It includes general recommendations for locations of land uses.

Plan, Master Street. (Development) A part of the general plan made and adopted by the Planning Commission and adopted by the City Council that classifying certain streets within the planning area jurisdiction as arterial or collector streets, consisting of a map and text.

Planned Zoning District. (Zoning, Development) A zoning district that allows for comprehensively planned developments for either single-use ormixed-use and permits development and zoning review as a simultaneous process.

Plat, concept. (Development) A generalized sketch of an area intended to be subdivided and containing sufficient information to allow the Planning commission to determine whether a subdivide can comply with the regulations.

Plat, final. (Development) A complete and exact subdivision plat, prepared for official recording as required by state law, to define property boundaries and proposed streets and other improvements.

Plat, preliminary. (Development) A preliminary plat for a subdivision shall be a formal plan, drawn to scale, indicating prominent existing features of a tract and its surroundings and the general layout of the proposed subdivision and shall meet the requirements outline in Chapter 166.

Platform sign. (Signs) A single or double-face sign attached to a supporting base place on the ground surface.

Plumbing fixture. (Building Regulations) For the purposes of establishing plumbing permit fees for additions, alterations, repairs, and new installations, a plumbing fixture shall be defined as any service line and/or pipe replacement or extension and any device and equipment that receives, stores, consumes, transfers, and/or discharges liquid and/or waste.

Portable swinger sign and A-frame or sandwich sign. (Signs) An advertising device which is ordinarily in the shape of an "A" or some variation thereof, located on the ground, easily movable, not permanently attached thereto and which is usually two-sided.

Portable temporary attraction sign board. (Signs) A single or double-surface painted or poster panel type sign or some variation thereof, which is temporary in nature, usually mounted on wheels, easily movable, and not permanently attached thereto.

Precision instrument runway. (Airport Zone) A runway having an existing instrument approach procedure utilizing an instrument landing system (ILS) or a precision approach radar (PAR). It also means a runway for which a precision approach system is planned and is so indicated on an approved airport layout plan or any other planning document.

Prefabricated Construction. (Zoning) Any structure built off-site excluding manufactured homes.

Primary surface. (Airport Zone) A surface longitudinally centered on a runway. When the runway has a specially prepared hard surface, the primary surface extends 200 feet beyond each end of that runway; for military runways or when the runway has no specially prepared hard surface, or planned hard surface, the primary surface ends at each end of that runway. The width of the primary surface is set forth in §165.01. The elevation of any point on the primary surface is the same as the elevation of the nearest point on the runway centerline.

Private open space. (Development) The outdoor living area directly adjoining a dwelling unit or building, intended for the private enjoyment of the residents or occupantso f the dwelling unit or building and defined in such a manner that its boundaries are evident.

Projecting sign. (Signs) Any sign that shall be affixed at an angle or perpendicular to the wall of any building in such a manner to read perpendicular or at an angle to the wall on which it is mounted.

Public grounds. (Tree Preservation and Protection) Areas including street rights-of-way, alleys, parks, medians, substations, treatment plants, plazas, squares, public buildings and any other area designated for public use.

Public open space. (Development) Open space, including but not limited to, any park, lake, stream, playground, or natural area commonly open to the public.

R

Real estate sign. (Signs) Temporary sign placed upon property for the purpose of advertising to the public the sale or lease of said property.

Recreational Structure. (Development) Anything constructed or erected with a fixed location on the ground, or attached to something having a fixed location on the ground that has a primary use that is recreational in nature. Among other things, recreation structures include tennis courts, basketball courts, swimming pools and jogging trails.

Regulatory area. (Stormwater Management, Drainage and Erosion Control) That portion of the floodplain subject to inundation by the 100-year flood is defined as the regulatory area. Its width is determined by the 100-year flood. Its length or reach is determined by natural bounds such as a lake, or by structures such as a dam or bridge, or by political or legal bounds. In the absence of complete information to define or estimate a 100-year flood, an interim regulatory area may be designated on the basis of satisfactory existing floodplain information.

Regulatory floodway. (Flood Damage Prevention) See: "Floodway."

Relic orchard. (Tree Preservation and Protection) Groups of fruit trees originally planted for agricultural purposes, but since taken out of production.

Remedy a violation. (Flood Damage Prevention) To bring the structure or other development into compliance with state or local floodplain management regulations, or, if it is possible, to reduce the impacts of its noncompliance. Ways that impacts may be reduced include protecting the structure or other affected development from flood damages, implementing the enforcement provisions of this development code, or otherwise deterring future similar violations, or reducing federal financial exposure with regard to the structure or other development.

Remove. (Signs) Remove shall mean:

(A) The sign face, along with the posts, columns, or supports of freestanding signs, shall be taken down and removed from the property.

(B) The sign face and supporting structures of "projecting", "roof" or "wall" signs shall be taken down and removed from the property.

(C) The sign face of "painted wall signs" shall be removed by painting over the wall sign in such a manner as to completely cover up and hide from sight the sign in question.

Residential driveway. (Streets and Sidewalks) A driveway on public property adjacent to a public street or highway to provide entrance to or exit from residential property for the exclusive use and benefit of those residing therein.

Residential zone. (Streets and Sidewalks) Any one side of a block in which 50% or more of the frontage of that side is used for residential purposes.

Retail liquor store. (Zoning) Any business engaged primarily in the retail sale of spirituous, vinous or malt beverages or light wine or beer as said terms are defined by A.C.A. §3-1-102, §3-1-103 and §3-5-202 for off-premises consumption.

Retaining wall. (Physical Alteration of Land) A structure erected between lands of different elevation to protect structures and/or prevent erosion from the upper slope.

Retaining wall height. (Physical Alteration of Land) The height of a retaining wall, for setback

purposes, shall be defined as the vertical distance from the top of the wall to the ground surface of the low side.

Retention. (Stormwater Management, Drainage and Erosion Control) The use of complete storage to prevent the discharge of a given volume of stormwater runoff into surface waters.

Right-of-way. (Development) The land opened, reserved or dedicated for street, walk, drainage or other public purposes.

Riparian. (Tree Preservation and Protection) Of, relating to, or located on the bank of a river or stream.

Riparian buffer. (Tree Preservation and Protection) A biological community consisting of trees, woody shrubs and groundcover that exists along the banks of rivers, creeks or intermittent and perennial streams.

Rip-rap. (Physical Alteration of Land) A loose assemblage of stones placed on ground to prevent erosion. Rip-rap shall be sized so that displacement does not occur due to velocity of water.

Riverine. (Flood Damage Prevention) Relating to, formed by, or resembling a river (including tributaries), stream, brook, etc.

Roof sign. (Signs) Any sign wholly erected, constructed or maintained on the roof structure or parapet wall of any building.

Runway. (Airport Zone) A defined area on an airport prepared for landing and take-off of aircraft along its length.

Rural street. (Development) A street located, or to be located, outside the city limits of the city but within the planning area jurisdiction of the city.

S

Safety zone. (Streets and Sidewalks) All parts of the street or highway right-of-way between the curb or shoulder line and the right-of-way line along the property frontage, except those areas contained in the access driveways.

Sediment basin. (Physical Alteration of Land) A depression in a waterway designed to trap sedimentation before entry into the stormwater system.

Separate offense. (Tree Preservation and Protection) In relation to trees, each tree is a separate offense.

Service building. (Manufactured Homes and Parks) (Manufactured Homes and Parks opened or expanded after 4-20-72) A building housing toilet and bathing facilities for men and women with laundry facilities and such other facilities as may be required by Chapter 175.

Setback. (Zoning) A required open space other than a court unoccupied and unobstructed by any structure or portion of a structure 30 inches above the general ground level of the graded lot upward, provided, however, that fences, walls, poles, posts and other customary yard accessories, ornaments, and furniture may be permitted in any yard subject to height limitations and requirements limiting obstruction of visibility.

Setback lines or building lines. (Development) A line on a plat generally parallel to the street right-of-way, indicating the limit beyond which buildings or structures may not be erected except as provided in ordinances.

Setback, front. (Zoning)

(A) A setback extending between side lot lines across the front of a lot adjoining a public street. In the case of through lots, unless the prevailing front setback pattern on adjoining lots indicates otherwise, front setbacks shall be provided on all frontages.

(B) Depth of required front setbacks shall be measured at right angles to a straight line joining the foremost point of the side lot line, in the case of rounded property corners at street intersections, shall be assumed to be the point at which the side and front lines would have met without such rounding.

Setback, rear. (Zoning)

(A) A setback extending across the rear of the lot between inner side setback lines. In the case of through lots and corner lots, there will be no rear setbacls, but only front and side setbacks.

(B) Width of a required rear setback shall be measured in such a manner that the setback established is a strip of the minimum width required by the district regulation with its inner edge parallel with the rear lot line.

Setback, side. (Zoning)

(A) A setback extending from the rear line of the required front yard to the rear lot line, or in the absence of any clearly defined rear lot line, or in the absence of any clearly defined rear lot line to the point on the lot farthest from the intersection of the lot line involved with the public street. In the case of through lots, side setbacks shall extend from the rear lines of front setbacks required. In the case

of corner lots, yards remaining after full front setbacks have been established shall be considered side setbacks.

(B) Width of a required side setback shall be measured in such a manner that the setback established is a strip of the minimum width required by district regulations with its inner edge parallel with the side lot line.

Setback, special. (Zoning) A setback behind any required setback adjacent to a public street, required to perform the same functions as a side or rear setback, but adjacent to a lot line so placed or oriented that neither the term "side setback" nor the term "rear setback" clearly applies.

Sexually oriented business. (Zoning) An adult arcade, adult bookstore or adult video store, adult cabaret, adult motion picture theater, or adult theater.

Shall. (Zoning) Is mandatory.

Shopping center. (Signs) Two or more retail stores and/or service establishments, or one retail store and one service establishment, sharing customer parking areas, regardless of whether said stores and/or establishments occupy separate structures or are under separate ownership.

Sign. (Signs) Every device, frame, letter, figure, character, mark, plane, point, design, picture, stroke, stripe, trademark, or reading matter, which is used or intended to be used to attract attention or convey information when the same is placed out of doors in view of the general public; in addition, any of the above which is not placed out of doors but which is illuminated with artificial or reflected light not maintained stationary and constant in intensity and color at all times when in use shall be considered a sign within the meaning of Chapter 174, when placed near the inside surface of a window in such a way as to be in view of the general public and used or intended to be used to attract attention or convey information to motorists. For the purpose of determining number of signs, a sign shall be considered to be a single display surface or display device containing elements organized, related, and composed to form a unit. Where matter is displayed in a random manner, without organized relationship to elements, or where there is a reasonable doubt as to the relationship of elements, each element shall be considered to be a single sign.

Significant tree. (Tree Preservation and Protection) A tree with a diameter at breast height (DBH) of 24 inches or more for fast growth species, 18 inches or more for slow and moderate growth species, and 8 inches or more for understory species, as set forth in the City of Fayetteville *Tree Preservation, Protection, and Landscape Manual.* A tree may also be considered significant because of advanced age for its species, or because it represents an uncommon or endangered species, or due to its location on a site designated as historic by local, state or federal authorities.

Single housekeeping unit. (Zoning) A dwelling unit with common access to and common use of all living and eating areas an all areas and facilities for the preparation, serving and storage of food within the dwelling unit.

Site. (Physical Alteration of Land) Any lot or parcel of land or contiguous combination thereof, under the same ownership, where grading is performed or permitted.

Slope. (Physical Alteration of Land) An inclined ground surface., the inclination of which is expressed as a ratio of horizontal distance to vertical distance.

Specified anatomical areas. (Zoning)

(A) Less than completely and opaquely covered human genitals, pubic region, buttock(s), and female breast below a point immediately above the top of the areola; and

(B) Human male genitals in a discernible turgid state, even if completely and opaquely covered.

Specified sexual activities. (Zoning)

(A) Human genitals in a state of sexual stimulation or arousal;

(B) Acts of human masturbation, sexual intercourse, or sodomy;

(C) Fondling or other erotic touching of human genitals, pubic region, buttock(s) or female breast.

Spot light illumination. (Signs) Illumination which comes from lamps, lenses or devices designed to focus or concentrate the light rays of the source.

Stabilization. (Physical Alteration of Land) That which is attained once the site is restored to its pre-development state in terms of soil stability and irritability.

Start of construction. (Flood Damage Prevention) The date the building permit is issued for either new construction or substantial improvement, provided the actual start of construction, repair, reconstruction, replacement, or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, beyond excavation, or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation or the installation of streets and/or

walkways, nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure.

Stealth technology. (Wireless Telecommunications Facilities) Systems, components and materials used in the construction of wireless communications facilities to make it compatible with the surrounding property.

Stormwater. (Stormwater Management, Drainage and Erosion Control) The flow of water that results from and occurs immediately following a rainfall event.

Stormwater management, drainage and erosion control permit. (Stormwater Management, Drainage and Erosion Control) A construction permit issued by the City of Fayetteville in compliance with the provisions of Chapter 170.

Stormwater management plan. (Stormwater Management, Drainage and Erosion Control) A plan for receiving, handling, and transporting storm and surface waters within the city's stormwater management system.

Stormwater management system. (Stormwater Management, Drainage and Erosion Control) All natural and man-made elements used to convey stormwater from the first point of impact with the surface of the earth to a suitable outlet location internal or external to the boundaries of the City of Fayetteville. The stormwater management system includes all pipes, channels, streams, ditches, wetlands, sinkholes, detention/retention basins, ponds, lakes, and other stormwater conveyance and treatment facilities whether public or private.

Stream. (Flood Damage Prevention) A watercourse having a source and terminus, banks, and channel through which waters flow at least periodically. Streams do not lose their character as a watercourse even though the water may dry up. For the purpose of this ordinance, streams are defined on the Flood Insurance Rate Map as single lines with no floodplain or floodway defined.

Stream corridor. (Stormwater Management, Drainage and Erosion Control) The landscape and physical features on both sides of a stream, including soils, slope, and vegetation, whose alteration can directly impact the stream's physical characteristics and biological properties.

Street. (Development) A strip of land, including the entire right-of-way, intended primarily as a means of vehicular and pedestrian travel which may also be used to provide space for sewers, public utilities, trees and sidewalks.

Street, arterial. (Development) A street or road of considerable continuity which serves or is intended to serve as the principal traffic way between separated areas or districts which is the main means of access to the primary street system or expressways.

Street, collector. (Development) A street which in addition to serving abutting properties, intercepts minor streets, connects with community facilities and carries neighborhood traffic to the major arterial street system. Where possible, houses should not front on collector streets.

Street, frontage. (Development) A minor street which is generally parallel to and adjacent to a major highway or railroad right-of-way and which provides access to abutting properties and protection from through traffic.

Street line. (Zoning) (Streets and Sidewalks) The right-of-way line of street.

Street, minor. (Development) A street used primarily to provide access to abutting properties.

Street right-of-way. (Development) The area designated for city improvements on both sides of the street.

Streets. (Streets and Sidewalks) Of higher use designation than collector street, including arterial streets and expressways as defined in Ordinance No. 1750 of the City of Fayetteville, Arkansas.

Structure. (Airport Zone) An object, including a mobile object, constructed or installed by man, including but without limitation, buildings, towers, cranes, smokestacks, earth formation, and overhead transmission lines.

Structure or building. (Zoning) Anything constructed or erected with a fixed location on the ground, or attached to something having a fixed location on the ground. Among other things, structures include buildings, manufactured homes, walls, fences, billboards and poster panels.

Subdivider. (Development) A person, firm or corporation undertaking a subdivision as defined in Chapter 166, Development,.

Subdivision. (Development) The subdividing of land into lots and blocks, the parceling of land resulting in the need for access or utilities, or the dividing of an existing lot or parcel into two or more lots or parcels.

Substantial damage. (Flood Damage Prevention) Damage of any origin sustained by a structure whereby the cost of restoring the structure to its before-damaged condition would equal or exceed 50% of the market value of the structure before the damage occurred.

Substantial improvement. (Flood Damage Prevention) Any repair, reconstruction, or improvement of a structure, the cost of which equals or exceeds 50% of the market value of the structure either:

(A) Before the improvement or repair is started; or

(B) If the structure has been damaged, and is being restored, before the damage occurred.

For the purpose of this definition, "substantial improvement" is considered to occur when the first alteration of any wall, ceiling, floor, or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure. The term does not, however, include either:

(a) Any project for improvement or a structure to comply with existing state or local health, sanitary, or safety code specifications which are solely necessary to assure safe living conditions; or

(b) Any alteration of a structure listed on the National Register of Historic Places, or a state inventory of historic places.

Suburban. (Development) Located outside the corporate city limits, but within the city's planning area.

T

Tandem lot. (Zoning) A lot which does not have required frontage on a public street and which is located behind a lot or a portion of a lot which does have frontage on a public street.

Telecommunications. (Wireless Telecommunications Facilities) The transmission, between or among points as specified by the user of information of the user's choosing, without change in the form or content of the information as sent and received.

Terrace. (Physical Alteration of Land) A relatively level step constructed in the face of a graded slope surface for drainage and maintenance purposes.

Topping. (Tree Preservation and Protection) Also referred to as stubbing, dehorning, pollarding and heading; it is the severe removal of the tree canopy back to large stubs.

Tower or communications tower. (Wireless Telecommunications Facilities) Any structure that is designed and constructed for the primary purpose of supporting one or more antennas, including lattice towers, guy towers, or monopole towers. The term includes radio and television transmission towers, microwave towers, common-carrier towers, cellular telephone towers, alternative tower structures, and the like. This term is not intended to describe buildings or other structures that have been constructed primarily for a purpose other than supporting one or more antennas, despite the fact that such structure may currently, or in the future, actually support one or more antennas.

Townhouse. (Zoning) Two or more single-family dwelling units constructed in a series of attached units with property lines separating each unit.

Transitional surfaces. (Airport Zone) A surface extending outward at 90 degree angles to the runway centerline and the runway centerline extended at a slope of seven feet horizontally for each foot vertically from the sides of the primary and approach surfaces to where they intersect the horizontal and conical surfaces.

Travel trailer. (Zoning) A vehicular, portable structure built on a chassis, designed to be used as a temporary dwelling for travel and recreational purposes, having a body width not exceeding eight feet.

Tree. (Airport Zone) Any object of natural growth.

Tree. (Tree Preservation and Protection) Any self-supporting woody perennial plant, usually having a main stem or trunk and many branches, and at maturity normally attaining a trunk diameter greater than three inches at DBH and a height of over 10 feet.

Tree and Landscape Advisory Committee. (Tree Preservation and Protection) An advisory committee appointed by the City Council to assist the landscape administrator with city beautification and the management of its trees.

Tree preservation area. (Tree Preservation and Protection) Those areas designated for the protection of both preserved and planted trees depicted on a tree preservation plan, abbreviated tree preservation plan, preliminary plat, large scale development, or site plan.

Tree preservation plan. (Tree Preservation and Protection) A site plan that delineates tree preservation areas and details measures to be taken to ensure protection and survivability of trees to be saved, prior to and during construction.

Tree registry. (Tree Preservation and Protection) A list of trees registered with the city due to documented historic association, rare tree species or extraordinary value because of their age, size or type.

Tree surgery. (Tree Preservation and Protection) Includes cavity filling/repair, bracing, cabling, and wound treatment.

U

Unified Soil Classification System. (Physical Alteration of Land) A system adopted jointly by the Corps of Engineers and Bureau of Reclamation in 1952 to classify soils according to texture, plasticity, and performance as engineering construction material.

Unit. (Building Regulations) A product or equipment used in heating and air conditioning, refrigeration, ventilation, or process cooling and heating system.

Universal soil loss equation. (Physical Alteration of Land) An equation that was developed by USDA to determine erosion based rainfall, soil irritability, slope, length of slope, plant cover, and mulching.

Urban. (Development) Located within the corporate city limits.

Urban street. (Development) A street located, or to be located, within the city limits.

Use buffer. (Tree Preservation and Protection) Trees or other woody shrubs that serve to screen incompatible land uses, unwated light, or noise.

Used or occupied. (Zoning) Include the words "intended", "designed", or "arranged to be used or occupied."

V

Variance. (Flood Damage Prevention) A grant of relief to a person from the requirements of this ordinance when specific enforcement would result in unnecessary hardship. A variance, therefore, permits construction or development in a manner otherwise prohibited by this ordinance. (For full requirements see §60.6 of the National Flood Insurance Program regulations.

Variance. (Zoning) A variance is a relaxation of the terms of zoning, Chapters 160 through 165, where such variance will not be contrary to the public interest and where, owing to conditions peculiar to the property and not the result of the actions of the applicant, a literal enforcement would result in unnecessary and undue hardship.

Veterinary small animal out-patient clinic. (Zoning) An office where vaccination and treatment of small animals is performed; where no x-rays, surgery or treatments requiring hospitalization are performed; where no overnight boarding is permitted; and where no after-hours or weekend emergency services are performed.

View obscuring vegetation. (Zoning) A screen of live plant material that is opaque from the ground to a height of at least six feet intended to exclude visual contact between uses and to create a strong impression of special separation during all seasons of the year. At maturity, the screen shall be considered to be view obscuring if there are no openings of greater that one square foot.

Violation. (Flood Damage Prevention) The failure of a structure or other development to be fully compliant with the community's floodplain management regulations. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required in Chapter 168 is presumed to be in violation until such time as that documentation is provided.

Visual runway. (Airport Zone) A runway intended solely for the operation of aircraft using visual approach procedures.

W

Wall sign. (Signs) Any sign that shall be affixed parallel to the wall or printed on the wall of any building in such a manner as to read parallel to the wall on which it is mounted; provided, however, said wall sign shall not project above the top of the wall or beyond the end of the building. For the purpose of Chapter 174, any sign display surface that is affixed flat against the sloping surface of a mansard roof shall be considered a wall sign. Any sign that is affixed to the face of the building marquee, building awning, or a building canopy shall be considered a wall sign.

Wastewater System Improvements. (Water and Wastewater Impact Fees) Capacity-enhancing improvements to the facilities for the transmission, treatment, reclamation and disposal of wastewater. Lift stations, force mains and gravity mains or excluded from the definition of wastewater system improvements.

Water surface elevation. (Flood Damage Prevention) The height, in relation to the National Geodetic Vertical Datum (NGVD) of 1929 (or other datum where specified) of floods of various magnitudes and frequencies in the floodplains of coastal or riverine areas.

Water System Improvements. (Water and Wastewater Impact Fees) Capacity-enhancing improvements to the facilities for the supply, storage, transmission and distribution of potable water, excluding water lines less than eight inches in diameter and other lines that are the minimum size needed to serve an individual development project.

Windblown sign. (Signs) Any flag, pennant, balloon, spinner, or blimp.

Wireless Communications Facility (WCF). (Wireless Telecommunications Facilities) A land use facility that transmits and/or receives electromagnetic signals for the purpose of transmitting analog or digital voice or data communications. It includes antennas, microwave dishes, horns and other types of monopoles, or similar structures supporting said equipment, equipment buildings, shelters or cabinets, and other accessory development. Wireless communications facility includes personal wireless services as defined in the Federal Telecommunications Act of 1996, and as subsequently amended.

(Code 1965, §§13A-1; 13B-1; 17B-7(a0, 19-24, 1713-2; App. A, Art. 17; App. B, §1; App. C, Art. 1, §D; Ord. No. 1509, 8-8-66; Ord. No. 1747, 6-20-70; Ord. No. 1790, 3-15-71; Ord. No. 1801, 6-21-71; Ord. No. 1859, 3-20-72; Ord. No. 1893, 12-19-72; Ord. No. 1998, 5-7-74; Ord. No. 2581, 12-4-79; Ord. No. 2697, 1-20-81; Ord. No. 2753, 8-18-81; Ord. No. 2789, 1-18-82; Ord. No. 2934, 8-2-83; Ord. No. 2948, 9-20-83; Ord. No. 3011, 6-5-84; Ord. No. 3024, 8-21-84; Ord. No. 3231, 12-2-86; Ord. No. 4024, §2, 3-28-87; Ord. No. 3298, 10-6-87; Code 1991, §§98.60, 118.01, 150.02, 156.001, 156.065, 158.03, 158.35, 159.04, 160.002, 160.096(A), 160.121, 161.06, 162.02, 163.02; Ord. No. 3551, 6-4-91; Ord. No. 3138, 11-5-85; Ord. No. 3165, 2-4-86; Ord. No. 3699, §2, 4-20-93; Ord. No. 3780, §1, 4-19-94; Ord. No. 3794, §1 5-17-94; Ord. No. 3870, §1, 4-1-94; Ord. No. 3895, 6-20-95; Ord. No. 3901, §1, 2, 7-5-95; Ord. No. 3908, §1, 7-18-95; Ord. No. 3970, §1, 7-18-95; Ord. No. 3913, §1, 8-1-95; Ord. No. 3963, §1, 4-16-96; Ord. No. 3970, §1, 5-7-96; Ord. No. 3971, §1, 5-21-96; Ord. 4100, §2 (Ex. A), 6-16-98; Ord. No. 4113, 8-18-98; Ord. No. 4127, 12-15-98; Ord. No. 4178, 8-31-99; Ord. No. 4226, 2-15-00; Ord. No. 4285, 1-2-01; Ord. No. 4321, 6-19-01; Ord. No. 4340, 10-2-01)

TITLE XV. UNIFIED DEVELOPMENT ORDINANCE

Chapter 157. Notification and Public Hearings.

Sec. 157.01. General requirements/information.
Sec. 157.02. Development.
Sec. 157.03. Zoning.
Sec. 157.04. Conditional uses.
Sec. 157.05. Vacations of streets, alleys, rights-of-way and easements.
Sec. 157.06. Appeals of staff decisions/interpretations.
Sec. 157.07. Manufactured homes and manufactured home parks.
Sec. 157.08. Fire Prevention Code.
Sec. 157.09. Sign Appeal.
Secs 157.10–157.99. Reserved.

Sec. 157.07. Manufactured homes and manufactured home parks.

(A) Whenever the enforcement officer determines that there are reasonable grounds to believe that there has been a violation of any provision of Chapter 175, or any regulation adopted pursuant thereto, he/she shall give notice of such alleged violation to the owner of the park and to the person to whom the operator's permit was issued, as hereinafter provided.

(B) Such notice shall:

(1) Be in writing;

(2) Include a statement of the reasons for its issuance;

(3) Allow a reasonable time for the performance of any act it required;

(4) Be served upon the owner and the operator; provided, that such notice or order shall be deemed to have been properly served upon such owner or operator when a copy thereof has been sent by certified mail to their last know address, or when they have been served with such notice by any other method authorized or required by the laws of the state; and,

(5) Contain an outline of remedial action, which, if taken, will effect compliance with the provisions of Chapter 175 and with regulation adopted pursuant thereto.

(Code 1965, §13B-13; Ord. No. 1859, 3-20-72; Code 1991, §156.077; Ord. No. 4100, §2 (Ex. A), 6-16-98)

Cross reference(s)--Manufactured homes and Manufactured home Parks, Ch. 175, §163.22.

Sec. 157.08. Fire Prevention Code. *Blasting.* In addition to the requirements and regulations provided in the Fire Prevention Code, the applicant for a blasting permit shall notify all residential property owners located within 200 yards of a blasting site. Notification may be personal contact, or by written notice left at the residence and shall contain the dates of any blasting activity.

(Ord. No. 4100, §2 (Ex. A), 6-16-98; Ord. No. 4125, 11-17-98)

Cross reference(s)--Fire Prevention Code/Building Code, § 173.02.

Sec. 157.09. Sign Appeal.

(3) *Public Hearing.* Upon receipt of a petition for a sign appeal, the Board of Sign Appeals shall hold a public hearing on the requested appeal.

(4) *Notice of public hearing - city.* Notice of public hearing shall be given by the city using the following methods:

(1) *Sign.* A sign 18 inches high and 24 inches wide shall be placed upon the property seven days before the date of the public hearing.

(2) *Other notice.* The Board of Sign Appeals shall also give notice of such hearing to interested persons and organizations as it deems feasible and practicable.

Secs. 157.10--157.99. Reserved.

TITLE XV. UNIFIED DEVELOPMENT ORDINANCE

Chapter 159. Fees.

Sec. 159.01. Fees/schedule.
Secs. 159.02.--159.99. Reserved.

TITLE XV. UNIFIED DEVELOPMENT ORDINANCE

CHAPTER 159. FEES.

Sec. 159.01. Fees/schedule.

(A) *Fees.* Fees shall be imposed, as set forth below, to cover the cost of public notices and such other expenses as may be incurred in connection with processing of applications, plan reviews, amendments, permits, variances and other matters pertaining to the UDO.

(1) An alderman may present a resolution to the City Council to waive, or reduce development permit fees otherwise required by this chapter, elsewhere within the Unified Development Ordinance. If the reduction, or waiver would serve the public interest, alleviate an unfair burden upon an applicant, or be beneficial to the city as a whole, the City Council may grant such reduction, or waiver of permit fee.

(B) *Fee schedule.*

(1) *General.* Unless specific fees are set forth below, the City Council shall, by resolution, establish a schedule of fees and a collection procedure. The schedule of fees shall be posted in the Planning Division.

(2) *Signs.*

(a) *Signs.* For each sign or other advertising structure regulated by Chapter 174; $10.00 plus $1.00 per square foot of sign face.

(b) *Windblown signs.* $10.00.

(c) *Sign variance.* Filing fee: $350.00

(3) *Development.*

Concurrent Plat

Nonresidential	$800.00
10 or less residential units	$200.00
25 or less residential units	$400.00
26 or more residential units	$800.00

Preliminary Plat

Nonresidential	$800.00
10 or less residential units	$200.00
25 or less residential units	$400.00
26 or more residential units	$800.00

Final Plat

Nonresidential	$800.00
10 or less residential units	$200.00
25 or less residential units	$400.00
26 or more residential units	$800.00

Concept Plat	$50.00

Lot split	$200.00

Large Scale Development

Nonresidential	$800.00
10 or less residential units	$200.00
25 or less residential units	$400.00
26 or more residential units	$800.00

Planned Zoning District

Nonresidential	$1,125.00
Residential:	
10 or less residential units/lots	$525.00
25 or less residential units/lots	$725.00
26 or more residential units/lots	$1,125.00

(4) *Physical alteration of land.*

Permit Fee

Less than ½ acre	$75.00
½ to 1 acre	$100.00
Over 1 acre	$200.00
Appeals	$100.00

(Ord. No. 4113, 8-18-98)

(5) *Drainage.* Non-refundable permit application fee.

Up to 0.5 acre	$75.00
0.51 to 1.0 acre	$100.00
Over 1.0 acre	$200.00
Appeals	$100.00

(6) *Zoning.*

Rezoning	$325.00
Conditional use	$100.00
Manufactured home:	
Initial permit	$25.00
Renewal	$12.50
Home occupation:	
Initial permit	$25.00
Renewal	$12.50
Variance:	
Before any violation has occurred	$25.00
After any violation has occurred	$100.00
Appeal of Zoning and Development Administrator interpretation	$25.00
Certificate of Zoning Compliance	$25.00

(7) *Streets and sidewalks.*

Driveway and curb cut	$20.00
Sidewalk	$20.00
Driveway, curb cut and sidewalk	$25.00
Excavation of streets and other public ways	$5.00

Cross reference(s)–Excavations, §171.14

(8) *Tree preservation.*

Filing fee	$120.00

(9) *Floodplain determination.*

Administrative review fee	$25.00

(10) *Vacations.*

Filing fee	$200.00

(11) *Building permits.*

(a) *General fees.* The following general provisions shall apply to all permits, including but not limited to building, electrical, gas, mechanical and plumbing; and shall apply in addition to the fees and requirements set forth in each separate code.

(i) *Permit fees.*

a. *Design/build fee.* In addition to the permit fees, a design/build fee for fast-track, design-build, and buildings permitted with construction progressing as design and construction plans are in progress shall be equal to one-half the permit fee but shall not be more than $1,000.00.

b. *Emergency, investigative and after hour(s).* In addition to the permit fee, an emergency fee for after hours inspection, investigations and emergency inspections shall be $20.00 per inspection.

c. *Outside city limits.* In addition to the permit fee, each inspection required outside Fayetteville city limits shall be $20.00 per inspection.

d. *Work without permit.* Where work for which a permit is required is started or proceeded prior to obtaining said permit, the fees herein specified shall be doubled. Payment of such double fee shall not relieve any persons from fully complying with the requirement of any code in the execution of the work nor from any other applicable penalties.

e. *Re-inspection.* For each re-inspection for correction of violations and/or if installation is not ready for requested inspections the fee shall be $20.00.

(ii) *Permit valuation.*

a. Permit valuation is the reasonable valuation of all services, labor, materials, and appliances or devices entering into and necessary to the prosecution and completion of the work ready for occupancy.

b. The permit valuation shall include total cost such as plumbing, electrical, gas, mechanical, equipment, and other systems, however, the cost of excavation or grading, paying, and land cost are not deemed a part of such permit valuation.

c. The building permit fee shall be based on the valuation as determined by the building code data or as submitted by the applicant, whichever is greater.

(iii) *Exemptions from permit fees.*

a. *Historical buildings.*

1. Buildings identified and classified as historical buildings or structures by state or local jurisdiction shall be exempt from permit fees.

2. The Mayor may exempt all or part of the applicable permit fees for buildings that can be proven to be more than 50 years old that are judged by the building official to be safe and in the public interest of health, safety, and welfare regarding any proposed construction, alteration, repair, enlargement, restoration, or relocation,

or moving of buildings within fire districts.

b. *Building construction.* Building construction fees shall be as set forth in the building code, fees appendix, except as set forth below:

Partial C of O	$25.00
Original C of O--new building	$15.00
Certificate of completion	$15.00
C of O--existing building and/or change of occupancy use	$25.00
Demolition permit	$50.00
Temporary C of O	$25.00
Annual C of O renewal	$12.50
Annual C of O renewal--if expired	$25.00
Footing/foundation only	$50.00
Appeal of building official to Construction Board of Adjustment and Appeal	$50.00
Moving permit	$100.00
Permit extension	$50.00
Plan view fee--shall not exceed	$1,000.00

c. *Demolition fees.* Single family residences shall be exempt from demolition fees.

(12) *Electrical.*

(a) *Electrical permit fees.* Fees for permit shall be paid to the city, as follows:

i. First four meters, new or replacement, $20.00

ii. For each additional meter on a building, $5.00

iii. $0.25 per outlet, and $10.00 per inspection with electrical wiring in concrete.

iv. Neon tube lighting shall be $10.00 for each transformer.

v. A minimum fee for any electrical permit shall be $20.00.

(b) *Apprentice electrician.* Registration of an apprentice electrician, $10.00.

(13) *Gas.*

(a) *Gas permit fees.* Fees for gas permit shall be paid to the city, as follows:

i. First five fixtures for $20.00 plus $2.00 for each additional fixture.

(b) *Exceptions.* Gas ranges/ovens, domestic clothes dryers, and space heaters not required to have a vent are exempted and gas permits are not required to connect these appliances to an existing gas outlet in an existing piping system.

(14) *Mechanical permit fees.* Fees for a mechanical permit shall be paid to the city as follows:

Minimum permit fee for the first unit	$20.00
Additional units greater than ⅛ horse power	$5.00
Fractional horse power mechanical exhaust	$2.00
Gas vent per unit	$5.00

(15) *Plumbing.*

(a) *Plumbing permit fees.* Fees for plumbing permits shall be paid to the city, as follows:

i. First five fixtures for $20.00, plus $1.75 for each additional fixture, and

ii. $10.00 for each inspection required for plumbing under slab.

Sec. 159.02 Water and wastewater impact fees

(A) *Applicability.*

(1) The following provisions shall apply to all of the territory within the City's water and wastewater service areas, including areas outside the corporate city limits and within service areas located within Washington County and other incorporated cities after June 16, 2003 .

(2) The following types of development shall be required to pay a water and/or wastewater impact fee:

(a) New development seeking a new connection to the City's water or wastewater system.

(b) New development seeking a new connection to the system of a wholesale customer of the City's water or

wastewater system, where collection of the City's impact fee is required by the City's contract with the wholesale customer.

(c) Residential redevelopment involving the construction of one or more additional dwelling units.

(d) Nonresidential redevelopment seeking a larger capacity water meter.

(B) *Intent*

(1) The intent of wastewater and water impact fees is to ensure that new development bears a proportionate share of the cost of improvements to the City's water and wastewater systems; to ensure that the proportionate share does not exceed the cost of providing water and wastewater facilities to the development that paid the fee; and to ensure that funds collected from developments are used to construct water and wastewater facilities that serve such developments. It is further the intent of this Ordinance to use the impact fees to implement the City's 2020 General Plan and future plan updates and to implement the City's Five Year Capital Improvements Program.

(2) It is not the intent of this Ordinance to collect any money from any development in excess of the actual amount necessary to offset demands generated by that development for the water and wastewater facilities for which the fee was paid.

(3) It is not the intent of this Ordinance that any monies collected for the water impact fee and the wastewater impact fee ever be commingled or ever be used for a type of facility different from that for which the fee was paid.

(C) *Time of Collection*

(1) Water and wastewater impact fees for new development shall be paid prior to the issuance of a new or larger water meter, connection to the wastewater system, or issuance of a building permit; whichever comes first.

(2) Development projects which have obtained building permits prior to the effective date of this ordinance shall not have to pay impact fees if the building is completed with water and sewer hook-ups installed and certificate of occupancy issued no later than six (6) months from the effective date of this ordinance.

(D) *Fee Determination*

(1) *Schedule of Fees.* The Impact Fee Administrator shall determine the amount of the water and wastewater impact fees for residential uses based on the type or size of the dwelling unit and for nonresidential uses based on the size of the water meter using the following schedule:

Land Use	Unit	Water	Waste-Water	Total
Single-Family (average)	Dwelling	$308	$835	$1,143
Multi-Family (per dwelling unit)	Dwelling	$219	$593	$812
Nonresidential (5/8" x 3/4" meter)	Meter	$308	$835	$1,143
Nonresidential (1" meter)	Meter	$770	$2,088	$2,858
Nonresidential (1-1/2" meter)	Meter	$1,540	$4,175	$5,715
Nonresidential (2" meter)	Meter	$2,464	$6,680	$9,144
Nonresidential (3" meter)	Meter	$4,928	$13,360	$18,288
Nonresidential (4" meter)	Meter	$7,700	$20,875	$28,575
Nonresidential (6" meter)	Meter	$15,400	$41,750	$57,150
Nonresidential (8" meter)	Meter	$24,640	$66,800	$91,440
Nonresidential (10" meter)	Meter	$35,420	$96,025	$131,445

(2) *Redevelopment, Reconstruction, Change of Use.* In the event of a redevelopment, reconstruction or change of use from an existing development or use, the fee shall be the difference between what the fee would be for the entire redevelopment or reconstruction project and what the fee would have been for the existing development or use. Enlargement of a single family home will not require any impact fee.

(3) *Mixed Use.* If the proposed development includes a mix of the residential land uses and/or nonresidential meter sizes that are listed in the impact fee schedule, the fee shall be determined by adding up all the water and wastewater impact fees that would be applicable for each residential land use type and/or nonresidential meter size as if it was a freestanding land use type.

(4) *Fire Suppression / Low Pressure.* It is the intent of this ordinance to base water and

wastewater impact fees on the typical usage in a new building or other facility. Extinguishing of fires is not a part of typical usage; to allow adequate fire flow to sprinklers and internal hydrants at some large and at-risk properties, it may be necessary for fire protection purposes to install a larger water meter than would be necessary to meet day-to-day needs of that facility. In addition, a larger meter may be required in areas of low water pressure than in areas of normal water pressure for the same type of use. In those cases, it is the policy of the City that the impact fee for water and wastewater should be based on the meter size needed by that facility for its typical usage, without regard to fire-flow or unusual pressure conditions.

(5) *Irrigation.* Any separate water meter installed for irrigation purposes only shall not be included in the calculation of the wastewater impact fee.

(6) *Affordable Housing Exemption.*

(a) *Single family housing.* Construction of single family housing funded wholly or primarily by federal Community Development Block Grants, non-profit service organizations such as Habitat for Humanity, Housing and Urban Development housing loans and similar programs designed to provide affordable, owner-occupied, single family residences to low income individuals shall be exempted from payment of impact fees pursuant to this ordinance by the Impact Fee Administrator.

(b) *Appeal.* A person aggrieved by the Impact Fee Administrator's refusal to grant an Affordable Housing Exemption may appeal the denial to the Planning Commission.

(E) *Use of Fees.*

(1) *Establishment of Accounts.* An Impact Fee Fund that is distinct from the General Fund of the City is hereby created, and the impact fees received will be deposited in the following interest-bearing accounts of the Impact Fee Fund:

(a) Water Impact Fee Account, and

(b) Wastewater Impact Fee Account.

(2) *Water Impact Fee Accounts.* The Water Impact Fee Account shall contain only those water impact fees collected pursuant to this Ordinance plus any interest which may accrue from time to time on such amounts.

(3) *Wastewater Impact Fee Account.* The Wastewater Impact Fee Account shall contain only those wastewater impact fees collected pursuant to this Ordinance plus any interest which may accrue from time to time on such amounts.

(4) *Order of Use.* Monies in each impact fee account shall be considered to be spent in the order collected, on a first-in/first-out basis.

(5) *Use of Fees.* The monies in each impact fee account shall be used only for the following:

(a) *Acquisition.* To acquire land for and/or acquire or construct water or wastewater system improvements of the type reflected in the title of the account and as described in the Impact Fee Study as well as extension of service to new development paying an impact fee.

(b) *Debt service.* To pay debt service on any portion of any current or future general obligation bond issue or revenue bond issue used to finance water or wastewater system improvements of the type reflected in the title of the account that created or will create capacity to serve new development.

(c) As described in subsection F, Refunds.

(F) *Refunds.*

(1) Any monies in the Impact Fee Fund that have not been spent or encumbered within ten (10) years after the date on which such fee was paid shall be refunded by the City to the then current owner of the land for which the fee was paid with interest since the date of payment. Interest shall be based on a five percent annual rate.

(2) After an impact fee has been paid pursuant to this Ordinance, no refund of any part of such fee shall be made due to the fact that the project for which the fee was paid is later demolished, destroyed, or is altered, reconstructed, or reconfigured so as to reduce the number of dwelling units in the project, or the size of the water meter required.

(3) At the time of payment of the water or wastewater impact fee under this Ordinance,

the Impact Fee Administrator shall provide the applicant paying such fee with written notice of those circumstances under which refunds of such fees will be made. Failure to deliver such written notice shall not invalidate any collection of any impact fee under this Ordinance.

(Code 1965, §§17B-3(c); 17B-7(k), 18-27, App. A., Art. 9(6), 10(2), 11, App. C., Art. II, §E; Ord. No. 1747, 6-29-70; Ord. No. 1790, 3-15-71; Ord. No. 1893, 12-19-72; Ord. No. 2198, 2-17-76; Ord. No. 2323, 4-5-77; Ord. No. 2538, 7-3-79; Ord. No. 2581, 12-4-79; Ord. No. 2934, 8-2-83; Ord. No. 2948, 9-20-83; Ord. No. 3230, 11-8-86; Ord. No. 3298, 10-6-87; Code 1991, §§98.62, 158.22, 158.45, 159.15, 160.172, 160.195, 160.197; Ord. No. 3716, §2, 6-15-93; Ord. No. 3925, §4, 7, 10-3-95; Ord. No. 4100, §2 (Ex. A), 6-16-98; Ord. No. 4113, § 1, 8-18-98; Ord. 4323, 6-19-01; Ord. No. 4447, §1, 12-17-02)

Secs. 159.03.–159.99. Reserved.

(D) *Unit 4. Cultural and recreational facilities.*

(1) *Description.* Unit 4 consists of cultural and recreational uses to serve the residents of the community.

(2) *Included uses.*

Auditorium, stadium	
Art gallery, museum	
Cemetery	
Child care center, nursery school *	
Church	
College or university	
Community center	
Crematorium	
Detention home	
Dormitory	
Eldercare	
Hospital	
Mausoleum	
Playfield, playground	
Private club or lodge	
School:	•Elementary •Junior High •Senior High
Swimming pool	
Tennis court	
Theater (legitimate)	
Zoo	

Cross-reference(s)--Parking and Loading, Ch. 172.

(E) *Unit 5. Government facilities.*

(1) *Description.* Unit 5 consists of the main facilities of government agencies.

(2) *Included uses.*

City or county jail
Courts of law
Fire station
Governmental agencies and offices
Library
Police station
Post office

(F) *Unit 6. Agriculture.*

(1) *Description.* Unit 6 consists of agricultural uses and services and certain other uses suitable for location near, but not in, a residential district.

(2) *Included uses.*

Agricultural uses and services:	Farm:	•Egg •Truck
	Services:	•Hay baling •Smoking, curing and selling of smoked or cured poultry and livestock •Sorting, packing and selling of fruits, vegetables and flowers •Threshing

(G) *Unit 7. Animal husbandry.*

(1) *Description.* Unit 7 consists of livestock raising and related activities which are ordinarily objectionable to other uses and require, therefore, a buffer strip when abutting a C or R District.

(2) *Included uses.*

Animal farms for show, breeding, and training	
Farms with livestock	
Kennel	
Livestock services:	•Animal hospitals •Shipping of livestock •Training of horses •Veterinarian's treatment areas
Recreational uses:	•Guest ranch •Riding stable * •Rifle range •Rodeo ground

Sec. 163.10. Manufactured and mobile homes.

(A) *Manufactured home parks.* Manufactured home parks shall be subject to the provisions of Manufactured homes and Manufactured home Parks, Chapter 175, and Development, Chapter 166 and shall require a conditional use permit in all RMF districts.

(1) *Accessory commercial uses.* In a manufactured home park there may be provided accessory commercial uses intended solely for the convenience of the residents of the development, provided that:

(a) All such units are operated within an enclosed structure;

(b) The gross floor area of such accessory uses shall not exceed 25 square feet for each manufactured home space in the park;

(c) No such structure shall be closer than 100 feet to any property in an R or R-O District outside the development;

(d) All accessory commercial uses shall be located in a manner that the use is surrounded by the manufactured home park and is not located on the outer boundaries of said park.

(2) *Dwelling units.* No single-family, two-family, or multi-family dwelling unit may be erected or placed upon any lot within a manufactured home park unless said lot and dwelling meets all requirements of the zoning regulations for such a dwelling in the zoning district where the manufactured home park is located.

(B) *Location of manufactured and mobile homes.*

(1) *Manufactured home parks/exceptions.* Manufactured homes are permitted in manufactured home parks and in the R-A, Residential – Agricultural zoning district.

(2) *Mobile homes.* Mobile homes are permitted in manufactured home parks.

(Code 1965, App. A., Art. 7 (12); Ord. No. 1747, 6-29-70; Ord. No. 1869, 6-19-72; Ord. No. 2320, 4-5-77; Code 1991, §160.086; Ord. No. 4100, §2 (Ex. A), 6-16-98)

Secs. 163.11. Outdoor music establishments. Outdoor music establishments operating during May or June of 2002 may continue to operate at the same location without this conditional use even if the ownership or name of the outdoor music establishment changes in the future as long as the establishment does not terminate its outdoor music for 12 consecutive months or longer. All other outdoor music establishments shall not be allowed in any zoning district, except C-1, C-2, C-3 and C-4, where they may be allowed as conditional uses subject to the following additional conditions:

(A) *Site plan.* A site plan showing the proposed location and size of the outdoor music area; location and direction of the speakers; noise absorbing walls, structures or devices; proposed days and hours of operation of the outdoor music area; and measures proposed to lessen or eliminate any adverse affects upon nearby residences and businesses.

(B) *Planning Commission review.* In addition to all normal considerations for a conditional use, the Planning Commission may require noise reducing measures and structures be incorporated into an outdoor music area, may limit the size, power, number and direction of speakers, and may limit the hours of outdoor music generation from the establishment.

(C) *Fayetteville noise ordinance violation.* If the establishment or any band or any person operating at such establishment is convicted of violating the Fayetteville noise ordinance (§96.06 of the *Code of Fayetteville*), such violation may constitute grounds for revocation of this conditional use to operate an outdoor music establishment.

(D) *Fayetteville entertainment district.* The City Council's policy is to encourage outdoor music establishments along Dickson Street from Block Avenue to Arkansas Avenue and on West Avenue from Spring Street to Lafayette Street as long as such establishments are reasonably compatible with adjoining neighborhoods.

(Ord. No. 4409, §2, 8-6-02)

TITLE XV. UNIFIED DEVELOPMENT ORDINANCE

Chapter 173. Building Regulations.

Sec. 173.01. General provisions.
Sec. 173.02. Fire Prevention Code/Building Code.
Sec. 173.03. Fire zones.
Sec. 173.04. Electrical Code.
Sec. 173.05. Gas Piping Code.
Sec. 173.06. Plumbing Code.
Sec. 173.07. Mechanical Code.
Sec. 173.08. Unsafe buildings.
Sec. 173.09. Homebuilders Registration.
Sec. 173.10. Standard Housing Code.
Secs. 173.11.--173.99. Reserved.

TITLE XV. UNIFIED DEVELOPMENT ORDINANCE

CHAPTER 173. BUILDING REGULATIONS.

Sec. 173.01 General provisions. In addition to the specific provisions provided hereinafter, the following general provisions shall apply to the Building Code, Electric Code, Gas Code, Mechanical Code and the Plumbing Code.

(A) *Permits.*

(1) *Fees paid.* A permit shall not be issued until the fees prescribed have been paid. Nor shall an amendment to a permit be released until the additional fee, if any, due to an increase in the estimated cost of the building, structure, electrical, plumbing, mechanical, or gas systems has been paid.

(2) *Expiration.* Every permit issued hereunder shall expire by limitation and become null and void if construction/installation authorized by permit is not commenced within six months from the date of such permit, or if the construction/installation authorized by such permit is abandoned for a period of six months at any time after the construction/installation is commenced. Before such installation can begin or be recommended, a permit extension fee shall be paid or a new permit shall be secured for the unfinished portion of the installation as required by the building official.

(B) *Liability insurance.*

(1) The following shall be required to carry liability insurance.

(a) Every licensed master electrician applying for an electrical permit;

(b) Every licensed supervising gas filter actively engaged in gas installations;

(c) Every licensed mechanical/HVACR licensee engaged in mechanical installations.

(d) Every licensed master plumber actively engaged in plumbing installations.

(2) Liability insurance shall be carried as set out below:

•General aggregate	$100,000.00
•Personal and advertising	$100,000.00
•Each occurrence	$100,000.00

Each certificate shall indicate name of insurance company issuing policy, name of insured, policy number, effective and expiration date, and signature of authorized representative of insurance company.

(C) *Responsibilities of permit applicant.*

(1) *Notice to city.* It shall be the duty of the permit applicant or his authorized representative to give notice to the city Building Safety Division when an installation is ready for an inspection.

(2) *Installation ready for inspection.* It shall be the duty of the permit applicant to make sure that the installation is ready for inspection before the inspection is requested.

(3) *Provide ready access.* It shall be the duty of the permit applicant to provide ready access to the premises where the requested inspection is to be made.

(D) *Exemptions.* The assembly and erection of approved equipment by the manufacturer of such equipment, except electrical, gas, mechanical, and plumbing connections to said equipment, shall be exempt from permitting and inspection provisions.

(E) *Uncovering work.* Any installation or part thereof which is installed, altered, or repaired and covered before being inspected shall be uncovered for inspection as required by the Building Safety Division Director.

(F) *Certificate of occupancy.*

(1) *Required.* In addition to the building permit fee, buildings and parts of buildings shall not be occupied before a certificate of occupancy is executed and issued by the building official.

(2) *Copy upon request.* The owner of a single-family and multi-family residential dwelling will receive a copy of the certificate of occupancy if requested.

(Ord. No. 4100, §2 (Ex. A), 6-16-98)

Sec. 173.02. Fire Prevention Code/Building Code.

(A) *Adoption by reference.* There is hereby adopted by the City Council, by reference thereto, the provisions set forth in the Arkansas Fire Prevention Code, with state adopted appendices, as may from time to time hereafter be amended and adopted by the State of Arkansas, save and except such portions of said

code as may be deleted, modified, or amended herein.

(B) *Amendments, additions, and deletions to the Building Code.* The Building Code shall be amended as follows:

(1) *Construction documents.* Plans reviewed for code compliance with permits issued shall be destroyed after construction is complete and as allowed by law after being copied for permanent record and maintained by the city. Plans retained on file for one-through four-family residential dwelling units will be destroyed when construction is complete and may not be permanently copied.

(a) *Plans.* Plans submitted to be reviewed for code compliance and permitting shall note the following:

(i) Construction type;

(ii) Occupancy classification(s);

(iii) Occupant load;

(iv) Design live loads;

(v) Design dead loads;

(vi) Occupancy and tenant separations;

(vii) Design snow load; and

(viii) Design wind load.

(b) *Ground snow loads.* Ground snow loads to be used in the determination of design snow loads shall not be less than 20 pounds per square foot.

(c) *Plan review.* A plan review by an independent entity may be required by a building official for plans of unusual, special, and/or hazardous use of buildings submitted for permit or review.

(2) *Footing.*

(a) *Design requirements.*

(i) The footing bottoms shall be a minimum of 24 inches below finish grade, and

(ii) The minimum width of a concrete footing for one story building with 1,400 or less square feet shall be 18 inches. The minimum width of a concrete footing for two-story buildings and buildings greater than 1,400 square feet shall be 24 inches. All footings shall be reinforced with horizontal steel rebar; and

(iii) Minimum footing rebar size shall be two #4's in an 18 inch footing and three #4's in a 24 inch footing and tied perpendicular with #4 rebar at 24 inches on center, and supported three inches (3") from the bottom of the footing with support approved by the building official; and

(iv) The thickness of the concrete footing shall be a minimum of 12 inches with a minimum of 3,000 PSI concrete; and

(v) Minimum concrete footing for concentrated load shall be 24 inches x 24 inches x 12 inches in depth of 3,000 PSI concrete, 24 inches to bottom below finish grade with a rebar mat of four #4's supported three inches from the bottom with support as approved by the building official; or

(vi) Designed by an Arkansas registered professional architect or engineer.

(3) *Concrete floors.* (Slabs on grade).

(a) *Minimum requirement.* Minimum requirement for concrete slab-on-grade floors shall be constructed in accordance with the *CABO One and Two Family Dwelling Code*, and shall be at least eight inches (8") above the finish grade surrounding the building; and

(b) *Minimum compressive strength.* Concrete used in the construction of floors shall have a minimum compressive strength of 3,000 pounds per square inch; or

(c) *Design.* Designed by an Arkansas registered professional architect or engineer.

(4) *Crawl space.* Crawl space grade shall not be lower than finish grade outside of a building without construction of a drainage remedy approved by the building official.

(5) *Signs.* The City of Fayetteville adopted sign ordinance shall take precedence over conflicts with the Building Code outdoor display and signs requirements.

(6) *Portable buildings.* Requirements for building permits shall not apply to small one story portable buildings with an area of 80 square feet or less, but shall be subject to other applicable city requirements.

(7) *Reroofing.* Reroofing of existing residential dwelling units including detached garages and portable buildings shall not require a permit. However, the project is not exempt from meeting all code requirements.

(C) *Amendments, additions, and deletions to the Fire Prevention Code.* The Fire Prevention Code shall be amended as follows:

Sprinklers. In addition to the requirements of the Fire Prevention Code and the Building Code, any new building or alteration, addition or change of occupancy of existing buildings which exceeds three stories including the basement, or 50 feet or greater in height at the highest point of said building shall be protected by a complete automatic sprinkler system designed and installed with compliance to applicable NFIPA Standards.

(Ord. No. 4100, §2 (Ex. A), 6-16-98)

Sec. 173.03. Fire zones.

(A) *Zones.* The city is hereby divided into two fire zones which shall be known as the first fire zone and the intermediate fire zone.

(1) *First zone.* The first fire zone shall include the following areas of the city:

(a) Beginning at a point where the east line of south Locust Avenue intersects the north line of west Rock Street and running thence west along the north line of Rock Street to the east line of South West Avenue; thence north along the east line of West Avenue to the north line of West Center Street to the east line of University Avenue to the north line of West Dickson Street; thence west along the north line of Dickson Street to the east line of Arkansas Avenue; thence north along the east line of Arkansas Avenue to the south line of Ida Street; then east along the south line of Ida Street to the east line of Gregg Avenue; thence north along the east line of Gregg Avenue to the south line of West Lafayette Street; thence east along the south line of Lafayette to a point 259 feet and three inches (3") east of the east line of North West Avenue; thence south to a point in the south line of Scott Street, said point being 259 feet and three inches (3") east of the east line of North West Avenue; thence east along the south line of Scott Street to the west line of Rollston Avenue, thence south along the west side of Rollston Avenue, to a point 180 feet north of the north line of West Dickson Street; thence east parallel with the north line of Dickson Street to a point in the west line of a private driveway which is 147 feet, more or less, east of the east line of College Avenue; thence south along the west line of said driveway to the south line of East Dickson Street; thence east along the south line of East Dickson Street to a point which is 300 feet east of the east line of North College Avenue; thence south parallel with the east line of College Avenue to the north line of East Rock Street; thence west along the north line of Rock Street to the point of beginning.

(b) Beginning on the north boundary of the area described in subsection a. above, at a point which is 180 feet north and 160 feet west of the west line of College Avenue; thence north parallel with said west line of College Avenue; thence north parallel with said west line of College Avenue 480 feet; thence west 30 feet; thence north 132 feet to the south line of Lafayette Street; thence across Lafayette Street to the north side thereof to a point 180 feet west of the west line of College Avenue; thence north 92.5 feet; thence east 10 feet; thence north parallel to the west line of College Avenue 367 feet to the south line of Maple Street; thence northwesterly across Maple Street to the east line of the north-south alley between Maple Street and Davidson Street, the east line of said alley being 200 feet west of College Avenue; thence north along said east line to Davidson Street; thence northeasterly across Davidson Street to a point on the north line thereof, 140 feet west of the west line of College Avenue; thence north parallel with said west line of College Avenue to Trenton Boulevard; thence across Trenton Boulevard to a point on the north line thereof, 150 feet west of the west line of College Avenue; thence in a northerly direction parallel to and 150 feet west of the west line of College Avenue to the south line of North Street; thence east along the south line of North Street to a point 150 feet east of the east line of College Avenue; thence in a

southerly direction parallel to and 150 feet east of the east line of College Avenue to the north line of Davidson Street; thence southwesterly across Davidson Street to a point on the south line thereof 135 feet east of the east line of College Avenue; thence south parallel to and 135 feet east of the east line of College Avenue 212 feet, more or less, to an east-west alley, thence southeasterly across said alley to a point on the south side thereof 205 feet east of the east line of College Avenue; thence south parallel to and 205 feet east of the east line of College Avenue to the north line of Maple Street; thence southwesterly across Maple Street to a point on the south side thereof 110 feet east of the east line of College Avenue; thence south parallel to and 110 feet east of the east line of College Avenue; thence south parallel to and 130 feet east of the east line of College Avenue, 295 feet, more or less, to the north line of Lafayette Street; thence southwesterly across Lafayette Street to a point of the south side thereof, 120 feet east of the east line of College Avenue; thence south 112 feet; thence east to a point 200 feet east of the east line of College Avenue thence south 110 feet to Cravens Street; thence across Cravens Street to a point on the south side thereof 205 feet east of the east line of College Avenue; thence south parallel to and 205 feet east of the east line of College Avenue, 270 feet; thence west 55 feet; thence south to the north boundary of the area described in the subsection a. above; thence west to the place beginning.

(c) A strip of land 150 feet wide on each side of the I-540 from the north line of the first fire zone, as established in the above divisions, north along I-540 to the north city limits.

(d) A strip of land 150 feet wide on each side of the I-540 from the south boundary of the first fire zone, as established in the above divisions, south along I-540 to the south city limits.

(e) A strip of land 150 feet wide on each side of United States Highway 62 from I-540 west along United States Highway 62 to the west city limits.

(f) A zone 460 feet wide, extending 230 feet on each side of the centerline of North College Avenue from the north line of East Dickson Street to the south line of East Davidson Street.

(g) The west 300 feet of Block A of Maplewood Addition to the city.

(h) Beginning at the limits of the first fire zone, as established by the above divisions, at a point on the north line of East Rock Street which is 200 feet east of the east line of South College Avenue; thence south along the east side of an alley 200 feet east of the east line of South College Avenue to the centerline extended of East South Street; thence west along the centerline of East South Street to the centerline of South East Avenue; thence south along the center line of South East Avenue to the centerline of West Fourth Street (formerly West First Street); thence west along the centerline West Fourth Street to the centerline of South Block Avenue; thence south along the centerline of South Block Avenue to the centerline of West Fifth Street; thence west along the centerline West Fifth Street extended to the intersection of the first fire zone limits as established by the above subsections, at a point 150 feet east of the east line of South School Avenue; thence north along said limits parallel and 150 feet east on the east line of South School Avenue to the north line of West Rock Street at said limits; thence east with said limits along the north line of Rock Street to the point of beginning.

(i) A zone of 340 feet wide, extending 170 feet in each side of the centerline of South School Avenue, from the north line of Rock Street south to the south line of Fifteenth Street.

(j) A zone 360 feet wide, extending 180 feet on each side of the centerline of West Sixth Street (Highway 62), from a north-south line parallel to and 140 feet west of the centerline of South School Avenue west to a point on a line parallel with the west line of Buchanan Avenue.

(2) *Intermediate fire zone.* The intermediate fire zone shall include all territory now or hereafter within the corporate limits of the city which is not within the first fire zone.

(Code 1965, §16-1; Ord. No. 885, 10-01-45; Code 1991, §151.01, 151.02, 151.03; Ord. No. 4100, §2 (Ex. A), 6-16-98)

Sec. 173.04. Electrical Code.

(A) *Adoption by reference.* There is hereby adopted by the City Council of the City of Fayetteville, Arkansas, by reference thereto the provisions set forth in the Arkansas Board of Electrical Examiners Act, Arkansas Electrical Code Authority Act, and Regulations for the Board of Electrical Examiners governing the construction, installation and inspection of electrical wiring, electrical equipment, and electrical installations, pursuant to the authority expressly conferred by the laws of the State of Arkansas, and as may from time to time hereafter be amended, save and except such as may be deleted, modified, or amended herein.

(B) *Amendments, additions, and deletions.* The Arkansas Board of Electrical Examiners Act, Arkansas Electrical Code Authority Act, and Regulations for the Board of Electrical Examiners governing the construction, installation, and inspection of electrical wiring, electrical equipment, and electrical installations shall be amended as follows:

(1) *Responsibilities of a master electrician.* It shall be the duty of the master electrician to require apprentice electricians to register annually with the city Building Safety Division before doing electrical work and to inform the Building Safety Division when said apprentice is terminated.

(2) *Exemptions.* The following shall be exempt from these provisions:

(a) *Public utility.* Any construction, installation, maintenance, repair, or renovation by a pubic utility regulated by the Public Service Commission, or by a rural electric cooperative, of any transmission or distribution lines or facilities incidental to their business and covered under other nationally recognized safety standards.

(b) *Department of Labor, Elevator Safety Division.* Electrical work regulated by the Arkansas Department of Labor, Elevator Safety Division.

(c) *Minor repair.* A permit is not required for minor repair, replacement of fuses and lamps, or connections of portable electrical equipment to permanently installed receptacles.

(3) *Permits required; qualifications.*

(a) *Application.* All electrical work, unless specifically exempt herein, shall require the application and approval of an electrical permit from the city Building Safety Division prior to beginning electrical installations in the corporate limits of the city.

(b) *Issuance.* The city Building Safety Division is authorized to issue electrical permits to the following:

(i) Arkansas state licensed master electricians.

(ii) Arkansas state licensed industrial maintenance electrician for an electrical permit on or within an industrial or manufacturing type facility.

(iii) A permit may be issued to a property owner to install electrical installations in a single-family residence, provided the property owner does the work himself, and the building is owned and occupied by such owner as his home. Such electrical work must strictly comply with the requirements of this chapter.

(4) *Power company.*

(a) *Meter installation.* An electrical utility power company shall not install a meter before approval is received from the Building Safety Division when there have been changes, additions, alterations, and/or repairs to the electrical system.

(b) *Faulty electrical wiring.* An electrical utility power company shall not install a meter when faulty electrical wiring is evident and a hazard exists.

(c) *Existing installation.* Nothing herein shall be so construed as to require approval from the Building Safety Division before a meter is installed on an existing installation unless some change has been made and/or a hazard exists to the electrical system.

(5) *Miscellaneous provision.*

(a) *NM and NMC cable.* The use of type NM and NMC cable shall be limited to residential dwelling units and existing buildings less than 3, 000 total square feet that are less than three stories and with occupancy defined by the building code as business and/or mercantile when altered, renovated, added to, and/or occupancy changed. Existing electrical wiring proposed to be used for said existing building shall be certified as safe by an Arkansas Professional Engineer and / or Architect or Arkansas Master License Electrician.

(b) *Pull chain switches.* The use of pull chain switches shall be prohibited.

(c) *Fuses.* The use of fuses as overcurrent protection of circuits shall be prohibited in residential dwellings.

(d) *Aluminum conductors.* The minimum size of aluminum conductors shall be #2 AWG. Splicing and termination of aluminum conductors shall be with approved compression fittings.

(6) *Neon lighting.*

(a) *Permit required.* Power and control electrical wiring shall not be installed without obtaining a permit. Permit application, drawings, and specification shall be submitted for approval as required by the Building Safety Division before installation begins.

(b) *No license required.* An electrical license shall not be required to obtain a permit to install neon tubing, associated transformer, high voltage wiring, and appurtenances.

(C) *Inspections and tests.*

(1) Inspections of electrical installations shall be requested and approved by the Building Safety Division before covering as follows:

(a) Temporary construction meter;

(b) Underground;

(c) In concrete or under concrete;

(d) Rough-in;

(e) Meter; and/or,

(f) Final.

(2) Tests on electrical work shall be performed by the master electrician as required by the Building Safety Division Director.

(Ord. No. 4100, §2 (Ex. A), 6-16-98)

State law reference(s)--Arkansas Board of Electrical Examiners Act, A.C.A. §7-25-102 et seq.; Arkansas Electrical Code Authority Act, A.C.A. §20-31-101 et seq.

Sec. 173.05. Gas Piping Code.

(A) *Adoption by reference.* There is hereby adopted by the City Council by reference thereto the provisions set forth in the Arkansas State Gas Code, Rules and Regulations of the State Board of Health governing the construction, installation and inspection of consumer's gas piping, gas appliances and gas equipment, duly adopted and promulgated by the Arkansas State Board of Health, Little Rock, Arkansas, pursuant to the authority expressly conferred by the laws of the State of Arkansas, and as may from time to time hereafter be amended, save and except such portions of said code as may be deleted, modified or amended herein.

(B) *Amendments, additions, and deletions.* The Arkansas State Gas Code, Rules and Regulations of the State Board of Health, governing the construction, installation and inspection of consumer's gas piping and gas appliances and gas equipment shall be amended as follows:

(1) *Exemptions.* The following shall be exempt from these provisions:

(a) *Gas company.* Nothing herein shall be construed as applying to a gas company, its agents, servants, and employees conducting its business under the franchise granted by the city in the installation, repair, maintenance, removal or replacement of gas piping machinery or equipment owned or operated by the gas company in the city.

(b) *Gas meter.* Nothing herein shall be so construed as to require a permit and inspection from the city Building Safety Division before a gas meter can be set unless some change has been made in gas installation since service was disconnected.

(2) *Permit required; qualifications.*

(a) *Application.* A gas permit shall be applied for and obtained from the city Building Safety Division prior to

beginning gas installations in the corporate limits of the city.

(b) *Issuance.* The city Building Safety Division is authorized to issue gas permits to the following:

(i) State licensed supervising gas fitter.

(ii) State licensed master plumbers.

(iii) A permit may be issued to a property owner to install gas installations in a single-family residence, provided the property owner does the work himself, and the building is owned and occupied by such owner as his home. Such gas installations must strictly comply with the requirements of this chapter.

(3) *Miscellaneous provisions.* All underground plastic as piping shall have a #14AWG copper or large tracer wire with moisture resistant thermoplastic insulation installed in the same trench with the underground plastic piping. Said tracer wire shall be continuous and secured to the piping above ground.

(C) *Inspection and tests.*

(1) Inspections of gas installations shall be made before covering, and with required tests as follows:

(a) Underground;

(b) Rough-in; and/or

(c) Final.

(2) Tests as required by code shall remain on any addition, alteration, repair, and new piping installations until the installation has been approved by a Building Safety Division Director.

(Code 1965, §15-69, 15-61, 15-76, 15-70; Ord. No. 1432, 02-15-65; Ord. No. 1741, 06-01-70; Ord. No. 2256, 07-20-76; Ord. No. 2033, 08-06-74; Ord. No. 4100, §2 (Ex. A), 6-16-98)

State law reference(s)--Public health-Enforcement, A.C.A. §4-97-106; Arkansas Administrative Procedure, A.C.A. §25-15-201 et seq.

Sec. 173.06 Plumbing Code.

(A) *Adoption by reference.* There is hereby adopted by the City Council by reference thereto the provisions set forth in the Arkansas State Plumbing Code, Rules and Regulations of the State Board of Health, governing the construction, installation and inspection of plumbing and drainage, duly adopted and promulgated by the Arkansas State Board of Health, Little Rock, Arkansas, pursuant to the authority expressly conferred by the laws of the State of Arkansas, and as may from time to time hereafter be amended, save and except such portions of said code as may be deleted, modified, or amended herein.

(B) *Amendments, additions, and deletions.* The Arkansas State Plumbing Code, Rules and Regulations of the State Board of Health, governing the construction, installation, and inspection of plumbing and drainage shall be amended as follows:

(1) *Permits required; qualifications.*

(a) *Application.* All plumbing work, unless specifically exempt herein, shall require the application for and approval of a plumbing permit from the city Building Safety Division, prior to beginning plumbing installations in the corporate limits of the city, and on water and sewer systems owned by the city outside of the city limits.

(b) *Documentation.* No plumbing permit shall be issued until the following has been received:

(i) Plumbing permit issued by the State Department of Health, as required.

(ii) Plans and specifications approved by the State Department of Health, as required.

(iii) State Department of Health approval of an individual sewage disposal system when a public sewer is not available for use.

(iv) Building permit has been issued.

(c) *Minor repairs.* No permit is required for minor repairs to faucet, valves, pipes, appliances, and the removal of stoppage.

(d) *Issuance.* The city Building Safety Division is authorized to issue plumbing permits to the following:

(i) State licensed master plumbers.

(ii) A permit may be issued to a property owner to install plumbing in a single-family residence, provided the property owner does the work himself, and the building is owned and occupied by such owner as his home. Such plumbing work must strictly comply with the requirements of this chapter.

(2) *Failure to permit and inspect.* Water meters shall not be allowed for installations that have not been permitted and inspected.

(C) *Inspection and tests.*

(1) Inspections of plumbing installations shall be made before covering, and with required test as follows:

(a) Underground;

(b) Under slab;

(c) Rough-in; and/or

(d) Multi-story rough-in; and

(e) Final.

(2) The Building Safety Division Director shall have the right to inspect and may require tests for existing plumbing installations when there is reason to believe that such system is not safe for the use it is intended. When such inspection or tests indicate a faulty or unsafe system, the system shall be made safe to the satisfaction of the inspector before the system is used.

(Code 1965, §15-1, 15-9, 15-3 15-4; Ord. No. 1433, 02-15-65; Ord. No. 1861, 04-13-72; Ord. No. 3228, 11-18-86; Ord. No. 4100, §2 (Ex. A), 6-16-98)

Sec. 173.07. Mechanical Code.

(A) *Adoption by reference.* There is hereby adopted by the City Council by reference thereto the provisions set forth in the Arkansas State Mechanical Code, Rules and Regulations of the State HVACR Board, including guidelines for estimating heat loss and gain, governing the installation and inspection of mechanical systems duly adopted and promulgated by the Arkansas State HVACR Board, Little Rock, Arkansas, pursuant to the authority expressly conferred by the laws of the State of Arkansas, as may from time to time hereafter be amended, save and except such portions of said code as may be deleted, modified, or amended herein.

(B) *Amendments, additions, and deletions.* The Arkansas State Mechanical Code, Rules and Regulations of the State HVACR Board, governing the installation and inspections of mechanical systems shall be amended as follows:

(1) *Application.* All mechanical work, unless specifically exempt herein, shall require the application for and approval of a mechanical permit from the city Building Safety Division, prior to beginning mechanical installations in the corporate limits of the city.

(2) *Minor repairs.* No permit is required for minor repairs such as recharging of units, filter changes, and replacement of parts within the units.

(3) *Issuance.* The city Building Safety Division is authorized to issue permits to the following:

(a) State licensee;

(b) A permit may be issued to a property owner for mechanical installations in a single-family residence, provided the property owner does the work himself, and the building is owned and occupied by such owner as his/her home. Such mechanical work must strictly comply with the requirements of this chapter.

(C) *Inspection and tests.*

(1) Underslab/underground;

(2) Rough-in; and/or

(3) Final.

(D) *Right to inspect.* The Building Safety Division Director shall have the right to inspect and may require tests for existing mechanical installations when there is reason to believe that such system is not safe for the use intended. When such inspections or tests indicate a faulty or unsafe system, the system shall be made safe before the system is used.

(Ord. No. 4100, §2 (Ex. A), 6-16-98)

Sec. 173.08. Unsafe buildings.

(A) No person or persons, partnership, corporation or association, hereinafter referred to as "owner", shall keep or maintain any house or building within the corporate limits of the city which has become dilapidated, unsafe, unsanitary, or detrimental to the public welfare.

(B) *Abatement procedure.*

Resolution. The rules and procedures of the inspection department for cleanup, raze and removal of property shall be followed. If the results of such efforts are unsatisfactory, the Building Safety Division Director may forward the matter to the City Council for consideration. The City Council may by resolution make the following determinations and issue the following order:

(1) *Determination of condition.* The City Council may by resolution determine that a building or house has become dilapidated, unsafe, unsanitary, or detrimental to the public welfare.

(2) *Order of raze and removal.* If it is determined that a building or house has become dilapidated, unsafe, unsanitary, or detrimental to the public welfare, the City Council may order the house or structure razed and removed.

(Code 1991, §151.51, 151.52(A)(1)(2); Ord. No. 3948, 02-20-96; Ord. No. 4100, §2 (Ex. A), 6-16-98)

State law reference(s)--Removal or razing of buildings, A.C.A. §14-56-203.

Sec. 173.09. Homebuilders registration. *Adoption by reference.* There is hereby adopted by the City Council, by reference thereto, the provisions set forth in A.C.A. §17-25-501 et seq., save and except such portions of said code as may be deleted, modified, or amended herein.

Cross reference(s)--Administration, Ch. 152; Appeals, Ch 155; Variances, Ch. 156; Fees, Ch. 159.

(Code, 1991, §151.31.5)

Sec. 173.10. Standard Housing Code.

(A) *Adoption by reference.* There is hereby adopted by the City Council, by reference thereto, the provisions set forth in the *Standard Housing Code, 1997 Edition*, save and except such portions of said code as may be deleted, modified, or amended herein.

(B) *Amendments, additions, and deletions to the Standard Housing Code, 1997 Edition.* The *Standard Housing Code, 1997 Edition*, shall be amended as follows:

(1) The Construction Board of Adjustments and Appeals shall perform those duties of the Housing Board of Adjustments and Appeals as set forth in Section 106, *Standard Housing Code, 1997 Edition.*

(2) The housing official shall be known as the chief building official.

(3) Section 108, *Standard Housing Code. 1997 Edition*, is hereby deleted.

(Code 1965, 6-34; Ord. No. 1558, 08-21-67; Ord. No. 2885, 01-04-83; Ord. No. 2299, 12-21-76; Ord. NO. 2709, 03-24-81; Code 1991, §151.20, §151.22; Ord. No. 4100, § 2 (Ex. A), 6-16-98; Ord. No. 4124, §2, 11-17-98)

Cross reference(s)--General penalty, §10.99.

State law reference(s)--Adoption of technical codes by reference, A.C.A. §14-55-207.

Secs. 173.11.--173.99. Reserved.

STAFF REVIEW FORM - FINANCIAL OBLIGATION

XX AGENDA REQUEST
____ CONTRACT REVIEW
____ GRANT REVIEW

For the Fayetteville City Council Meeting of: May 20, 2003

FROM:

Sondra Smith	City Clerk	City Clerk
Name	Division	Department

A Resolution ratifying the Resolution of the Fayetteville Public Facilities Board approving multifamily housing revenue bonds (Grandview Apartments Project), Series 2003 in an aggregate principal amount of not to exceed $3,700,000.

COST TO CITY:

$0.00	$ -	
Cost of this request	Category/Project Budget	Program Category / Project Name
	$ -	
Account Number	Funds Used to Date	Program / Project Category Name
	$ -	
Project Number	Remaining Balance	Fund Name

BUDGET REVIEW: N/A Budgeted Item ____ Budget Adjustment Attached

Budget Manager — 5-7-03 Date

CONTRACT/GRANT/LEASE REVIEW:

Accounting Manager — 5/7/03 Date
Internal Auditor — 5/7/03 Date
City Attorney — 5/8/03 Date
Purchasing Manager — 5/8/03 Date

STAFF RECOMMENDATION:

Division Head — 5-6-03 Date
Department Director — 5-6-03 Date
Finance & Internal Services Dir. — 5-8-03 Date
Chief Administrative Officer — 5-7-03 Date
Mayor — 5/8/03 Date

Received in Mayor's Office ____ Date

Cross Reference:

Previous Ord/Res#: ____

Orig. Contract Date: ____

Orig. Contract Number: ____

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

Staff Review Form - Page 2

Description _____ Meeting Date May 20, 2003

Comments: Reference Comments:

Budget Manager

Accounting Manager

City Attorney

Purchasing Manager

ADA Coordinator

Internal Auditor

Grants Coordinator

JAMES N. McCORD
Attorney at Law
11 N. WEST AVE.
SUITE #202
FAYETTEVILLE, ARKANSAS 72701

TELEPHONE (479) 695-1134
FACSIMLE (479) 695-1135
jimmccordlaw@alltel.net

CONFIDENTIAL
FACSIMILE TRANSMISSIONS

TO: SANDRA SMITH, CITY CLERK

RE: FAY. PUB. FAC. BD. - CARNOVICH APTS. BONDS

FAX NO: 718-7695

NUMBER OF PAGES (Including This Page): 3

DATE: 5/5/03 TIME: 2:45 p.m.

If you do not receive the complete transmission, please call the individual named below at (479) 695-1134.

BY: Jim

MESSAGE: ATTACHED IS CORRECTED CITY COUNCIL RESOLUTION. DISCARD RESOLUTION FAXED AT 2:25 p.m. TODAY.

CONFIDENTIALITY NOTE: This communication is subject to attorney-client privilege. The information contained herein is Privileged and Confidential Information intended only for the addressee. If you are not the addressee, you are hereby notified that any dissemination, distribution, or copy of this communication is strictly prohibited. If you have received this communication in error, please immediately notify us by telephone and return the original facsimile transmission to the above address. Thank you.

RE: WOOTEN EPES (501) 975-3001

RESOLUTION NO. ___

A RESOLUTION RATIFYING THE RESOLUTION OF THE FAYETTEVILLE PUBLIC FACILITIES BOARD APPROVING MULTIFAMILY HOUSING REVENUE BONDS (GRANDVIEW APARTMENTS PROJECT), SERIES 2003 IN AN AGGREGATE PRINCIPAL AMOUNT OF NOT TO EXCEED $3,700,000

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

WHEREAS, the Board is authorized by the Act and the Ordinance to issue and sell its revenue bonds and to use the proceeds to finance residential housing facilities in the City for low and moderate income families, to secure payment of such revenue bonds as therein provided (including bond insurance or letters of credit), all in accordance with the provisions of the Act and the Ordinance; and

WHEREAS, the Board has determined that the economic interests of the City and public purposes of the Board are served by issuing its Multifamily Housing Revenue Bonds, Series 2003 (Grandview Apartments Project) (the "Bonds") in an aggregate principal amount of not to exceed $3,700,000 for the purpose of providing moneys to provide financing for the acquisition and rehabilitation of a multifamily housing project for low to moderate income households known as Grandview Apartments (the "Project") and for other purposes related thereto; and

WHEREAS, the Bonds are not a debt of or a pledge of the credit of either the City or the Board and neither the City nor the Board is obligated to pay debt service on the Bonds; and

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

WHEREAS, pursuant to the provisions of the Ordinance, resolutions adopted by the Board which authorize the issuance of bonds for financing a multifamily housing project for low to moderate income households shall be ratified by the City; and

WHEREAS, the Board adopted a resolution on April 21, 2003 to approve the Bonds subject to the ratification by the City and subsequent approval by the Board of final financing terms; and

WHEREAS, such resolution adopted by the Board on April 21, 2003, authorized the Chairman and Secretary to execute documents to effect the issuance of the Bonds; and

WHEREAS, the City, as an exercise of its ministerial powers should ratify the Board's resolution in recognition that the City is not a part of the deliberative process of approval of the issuance of the Bonds and provided further that the City should ratify the resolution adopted by the Board on April 21, 2003, based upon a determination that the Board has solely and independently exercised its powers and responsibilities in a manner which complies with the Ordinance.

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

Section 1. **Recognition of Board's Authority**. The Board is authorized by the Act and the Ordinance to approve the issuance of the Bonds for the purpose of providing moneys to finance residential housing facilities for low and moderate income families, pay the costs of issuing the Bonds and for other purposes related thereto and shall comply with other provisions of the Act and the Ordinance. The Bonds by statute and intent of this City Council are not a debt of or a pledge of the credit of either the City or the Board and neither the City nor the Board is obligated to pay debt service on the Bonds whether or not said Bonds have been properly issued.

Section 2. **Ratification of Board's Resolution**. The provisions of the Board's resolution approved April 21, 2003, a copy of which is filed with the Clerk of the City, are hereby ratified by the City.

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

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

PASSED and **APPROVED** this 20th day of May, 2003.

APPROVED:

By:_____
DAN COODY, Mayor

ATTEST:

By:_____
Sandra Smith, City Clerk

Fayetteville Public
Facilities Board
C. 1. Page 6

JAMES N. McCORD
Attorney at Law
11 N. WEST AVE.
SUITE #202
FAYETTEVILLE, ARKANSAS 72701

TELEPHONE (479) 695-1134
FACSIMLE (479) 695-1135
jimmccordlaw@alltel.net

CONFIDENTIAL FACSIMILE TRANSMISSIONS

TO: SANDRA SMITH
FAYETTEVILLE PUBLIC FACILITIES BOARD

RE: AGENDA ITEM FOR 5/20/03 CITY COUNCIL MEETING

FAX NO: 718-7695

NUMBER OF PAGES (Including This Page): 8

DATE: 5/1/03 TIME: 4:10 p.m.

If you do not receive the complete transmission, please call the individual named below at (479) 695-1134.

BY: JNM

MESSAGE: AGENDA ITEM "HEADING" ATTACHED WITH BACKUP MATERIALS. CITY COUNCIL RESOLUTION TO FOLLOW. THANKS, Jim

CONFIDENTIALITY NOTE: This communication is subject to attorney-client privilege. The information contained herein is Privileged and Confidential Information intended only for the addressee. If you are not the addressee, you are hereby notified that any dissemination, distribution, or copy of this communication is strictly prohibited. If you have received this communication in error, please immediately notify us by telephone and return the original facsimile transmission to the above address. Thank you.

A RESOLUTION RATIFYING THE RESOLUTION OF THE FAYETTEVILLE PUBLIC FACILITIES BOARD AUTHORIZING THE ISSUANCE OF FAYETTEVILLE PUBLIC FACILITIES BOARD MULTIFAMILY HOUSING REVENUE BONDS (GRANDVIEW APARTMENTS PROJECT), SERIES 2003 IN A PRINCIPAL AMOUNT NOT TO EXCEED $3,700,000

Grandview Apartments
401 W. 24th Street
Fayetteville, Arkansas 72701

Grandview Apartments is a 128-unit multifamily housing development. The property was built in 1974 and contains 3 two-story garden style residential buildings offering 24 one-bedroom, 60 two-bedroom and 24 three-bedroom units. Original construction consisted of a wood frame with siding and brick exterior with a pitched roof. The property is built on 12.04 acres with 192 open parking spaces. Current amenities for the property include a community leasing office, playground and laundry facilities. Residents pay for electric and gas utility services. The property is a government subsidized HUD Section 236 and HUD Section 8 property with 100% of the units available to tenants under the HUD Section 8 program. All of the units are reserved for low-income individuals and families according to HUD income qualifications.

The renovations will include new interior and exterior paint, carpet, heating and cooling units, new lighting, cabinets and GE High Efficiency appliances. Each unit will have a mixture of carpeting and vinyl floor covering, ceiling fans, ranges, refrigerators, disposals, central air conditioning and window coverings. All two and three-bedroom units will contain dishwashers. The renovations to the property will include updating the leasing office, laundry facilities and other common areas as well as enhancing outdoor and playground areas. The Applicant plans to acquire and rehabilitate this property through the use of tax exempt bonds and low income housing tax credit equity. Additionally, the developer will defer a portion of the developer fees earned for use as an additional source of funds. The Applicant is requesting a bond reservation in the amount of $4,000,000 for the purpose of maintaining affordable housing in the Fayetteville area.

RESOLUTION

RESOLUTION AUTHORIZING THE ISSUANCE OF THE FAYETTEVILLE PUBLIC FACILITIES BOARD (THE "ISSUER") MULTIFAMILY HOUSING REVENUE BONDS (GRANDVIEW APARTMENTS PROJECT) SERIES 2003 IN AN AGGREGATE PRINCIPAL AMOUNT NOT IN EXCESS OF $3,700,000 (THE "BONDS") TO PROVIDE PERMANENT FINANCING FOR THE ACQUISITION, REHABILITATION AND EQUIPPING OF A MULTIFAMILY RESIDENTIAL HOUSING PROJECT IN FAYETTEVILLE, ARKANSAS, FOR ELIGIBLE LOW AND MODERATE INCOME HOUSEHOLDS (THE "PROJECT"); SPECIFYING THAT THE BONDS ARE LIMITED OBLIGATIONS OF THE ISSUER PAYABLE SOLELY FROM THE TRUST ESTATE AS PROVIDED IN THE TRUST INDENTURE; APPROVING AND AUTHORIZING EXECUTION OF THE TRUST INDENTURE AUTHORIZING THE SALE OF THE BONDS AND A LOAN AGREEMENT RELATING THERETO; MAKING CERTAIN FINDINGS AND DETERMINATIONS WITH REFERENCE TO THE BONDS; AUTHORIZING THE EXECUTION AND DELIVERY OF RELATED DOCUMENTS; PROVIDING FOR REPEAL OF ANY INCONSISTENT PRIOR RESOLUTIONS OF THE ISSUER; AND PROVIDING FOR THE EFFECTIVE DATE OF THIS RESOLUTION.

WHEREAS, the Fayetteville Public Facilities Board (the "Issuer") has been organized and exists under the laws of the State of Arkansas as a public facilities board; and

WHEREAS, the Issuer is authorized and empowered by law, including particularly Arkansas Code Annotated Sections 14-137-101, et seq., as amended, (the "Act") and Ordinance No. 2465, as amended, of the City Council of the City of Fayetteville, Arkansas (the "Ordinance"), to borrow and lend funds in order to assist one or more multi-family residential housing facilities that provide housing for low-income persons and families in Fayetteville, Washington County, Arkansas; and

WHEREAS, on April 16, 2002, the Issuer approved the Project, as hereinafter defined, naming Bond Counsel and authorizing the Chairman of the Issuer and Bond Counsel to prepare documents related to the issuance of the Bonds, including the preparation and dissemination of a notice of public hearing and other matters in preparation of final approval of the issuance of the Bonds; and

WHEREAS, for the purposes set forth in the Act, the Issuer desires to issue an aggregate principal amount not in excess of $3,700,000 of its Multifamily Housing Revenue Bonds (Grandview Apartments Project) Series 2003 (the "Bonds"), pursuant to a Trust Indenture dated as of June 1, 2003 (the "Indenture") by and between the Issuer and a trustee to be named at a later date (the "Trustee"), to make a loan to GV Affordable Housing Limited Partnership, an Arkansas limited partnership (the "Borrower") to provide financing for the acquisition, rehabilitation and equipping of the Project; and

WHEREAS, the Bonds are payable from the Trust Estate (as that term is defined in the Indenture) (the "Trust Estate"), which Trust Estate includes revenues collected as rent for the occupancy of the multifamily housing residential apartments and named Grandview Apartments located at 401 W. 24th Street in the City of Fayetteville, Washington County, Arkansas comprised of 128 units; and

WHEREAS, there have been presented to this meeting the following documents, which the Issuer proposes to enter into or ratify the entering into on its behalf to effectuate the proposed financing:

1. The Indenture between the Issuer and the Trustee, setting forth the terms of the Bonds and the conditions and security of the Bonds;

2. The Bond Purchase Agreement (the "Purchase Agreement") among the Borrower, the Issuer and GMAC Commercial Capital Corp., or an affiliate thereof, (the "Purchaser") relating to sale of the Bonds;

3. The form of a Regulatory Agreement and Declaration of Restrictive Covenants (the "Regulatory Agreement") among the Borrower, the Issuer and the Trustee;

4. The form of a Loan Agreement among the Issuer, the Trustee and the Borrower (the "Loan Agreement");

5. The form of an Agreement for Interest Reduction Payments among the Borrower, the Trustee, the Issuer and HUD; and

6. The Bonds, as set forth in the Indenture.

WHEREAS, it appears that each of the instruments above referred to, which are now before the Issuer, are in appropriate form and are appropriate instruments for the purpose intended;

NOW, THEREFORE, BE IT RESOLVED BY THE FAYETTEVILLE PUBLIC FACILITIES BOARD, AS FOLLOWS:

Section 1. That the issuance of the Bonds for the purpose of financing of the Project is hereby approved and authorized, pursuant to and in accordance with the Indenture; provided however, the Bonds shall have maturity dates no later than December 1, 2040, and interest rates with respect to the Bonds shall not exceed the maximum rate permitted by law, as will be set forth in the Indenture now before this meeting. The Bonds shall be sold to the Purchaser at a price not less than 100% of the par amount of the Bonds.

Section 2. That, in order to provide funds to finance the acquisition and construction of the Project, the issuance of the Bonds in an aggregate principal sum not in excess of $3,700,000 in substantially the form set forth in the Indenture now before this meeting, subject to appropriate insertion and revision in order to comply with provisions of the Indenture, be and the same hereby are in all respects authorized, approved and confirmed, and the form and content of

the Bonds set forth in the Indenture now before this meeting be and the same hereby are in all respects authorized, approved and confirmed, and the Chairman, Vice Chairman or Secretary of the Issuer be and they hereby are authorized, empowered and directed to execute, whether by manual or facsimile signatures, seal with the official or facsimile seal of the Issuer, if any is required, and deliver for and on behalf of the Issuer the Bonds to the Trustee for authentication, and the Trustee is hereby authorized and directed to authenticate the Bonds, and the provisions of the Indenture with respect to the Bonds be and the same hereby are authorized, approved and confirmed and are incorporated herein by reference.

The Bonds shall be limited obligations payable solely from the Trust Estate, as that term is defined in the Indenture.

Section 3. That the form and content of the Indenture be and the same hereby are in all respects authorized, approved and confirmed, and the Chair, Vice President/General Counsel and/or the President of the Issuer be and they hereby are authorized, empowered and directed to execute and deliver the Indenture for and on behalf of the Issuer to the Trustee for the security of the Bonds and the interest thereon, including necessary counterparts, in substantially the form and content now before this meeting but with such changes, modifications, additions and deletions therein as shall to them seem necessary, desirable or appropriate (their execution thereof to constitute conclusive evidence of their approval of any and all changes, modifications, additions or deletions therein from the form and content of the Indenture now before this meeting) and that from and after the execution and delivery of the Indenture, the Chair, Vice President/General Counsel and/or the President of the Issuer are hereby authorized, empowered and directed to do all such acts and things and to execute all such documents as may be necessary to carry out and comply with the provisions of the Indenture as executed.

Section 4. Subject to the provisions of Section 1 herein, the sale of the Bonds to the Purchaser pursuant to the terms of the Purchase Agreement as provided therein is hereby authorized, approved and confirmed, and the same hereby is in all respects approved and confirmed, and the Chairman, Vice Chairman or Secretary of the Issuer be and hereby are authorized, empowered and directed to execute and deliver the Bonds; and the Chairman, Vice Chairman or Secretary of the Issuer be and they hereby are authorized, empowered and directed to execute and deliver the Purchase Agreement and other documents necessary to the Purchaser for and on behalf of the Issuer, including necessary counterparts, in substantially the form and content now before this meeting but with such changes, modifications, additions and deletions therein as shall to them seem necessary, desirable or appropriate (execution thereof to constitute conclusive evidence of the Issuer's approval of any and all changes, modifications, additions or deletions therein from the form and content of the Purchase Agreement now before this meeting), and that from and after the execution of this Resolution, the Chairman, Vice Chairman or Secretary of the Issuer are hereby authorized, empowered and directed to do all such acts and things and to execute all such documents as may be necessary to carry out the sale of the Bonds to the Purchaser.

Section 5. That the form and content of the Regulatory Agreement, the Loan Agreement and the Tax Certificate be and the same hereby are authorized, approved and confirmed and the Chairman, Vice Chairman or Secretary of the Issuer be and hereby are authorized, empowered and directed to execute and deliver the Regulatory Agreement, the Loan

Agreement and the Tax Certificate for and on behalf of the Issuer, including necessary counterparts in substantially the form and content now before this meeting but with such changes, modifications, additions or deletions therein as shall to them seem necessary, desirable or appropriate (execution thereof to constitute conclusive evidence of the Issuer's approval of any and all changes, modifications, additions or deletions therein from the form and content of the Regulatory Agreement, the Loan Agreement and the Tax Certificate now before this meeting) and that from and after the execution and delivery of the Regulatory Agreement, the Loan Agreement and the Tax Certificate, Chairman, Vice Chairman or Secretary of the Issuer are hereby authorized, empowered and directed to do all such acts and things and to execute all such documents as may be necessary to carry out and comply with the provisions of the Regulatory Agreement, the Loan Agreement and the Tax Certificate as executed.

Section 6. That the Chairman, Vice Chairman or the Secretary of the Issuer be and they hereby are authorized to execute and deliver for and on behalf of the Issuer any and all additional certificates, documents, opinions or other papers and perform all other acts (including without limitation the filing of any financing statements or any other documents to create and maintain a security interest in the Trust Estate pledged under the Indenture) as they may deem necessary or appropriate in order to implement and carry out the intent and purposes of this Resolution.

Section 7. That the report of the public hearing regarding the issuance of the Bonds held by the representatives of the Issuer for purposes of Section 147(f) of the Internal Revenue Code of 1986, as amended, and the Arkansas Revenue Bond Act, is hereby ratified and confirmed.

Section 8. That the provisions of this Resolution are hereby declared to be separable and, if any section, phrase or provisions shall for any reason be declared to be invalid, such declaration shall not affect the validity of the remainder of the sections, phrases or provisions.

Section 9. That all prior resolutions or portions thereof of the Issuer, which are inconsistent with the contents hereof, are hereby repealed.

Section 10. That this Resolution shall become effective immediately upon its passage and approval.

Adopted and approved this 21st day of April, 2003.

[SEAL]

FAYETTEVILLE PUBLIC FACILTIES BOARD

By: _____
Chairman

Attest:

By: _____
Secretary

STAFF REVIEW FORM - FINANCIAL OBLIGATION

XX AGENDA REQUEST
____ CONTRACT REVIEW
____ GRANT REVIEW

For the Fayetteville City Council Meeting of: May 20, 2003

FROM:

Rick Hoyt	Police	Police
Name	Division	Department

ACTION REQUIRED: Request City Council approval of Bid 03-34 to Purchase In-Car Video Systems from Mobile-Vision, Inc. for a total cost of $ 66,884.

COST TO CITY:

$66,884.00	$ 66,884	Specialized Police Equipment/ Fede
Cost of this request	Category/Project Budget	Program Category / Project Name
4470.9470.5210.00	$ 0	Police Improvements
Account Number	Funds Used to Date	Program / Project Category Name
02062	$ 66,884	Sales Tax Capital Improvement
Project Number	Remaining Balance	Fund Name

BUDGET REVIEW: X Budgeted Item ____ Budget Adjustment Attached

Budget Manager — 5-2-03 Date

CONTRACT/GRANT/LEASE REVIEW:

Marsha Farthing — Accounting Manager — 5/6/03 Date
Nancy Smoot — Internal Auditor — 5/5/03 Date
D.P. White — City Attorney — 5/6/03 Date
P Vliet — Purchasing Manager — 5/8/03 Date

STAFF RECOMMENDATION: Council approve Mayor Coody to purchase In-Car Video Systems.

Division Head — Date
Department Director — 5-2-03 Date
Finance & Internal Services Dir. — 5-8-03 Date
Chief Administrative Officer — 5-8-03 Date
Mayor — 5/8/03 Date

Received in Mayor's Office ____ Date

Cross Reference:

Previous Ord/Res#: ____

Orig. Contract Date: ____

Orig. Contract Number: ____

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

Staff Review Form - Page 2

Description _____ Meeting Date May 20, 2003

Comments:

Reference Comments:

Budget Manager

Accounting Manager

City Attorney

Purchasing Manager

ADA Coordinator

Internal Auditor

Grants Coordinator

RESOLUTION NO. _____

A RESOLUTION AWARDING BID #03-34 TO MOBILE-VISION, INC. IN THE AMOUNT OF SIXTY-SIX THOUSAND EIGHT HUNDRED EIGHTY-FOUR DOLLARS ($66,884.00) FOR THE PURCHASE OF SEVENTEEN (17) IN-CAR VIDEO SYSTEMS, AND THE UPGRADE OF THE 144X ZOOM CAMERA.

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

Section 1. That the City Council of the City of Fayetteville, Arkansas, hereby awards Bid #03-34 to Mobile-Vision, Inc. in the amount of Sixty Six Thousand Eight Hundred Eighty-Four Dollars ($66,884.00) for the purchase of seventeen (17) in-car video systems, and the upgrade of the 144x zoom camera.

PASSED and **APPROVED** this 20th day of May, 2003

APPROVED:

By: _____
DAN COODY, Mayor

ATTEST:

By: _____
SONDRA SMITH, City Clerk

DRAFT

FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

DEPARTMENTAL CORRESPONDENCE

MEMORANDUM

TO: Mayor Dan Coody
Fayetteville City Council

FROM: Rick Hoyt, Chief of Police RHoyt

DATE: May 2, 2003

SUBJECT: Acceptance of Bid 03-34 for Purchase of In-Car Video Systems

BACKGROUND

The Police Department applied for and received a Federal grant of $ 36,060 to assist in the purchase of in-car video systems. In-car video systems have become increasingly common in police agencies in the last several years. They provide a video and audio record of all traffic stops, many arrest situations, and vehicle pursuits. Officers wear a cordless microphone which transmits audio back to the patrol car recorder. The tapes can be used as evidence in criminal matters such as DWIs and other cases and are also useful to review for any training deficiencies on which an officer may need to improve. Another area the tapes become useful for is complaints citizens may make against an officer. The video and audio tape provides an excellent record of determining what actually happened.

CURRENT SITUATION

We have been in touch with other police departments and prospective vendors to identify the features we need in our system. The police department wanted a system which protected the integrity (chain-of-custody) of the tape so we specified a recorder in a locked vault located in the trunk. Only supervisors will have a key to change out tapes and used tapes will be placed in a secure location in the Evidence/Property section. We also wanted a system that comes on automatically whenever the vehicle's blue lights come on along with time/date stamping, digital counter, indicators to show whether the siren was on and whether the patrol car's brakes were activated. Additionally we wanted a system that allowed the officer to activate the recorder remotely from the cordless microphone unit and to have several frequencies so that multiple cars on a scene wouldn't confuse and garble the audio. Bid specifications were written and bids were opened on May 2, 2003. Purchase of these units are in keeping with at least two of the Fayetteville Vision 2020 Guiding Principles, #4 – Financially Sustainable City Government Providing Top Quality, Responsive Services and #10 – Reputation as a "Safe Community."

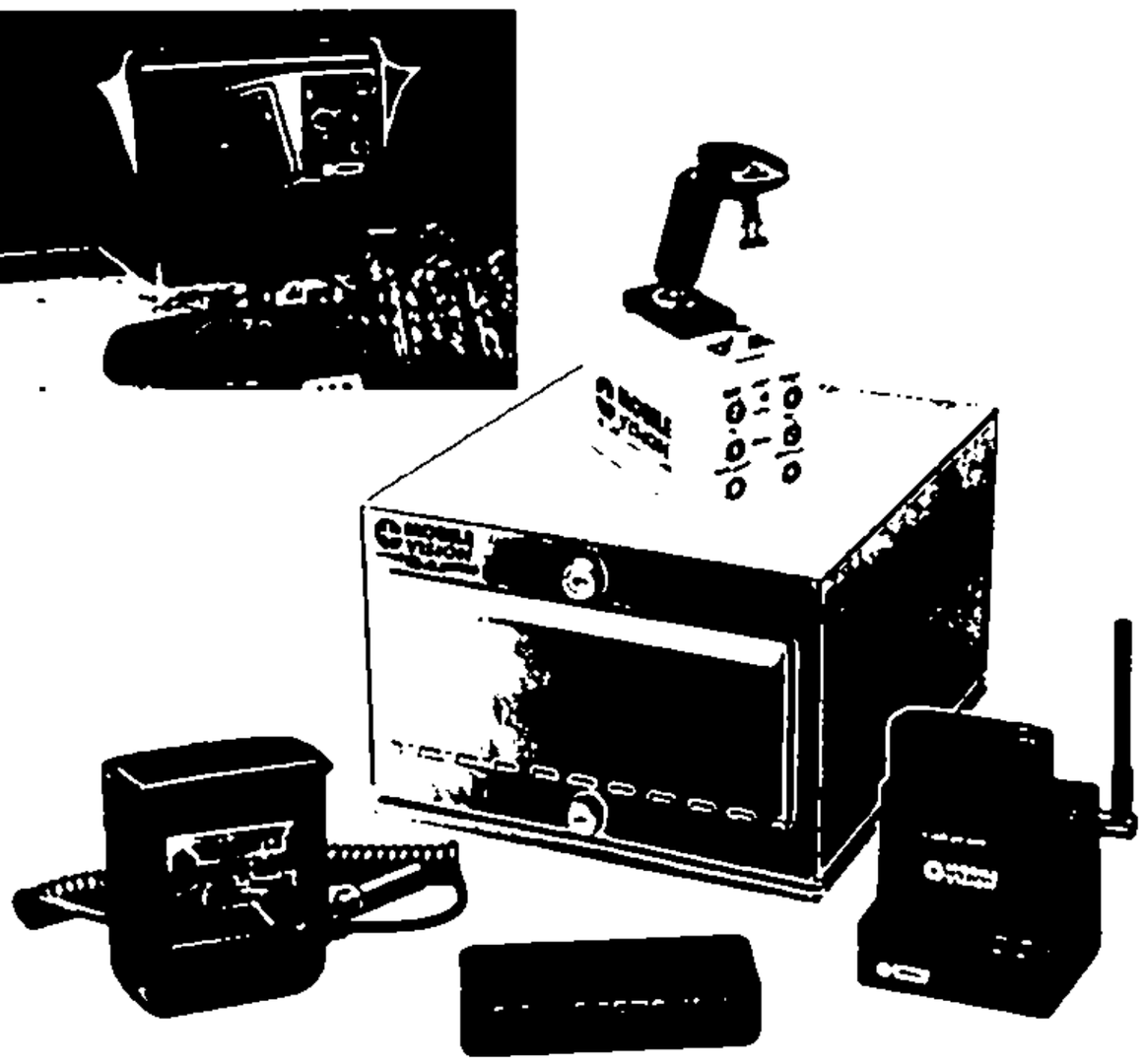
RECOMMENDATION

The Police Department requests the Council's approval of Bid 03-34 to purchase seventeen in-car video systems from Mobile Vision, Inc. along with an upgrade to the 144X zoom camera with Nite-watch for a total cost of $ 66,884. Additional funds to cover this purchase beyond the grant amount are available from the Specialized Police Equipment Project #02062 that is part of the Sales Tax Capital Improvement Fund.

SYSTEM

VCR Enclosure -- Camera -- Microphone -- Monitor -- Overhead -- Video Tape

In-Car Video System



- Powered by a JVC america video Recorder.
- JVC's new KZ-V10MV VCR - manufactured exclusively for Mobile-Vision!! The only industrial VCR built specifically to operate in an extreme temperature, dusty, high shock enviroment.
- Built tough for Law Enforcement Professionals -- VCR is protected by a tough 14 guage stainless steel outer shell and an inner "thermo" chassis of 90 mil aluminum.
- Trunk mounted with internal enviromental control systems.
- Total protection against evidence tampering.
- Small, low-light camera -- 1 lux, **128X Zoom,** auto-focus, back-light compensation and 8 shutter speeds

Why Use In-Car Video?

- Provides an indisputable video and audio record of all encounters involving officer and citizen.
- Enhances prosecution of DUI, drug interdiction, traffic violations and other offenses.
- Reduces court appearences -- saves overtime expenses.
- Supports officer's testimony.
- Improves level of professionalism.
- Reduces complaints.
- Excellent training and self-evaluation tool.
- Serves as a video and audio notebook to enhance memory when reporting.

Why use the Mobile-Vision In-Car Video System?

- Low-Light Color camera with an automatic 128X zoom lens -- **STANDARD!**
- Simple six button control head.
- "Active Matrix" color LCD monitor with built in speaker.
- Compact 14 guage Stainless Steel VCR enclosure -- **STANDARD!!**
- Programming changes restricted to authorized personnel.
- Digitally encoded wireless microphone -- **STANDARD!!**
- **JVC** VCR exclusive to Mobile-Vision, Inc.!!
- In-Car Microphone is controlled by user.
- Easy installation -- single cable harness -- installation typically takes between 2 to 3 hours.

How is it operated?

- Record mode can be activated by the emergency lights, wireless microphone or control head. Also optionally controlled from the menu, the siren or an auxilliary input can be used.
- Digitally encoded signal from the wireless microphone ensures RECORD cannot be activated from any other RF source.
- Recorded tape can be viewed on the monitor in the vehicle.
- Audio from the wireless microphone and in-car microphone is recorded on seperate channels.

How is the Evidence Protected

- Locked enclosure mechanically and electrically prevents tape removal. "Record Lock" allows tapes to be played back in the vehicle while preventing recording over evidence.
- Unlocking tape door does not allow access to any VCR controls, wiring or any other components.
- Removal and reinsertion of tape is indicated on recorded tapes.
- 5-digit sequential counter is superimposed on recording to detect tape alteration.
- Programming can only be set by authorized personnel.

Copyright © 2001 Mobile-Vision, Inc.

10/31/02

SYSTEM

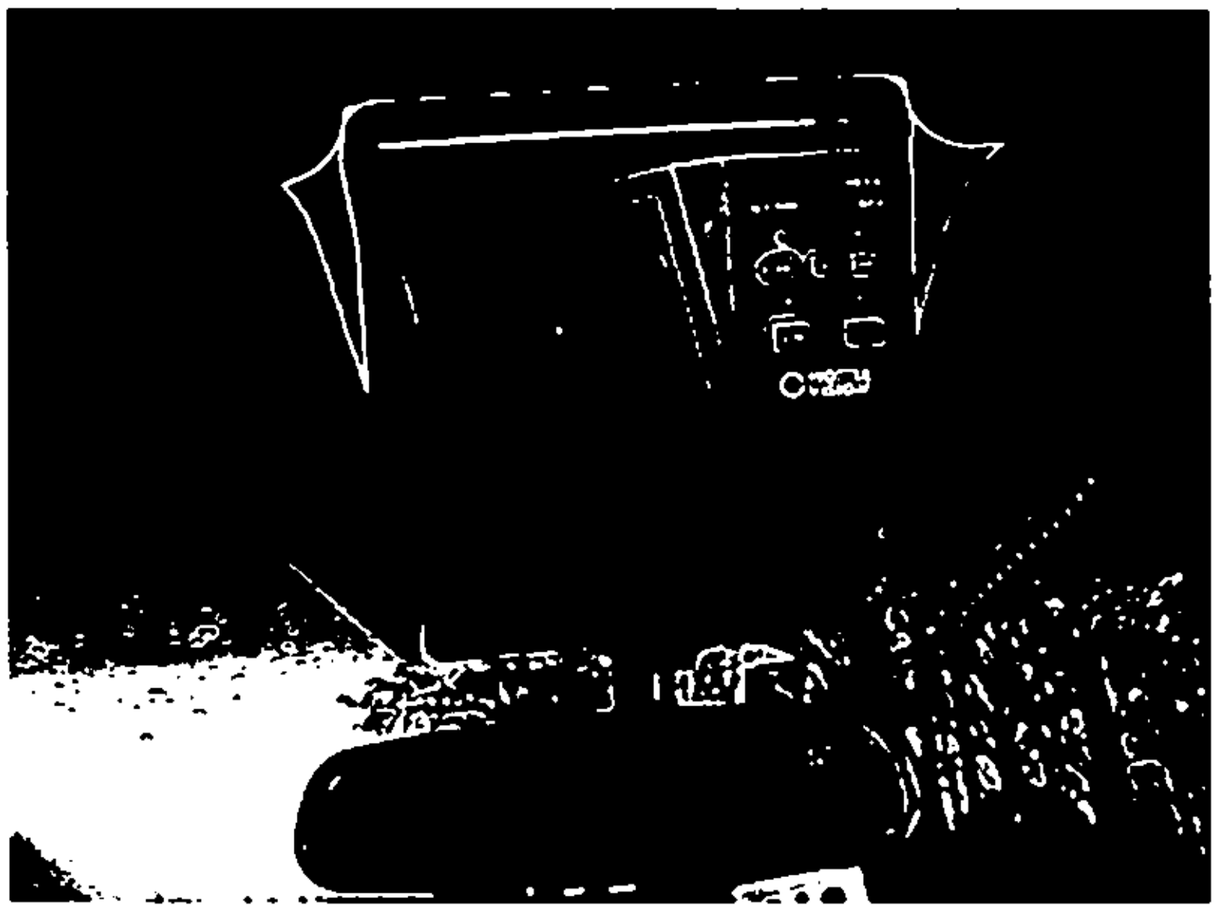
Back

We have combined our simple to use control head with a high quality, 3.5 inch active matrix LCD panel, into one compact overhead console.

One of the unique features we have added is the ability to choose the "auto-on" mode for the monitor. With the System power on, the monitor stays dark until a function is activated.

The console easily mounts overhead without making any holes in the headliner by using the existing sun visor screws.

The console is now available for delivery with new systems or as an upgrade to your existing Mobile-Vision system.



- 3.5" Industrial LCD Display.
- Backlit Functions
- Monitor and Control Head Combined into one Compact Design.
- Large Speaker for Exceptional Audio
- Securely Mounts without Additional Holes

STAFF REVIEW FORM - NON-FINANCIAL OBLIGATION

C-PZD 03-2.00
Lowe's Home Center
C. 3. Page 1

x AGENDA REQUEST

For the Fayetteville City Council Meeting of: May 20, 2003

FROM:

Dawn Warrick	Planning	CP&E
Name	Division	Department

ACTION REQUIRED: Ordinance Approval

SUMMARY EXPLANATION:

C-PZD 03-2.00 submitted by Lance Mills on behalf of Lowe's Home Centers, Inc. for property located at the southwest corner of Finger Road and Highway 62. The property is zoned C-2, R-O, and R-2 containing approximately 27.669 acres. The request is for a Commercial Planned Zoning District for a Lowe's Home Center on a lot containing 13.62 acres (133,532 sq.ft. building), retail lots containing 6.05 acres (53,876 sq.ft. building proposed) and 1.3 acres (future development), a 2.05 acre detention area and 4.59 acres of tree preservation.

STAFF RECOMMENDATION: Approval

Dawn D. Warrick — 5/6/03
Division Head — Date

Received in Mayor's Office — Date

[signature] — 5/7/03
City Attorney — Date

[signature] — 5-7-03
Department Director — Date

Cross Reference:

[signature] — 5-8-03
Finance & Internal Services Dir. — Date

Previous Ord/Res#:

Orig. Contract Date:

[signature] — 5-7-03
Chief Administrative Officer — Date

Orig. Contract Number:

[signature] — 5/7/03
Mayor — Date

New Item: Yes No

FAYETTEVILLE
LLE, ARKANSAS

113 W. Mountain St.
Fayetteville, AR 72701
Telephone: (501) 575-8267

PLANNING DIVISION CORRESPONDENCE

TO: **Mayor Dan Coody**
Fayetteville City Council
FROM: **Dawn Warrick, AICP, Zoning & Development Administrator**
THRU: **Tim Conklin, AICP, Director of Community, Planning & Engineering Svcs.**
DATE: **May 5, 2003**

Project: C-PZD 03-2.00: Planned Zoning District (Lowe's, 557/596) was submitted by Lance Mills of Ozark Civil Engineering, Inc. on behalf of Lowe's Home Centers, Inc. for property located at the southwest corner of Finger Road and Highway 62. The property is zoned C-2, Thoroughfare Commercial, R-O, Residential Office, and R-2, Medium Density Residential containing approximately 27.669 acres. The request is for a Commercial Planned Zoning District for a Lowe's Home Center on a lot containing 13.62 acres (133,532 sq.ft. building), retail lots containing 6.05 acres (53,876 sq ft building proposed) and 1.3 acres (for future development), a 2.05 acre detention area and 4.59 acres of tree preservation.

BACKGROUND

The proposal is for a Commercial Planned Zoning District for a Lowe's Home Center containing 13.9 acres (133,532 sq. ft. building) and a retail out lot containing 6.057 acres with 53,876 square feet of retail space. Another out lot for future development (1.3 acres) is also being proposed with this PZD. There are 4.59 acres of tree preservation and 2.051 acres of shared detention proposed. This item must also be heard at City Council pursuant to the requirements for a PZD.

Use	Lot Area
Lowe's	13.62
Dorado retail stores	6.057
Out lot (future development)	1.3
Tree Preservation	4.59
Shared detention area	2.051

CURRENT STATUS

On April 28, 2003, the Planning Commission voted 7-0-0 to forward this item to the City Council with a recommendation for approval of the C-PZD zoning contingent upon the approved development plan.

RECOMMENDATION

Staff recommends approval of the requested C-PZD.

PC Meeting of April 28, 2003

FAYETTEVILLE

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

Lowe's, C-PZD

TO: Fayetteville Planning Commission Members
THRU: Dawn Warrick, AICP, Zoning and Development Administrator
FROM: Sara Edwards, Associate Planner
Matt Casey P.E. Staff Engineer
DATE: April 24, 2003

Project: C-PZD 03-2.00: Planned Zoning District (Lowe's, 557/596) was submitted by Lance Mills of Ozark Civil Engineering, Inc. on behalf of Lowe's Home Centers, Inc. for property located at the southwest corner of Finger Road and Highway 62. The property is zoned C-2, Thoroughfare Commercial, R-O, Residential Office, and R-2, Medium Density Residential containing approximately 27.669 acres. The request is for a Commercial Planned Zoning District for a Lowe's Home Center on a lot containing 13.62 acres (133;532 sq.ft. building), retail lots containing 6.05 acres (53,876 sq ft building proposed) and 1.3 acres (for future development), a 2.05 acre detention area and 4.59 acres of tree preservation.

Findings:
Proposal: The proposal is for a Commercial Planned Zoning District for a Lowe's Home Center containing 13.62 acres (133,532 sq. ft. building) and a retail out lot containing 6.057 acres with 53,876 square feet of retail space. There is a lot being split with this PZD which is lot 2B to be developed later. There are 4.59 acres of tree preservation proposed.

Parking: Lowe's: 598 spaces
Retail: 304 Spaces

Existing Development: None

Surrounding Zoning: North: A-1
South: R-1
East: C-2
West: R-0

Surrounding Land Use: North: Retail and Agriculture
South: Residential
East: Retail
West: None

Water: A 12" water line running east to west along Sixth Street

Sewer: A 8" Sanitary Sewer line running east to west along Sixth Street

Right-of-way being dedicated: 55' of Right of Way is being proposed along Sixth Street

Street Improvements Proposed: None

Adjacent Master Street Plan Streets: Sixth Street is a principle arterial and requires 110' of Right of Way.

Site Coverage: 84%

Tree Preservation: 4.59 acres of on-site tree preservation is being proposed.
Existing canopy: 69%
Preserved canopy: 15%
Required in C-2 zone: 15%

Other: On site detention is proposed. The proposal is for a regional detention pond to the south of the property being purchased by Lowe's, which will serve this development as well as future development.

Wetland mitigation is proposed offsite and has been approved by the Corp of Engineers.

Recommendation: Forward to City Council with recommendation of approval of the requested rezoning.

Planning Commission approval of the proposed development subject to the conditions listed below.

Conditions of Approval:

1. An ordinance creating this C-PZD shall be approved by City Council.

2. Covenants shall be filed which provide for maintenance of parking areas and greenspace.

3. All signage proposed on site shall comply with Chapter 174, Signs of the Unified Development Ordinance and shall be permitted accordingly.

4. Planning Commission determination of the requested waiver to allow for parking spaces wider than nine feet. The request is for several 10 foot wide spaces to accommodate contractor parking.

5. Planning Commission determination of the requested waiver to allow for aisles wider than 24 feet in width. The proposal is for aisles up to 55 feet to accommodate truck traffic.

6. Planning Commission determination of requested waiver from the requirement of a landscape island along the front of the building.

7. ADA spaces shall be redistributed along the retail stores as shown on development plan.

8. Landscape islands shall be added near the ADA spaces.

9. Sidewalk fees in the amount of $12,394.62 in lieu of sidewalk construction along the tree preservation areas. Staff is recommending that a fee be assessed in lieu of construction to avoid tree removal in these areas.

10. A continuous planting of shrubs is required adjacent to parking lots along the right of ways.

11. The tree preservation easement must be filed prior to issuance of any permits for the proposed project.

12. Large scale development approval is required for development of lot 2B.

13. A traffic signal shall be installed at the developer's expense prior to any occupancy permit. This shall be subject to the Arkansas Highway and Transportation Department approval and staff review.

14. Street lights shall be installed along the south side of Sixth Street every 300 feet at the developer's expense. The street lights shall be a minimum 250 watt full cut off fixture.

15. All utilities shall be placed underground with the exception of a 14.4 KV line that exists on Lot 2.

16. Right-of-way shall be dimensioned from centerline and include a minimum of 55 feet from centerline along Sixth Street and a minimum 25 feet from centerline along Finger Road.

17. Merchandise display shall be limited to that which may be displayed on the sidewalk in front of the building. No merchandise display shall be allowed within the designated parking areas unless prior approval is obtained by the Planning Division who will verify that the required number of spaces are maintained and adequate traffic flow is maintained.

18. Covenants shall be submitted in accordance with §166.06 of the Unified Development Ordinance prior to building permit.

19. The developer shall erect at the entrance of Sherman Way a rectangular sign, not exceeding 24 inches by 12 inches, designating the street a "private street" which shall be clearly visible to motor vehicular traffic.

20. Planning Commission determination of compliance with Commercial Design Standards including signage.

    SIGNAGE: The wall sign does not comply with the sign ordinance as proposed. The ordinance prohibits signs extending more than 18 inches above roof level. The applicant is requesting the sign to extend 46.25 inches above the roof. Board of Sign Appeals

approval will be required for this variance from the sign ordinance.

There are two freestanding signs proposed. The Lowe's sign is a 30 foot tall pole sign which exceeds the maximum square footage. Staff recommends the sign be reduced to 75 square feet in order to comply with the sign ordinance. An area identification sign is proposed on Lot 2B which meets ordinance requirements.

§166.14 SITE DEVELOPMENT STANDARDS AND CONSTRUCTION AND APPEARANCE DESIGN STANDARDS FOR COMMERCIAL STRUCTURES.

D. Design Elements Guidelines for Commercial Structures.

1. The elements to avoid or minimize include:

a. Unpainted concrete precision block walls.
b. Square, boxlike structures.
c. Metal siding which dominates the main facade.
d. Large blank, unarticulated wall surfaces.
e. Large out of scale signs with flashy colors

2. Construction and appearance design standards for commercial structures.

a. A commercial structure or development shall be designed to avoid or minimize the elements set forth in D.1. above.
b. A commercial development which contains more than one building should incorporate a recurring, unifying, and identifiable theme for the entire development site.
c. A development should provide compatibility and transition between adjoining developments.

Standard Conditions of Approval:

21. Plat Review and Subdivision comments (to include written staff comments provided to the applicant or his representative, and all comments from utility representatives - AR Western Gas, SWBT, Ozarks, SWEPCO, Cox Communications)

22. Staff approval of final detailed plans, specifications and calculations (where applicable) for grading, drainage, water, sewer, fire protection, streets (public and private), sidewalks, parking lot(s) and tree preservation. The information submitted for the plat review process was reviewed for general concept only. All public improvements are subject to additional review and approval. All improvements shall comply with City's current requirements.

23. Sidewalk construction to include a minimum six foot sidewalk along Sixth Street, Sherman Way and Finger Road with sidewalk fees in lieu of construction along tree preservation areas.

20. Development approval shall be valid for one calendar year.

21. Prior to the issuance of a building permit the following is required:
a. Grading and drainage permits
b. Separate easement plat for this project that shall include the tree preservation area.

c. Project Disk with all final revisions
d. Completion of all required improvements or the placement of a surety with the City (letter of credit, bond, escrow) as required by §158.01 "Guarantees in Lieu of Installed Improvements" to guarantee all incomplete improvements. Further, all improvements necessary to serve the site and protect public safety must be completed, not just guaranteed, prior to the issuance of a Certificate of Occupancy

Background:

The project was reviewed at the March 10, 2003 Technical Plat Review and the April 3, 2003 and the April 17, 2003 Subdivision Committee Meetings.

Discussion at the Subdivision Committee meeting included ADA parking, tree preservation, signage, commercial design standards, and traffic.

The Subdivision Committee forwarded the Commercial Planned Zoning District to the full Planning Commission subject to all staff comments.

PLANNING COMMISSION ACTION: **__yes__Required**
_____Approved _____Denied

Date: _____
Comments:

_____

_____

CITY COUNCIL ACTION: **__yes__Required**
_____Approved _____Denied

Date: _____
Comments:

_____

_____

The "CONDITIONS OF APPROVAL", beginning on page one of this report, are accepted in total without exception by the entity requesting approval of this development item.

_____
By

_____
Title

_____
Date

Findings associated with C-PZD 03-2.00

Sec. 166.06. Planned Zoning Districts (PZD).

(B) *Development standards, conditions and review guidelines*

(1) *Generally.* The Planning Commission shall consider a proposed PZD in light of the purpose and intent as set forth in Chapter 161 Zoning Regulations, and the development standards and review guidelines set forth herein. Primary emphasis shall be placed upon achieving compatibility between the proposed development and surrounding areas so as to preserve and enhance the neighborhood. Proper planning shall involve a consideration of tree preservation, water conservation, preservation of natural site amenities, and the protection of watercourses from erosion and siltation. The Planning Commission shall determine that specific development features, including project density, building locations, common usable open space, the vehicular circulation system, parking areas, screening and landscaping, and perimeter treatment shall be combined in such a way as to further the health, safety, amenity and welfare of the community. To these ends, all applications filed pursuant to this ordinance shall be reviewed in accordance with the same general review guidelines as those utilized for zoning and subdivision applications.

FINDING: The General Plan designates this area as Regional Commercial and Mixed Use. The proposal is in conformity with the General Plan Designation. The applicant has met with adjacent property owners in order to ensure compatibility. Loading areas have been located away from residential areas and Tree preservation buffers have been proposed.

(2) *Screening and landscaping.* In order to enhance the integrity and attractiveness of the development, and when deemed necessary to protect adjacent properties, the Planning Commission shall require landscaping and screening as part of a PZD. The screening and landscaping shall be provided as set forth in §166.09 Buffer Strips and Screening. As part of the development plan, a detailed screening and landscaping plan shall be submitted to the Planning Commission. Landscape plans shall show the general location, type and quality (size and age) of plant material. Screening plans shall include typical details of fences, berms and plant material to be used.

FINDING: The proposal includes a tree preservation buffer around the nearest residential property to provide a buffer from the Commercial use.

(3) *Traffic circulation.* The following traffic circulation guidelines shall apply:

(a) The adequacy of both the internal and external street systems shall be reviewed in light of the projected future traffic volumes.

(b) The traffic circulation system shall be comprised of a hierarchal scheme of local collector and arterial streets, each designed to accommodate its proper function and in appropriate relationship with one another.

(c) Design of the internal street circulation system must be sensitive to such considerations as safety, convenience, separation of vehicular and pedestrian traffic, general attractiveness, access to dwelling units and the proper relationship of different land uses.

(d) Internal collector streets shall be coordinated with the existing external street system, providing for the efficient flow of traffic into and out of the planned zoning development.

(e) Internal local streets shall be designed to discourage through traffic within the planned zoning development and to adjacent areas.

(f) Design provisions for ingress and egress for any site along with service drives and interior circulation shall be that required by Chapter 166 Development of this code.

FINDING: The applicant has submitted a traffic study which adequately addresses the adequacy of street systems with the additional traffic from this development. Staff has reviewed the traffic study as well as the design for Sherman Way and found them to be adequate to handle traffic from this development. Sidewalks are proposed to accommodate pedestrian traffic. There is an access drive proposed from Finger Road as well an additional access drive from Sixth Street. A new street is planned as a private drive with a traffic signal to direct traffic to and from the site.

(4) *Parking standards.* The off-street parking and loading standards found in Chapter 172 Parking and Loading shall apply to the specific gross usable or leasable floor areas of the respective use areas.

FINDING: The proposal is in compliance with Chapter 172.

(5) *Perimeter treatment.* Notwithstanding any other provisions of a planned zoning district, all uses of land or structures shall meet the open space, buffer or green strip provisions of this chapter of this code.

FINDING:

(6) *Sidewalks.* As required by §166.03.

FINDING: Sidewalks are proposed in compliance with §166.03. Fees are recommended in lieu of construction in areas adjoining the tree preservation tracts in order to prevent the removal of trees for the installation of sidewalks in this area.

(7) *Street Lights.* As required by §166.03.

FINDING: Street lights have been required in the conditions of approval.

(8) *Water.* As required by §166.03.

FINDING: Water is proposed in compliance with §166.03.

(9) *Sewer.* As required by §166.03.

FINDING: Sewer is proposed in compliance with §166.03.

(10) *Streets and Drainage.* Streets within a residential PZD may be either public or private.

(a) *Public Streets.* Public streets shall be constructed according to the adopted standards of the City.

(b) *Private Streets.* Private streets within a residential PZD shall be permitted subject to the following conditions:

(i) Private streets shall be permitted for only a loop street, or street ending with a cul-de-sac. Any street connecting one or more public streets shall be constructed to existing City standards and shall be dedicated as a public street.

(ii) Private streets shall be designed and constructed to the same standards as public streets with the exceptions of width and cul-de-sacs as noted below.

(iii) All grading and drainage within a Planned Zoning District including site drainage and drainage for private streets shall comply with the City's Grading (Physical Alteration of Land) and Drainage (Storm water management) Ordinances. Open drainage systems may be approved by the City Engineer.

(iv) Maximum density served by a cul-de-sac shall be 40 units. Maximum density served by a loop street shall be 80 units.

(v) The plat of the planned development shall designate each private street as a "private street."

(vi) Maintenance of private streets shall be the responsibility of the developer or of a neighborhood property owners association (POA) and shall not be the responsibility of the City. The method for maintenance and a maintenance fund shall be established by the PZD covenants. The covenants shall expressly provide that the City is a third party beneficiary to the covenants and shall have the right to enforce the street maintenance requirements of the covenants irrespective of the vote of the other parties to the covenants.

(vii) The covenants shall provide that in the event the private streets are not maintained as required by the covenants, the City shall have the right (but shall not be required) to maintain said streets and to charge the cost thereof to the property owners within the PZD on a pro rata basis according to assessed valuation for ad valorem tax purposes and shall have a lien on the real property within the PZD for such cost. The protective covenants shall grant the City the right to use all private streets for purposes of providing fire and police protection, sanitation service and any other of the municipal functions. The protective covenants shall provide that such covenants shall not be amended and shall not terminate without approval of the City Council.

(viii) The width of private streets may vary according to the density served. The following

standard shall be used:

Paving Width
(No On-Street Parking)

Dwelling Units	One-Way	Two-Way
1 - 20	14'	22'
21+	14'	24'

***Note:** If on-street parking is desired, 6 feet must be added to each side where parking is intended.

(ix) All of the traffic laws prescribed by Title VII shall apply to traffic on private streets within a PZD.

(x) There shall be no minimum building setback requirement from a private street.

(xi) The developer shall erect at the entrance of each private street a rectangular sign, not exceeding 24 inches by 12 inches, designating the street a "private street" which shall be clearly visible to motor vehicular traffic.

FINDING: A private street is proposed to be constructed to minimum street standards and ending in a cul-de-sac. Street drainage is proposed in compliance with the Grading and Drainage Ordinances. Covenants for maintenance of the private drive will be submitted prior to building permit. A private drive will be erected prior to the certificate of occupancy.

(11) *Construction of nonresidential facilities.* Prior to issuance of more than eight building permits for any residential PZD, all approved nonresidential facilities shall be constructed. In the event the developer proposed to develop the PZD in phases, and the nonresidential facilities are not proposed in the initial phase, the developer shall enter into a contract with the City to guarantee completion of the nonresidential facilities.

FINDING: N/A

(12) *Tree preservation.* All PZD developments shall comply with the requirements for tree preservation as set forth in Chapter 167 Tree Preservation and Protection. The location of trees shall be considered when planning the common open space, location of buildings, underground services, walks, paved areas, playgrounds, parking areas, and finished grade levels.

FINDING: The proposal complies with §167.

(13) *Commercial design standards.* All PZD developments that contain office or commercial structures shall comply with the commercial design standards as set forth in

§166.14 Site Development Standards and Construction and Appearance Design Standards for Commercial Structures.

FINDING: The Planning Commission will make a determination of compliance with Commercial Design Standards with the development approval.

(14) *View protection.* The Planning Commission shall have the right to establish special height and/or positioning restrictions where scenic views are involved and shall have the right to insure the perpetuation of those views through protective covenant restrictions.

FINDING: N/A

(E) *Revocation.*

(1) *Causes for revocation as enforcement action.* The Planning Commission may recommend to the City Council that any PZD approval be revoked and all building or occupancy permits be voided under the following circumstances:

(a) *Building permit.* If no building permit has been issued within the time allowed.

(b) *Phased development schedule.* If the applicant does not adhere to the phased development schedule as stated in the approved development plan.

(c) *Open space and recreational facilities.* If the construction and provision of all common open spaces and public and recreational facilities which are shown on the final plan are proceeding at a substantially slower rate than other project components.

Planning staff shall report the status of each ongoing PZD at the first regular meeting of each quarter, so that the Planning Commission is able to compare the actual development accomplished with the approved development schedule. If the Planning Commission finds that the rate of construction of dwelling units or other commercial or industrial structures is substantially greater than the rate at which common open spaces and public recreational facilities have been constructed and provided, then the Planning Commission may initiate revocation action or cease to approve any additional final plans if preceding phases have not been finalized. The city may also issue a stop work order, or discontinue issuance of building or occupancy permits, or revoke those previously issued.

(2) *Procedures.* Prior to a recommendation of revocation, notice by certified mail shall be sent to the landowner or authorized agent giving notice of the alleged default, setting a time to appear before the Planning Commission to show cause why steps should not be made to totally or partially revoke the PZD. The Planning Commission recommendation shall be forwarded to the City Council for disposition as in original approvals. In the event a PZD is revoked, the City Council shall take the appropriate action in the city clerk's office and the public zoning record duly noted.

(3) *Effect.* In the event of revocation, any completed portions of the development or those

portions for which building permits have been issued shall be treated to be a whole and effective development. After causes for revocation or enforcement have been corrected, the City Council shall expunge such record as established above and shall authorize continued issuance of building permits.

(F) *Covenants, trusts and homeowner associations.*

(1) *Legal entities.* The developer shall create such legal entities as appropriate to undertake and be responsible for the ownership, operation, construction, and maintenance of private roads, parking areas, common usable open space, community facilities, recreation areas, building, lighting, security measure and similar common elements in a development. The city encourages the creation of homeowner associations, funded community trusts or other nonprofit organizations implemented by agreements, private improvement district, contracts and covenants. All legal instruments setting forth a plan or manner of permanent care and maintenance of such open space, recreation areas and communally-owned facilities shall be approved by the City Attorney as to legal form and effect, and by the Planning Commission as to the suitability for the proposed use of the open areas. The aforementioned legal instruments shall be provided to the Planning Commission together with the filing of the final plan, except that the Guarantee shall be filed with the preliminary plan or at least in a preliminary form.

(2) *Common areas.* If the common open space is deeded to a homeowner association, the developer shall file with the plat a declaration of covenants and restrictions in the Guarantee that will govern the association with the application for final plan approval. The provisions shall include, but not necessarily be limited to, the following:

(a) The homeowner's association must be legally established before building permits are granted.
(b) Membership and fees must be mandatory for each home buyer and successive buyer.

(c) The open space restrictions must be permanent, rather than for a period of years.

(d) The association must be responsible for the maintenance of recreational and other common facilities covered by the agreement and for all liability insurance, local taxes and other public assessments.

(e) Homeowners must pay their pro rata share of the initial cost; the maintenance assessment levied by the association must be stipulated as a potential lien on the property.

FINDING: Covenants will be required which comply with this section.

Sec. 161.25 Planned Zoning District

(A) Purpose. The intent of the Planned Zoning District is to permit and encourage comprehensively planned developments whose purpose is redevelopment, economic development, cultural enrichment or to provide a single-purpose or mixed-use planned development and to permit the combination of development and zoning review into a

simultaneous process. The rezoning of property to the PZD may be deemed appropriate if the development proposed for the district can accomplish one or more of the following goals.

(1) Flexibility. Providing for flexibility in the distribution of land uses, in the density of development and in other matters typically regulated in zoning districts.

(2) Compatibility. Providing for compatibility with the surrounding land uses.

(3) Harmony. Providing for an orderly and creative arrangement of land uses that are harmonious and beneficial to the community.

(4) Variety. Providing for a variety of housing types, employment opportunities or commercial or industrial services, or any combination thereof, to achieve variety and integration of economic and redevelopment opportunities.

(5) No negative impact. Does not have a negative effect upon the future development of the area;

(6) Coordination. Permit coordination and planning of the land surrounding the PZD and cooperation between the city and private developers in the urbanization of new lands and in the renewal of existing deteriorating areas.

(7) Open space. Provision of more usable and suitably located open space, recreation areas and other common facilities that would not otherwise be required under conventional land development regulations.

(8) Natural features. Maximum enhancement and minimal disruption of existing natural features and amenities.

(9) General Plan. Comprehensive and innovative planning and design of mixed use yet harmonious developments consistent with the guiding policies of the General Plan.

(10) Special Features. Better utilization of sites characterized by special features of geographic location, topography, size or shape.

FINDING: The proposal is for a single use commercial development. The rezoning of the property to a planned zoning district may be deemed appropriate due to the measures taken to ensure compatibility of the proposal with adjacent properties. The proposal will not have a negative impact on the development of adjacent property.

The proposal is consistent with the General Plan 2020 in which it meets the guiding policies for regional commercial areas needs which are:

9.9.a Provide enough retail business and service space to enable Fayetteville to realize its full potential as a regional market.

9.9.b Encourage continuing improvements and expansion of regional shopping

and entertainment attractions.

9.9.c Ensure that the surface transportation network serving regional commercial areas meet acceptable levels of service.

9.9.d Require that large commercial sites be designed and landscaped in a manner that preserves the aesthetic character of their surroundings.

9.9.e Direct new regional development into designated regional commercial centers.

9.9.f Approve new regional commercial development as planned unit developments in order to assure the overall integration of design and use.

(B) Rezoning. Property may be rezoned to the Planned Zoning District by the City Council in accordance with the requirements of this chapter and Chapter 166, Development. Each rezoning parcel shall be described as a separate district, with distinct boundaries and specific design and development standards. Each district shall be assigned a project number or label, along with the designation "PZD". The rezoning shall include the adoption of a specific master development plan and development standards.

FINDING: Staff has reviewed the proposed development with regard to findings necessary for rezoning requests. Those findings are attached to this report. An ordinance will be drafted in order to create this Planned Zoning District which will incorporate all conditions placed on the project by the Planning Commission. Covenants provided by the developer will be included in the PZD ordinance. This ordinance will be forwarded to the City Council for approval.*

(D) C-PZD, Commercial Planned Zoning District

(1) Purpose and intent. The C-PZD is intended to accommodate mixed-use developments containing any combination, including multiple combinations of commercial, office or residential uses in a carefully planned configuration in such a manner as to protect and enhance the availability of each independent use. The C-PZD is also intended to accommodate single use commercial developments that are determined to be more appropriate for a PZD application than a general commercial rezone. The legislative purposes, intent and application of this district include, but are not limited to, the following:

(a) To encourage the clustering of commercial and office activities within areas specifically designated to accommodate such uses and to discourage the proliferation of commercial uses along major thoroughfares and noncommercial areas.

(b) To provide for orderly development in order to minimize adverse impact on surrounding areas and on the general flow of traffic.

(c) To encourage orderly and systematic commercial, office or mixed use development design or a combination thereof, providing for the rational placement of activities, vehicular and pedestrian circulation, access and egress, loading, landscaping and buffering strips.

(d) To encourage commercial development which is consistent with the city's General Plan.

(e) To accommodate larger scale suburban developments of mixed-uses in a harmonious relationship.

FINDING: Staff has found the development of this property to be more appropriate for a PZD than a standard rezoning due to the proximity of adjacent residential property. The proposal is minimizing the impact on adjacent residential property. The commercial development is consistent with the General Plan.

(2) Permitted Uses.

Unit 1	City-wide uses by right
Unit 2	City-wide uses by conditional use permit
Unit 3	Public protection and utility facilities
Unit 4	Cultural and recreational facilities
Unit 5	Government facilities
Unit 8	Single-family dwellings
Unit 9	Two-family dwellings
Unit 10	Three-family dwellings
Unit 12	Offices, studios and related services
Unit 13	Eating places
Unit 14	Hotel, motel and amusement facilities
Unit 15	Neighborhood shopping
Unit 16	Shopping goods
Unit 17	Trades and services
Unit 18	Gasoline service stations and drive-in restaurants
Unit 19	Commercial recreation, small sites
Unit 20	Commercial recreation, large sites
Unit 21	Warehousing and wholesale
Unit 24	Home occupations
Unit 25	Professional offices
Unit 26	Multi-family dwellings
Unit 29	Dance halls

FINDING: The proposed development is allowed in Use Unit 16.

(3) Conditions.

(a) In no instance shall the commercial or office use area be less than fifty-one percent (51%) of the gross leasable floor area within the development.

(b) Residential uses must be appropriate to the design of the project.

(c) Warehousing and light industrial uses shall have a gross area per use that does not exceed five thousand (5,000) square feet and at least twenty percent (20%) of the floor area used for retail sales.

FINDING: The proposal is 100% commercial.

***Required Findings for Rezoning Request.**

RECOMMENDATION:
Staff recommends approval of the requested rezoning based on the findings included as part of this report.

LAND USE PLAN DESIGNATION: Regional Commercial / Mixed Use

FINDINGS OF THE STAFF

1. A determination of the degree to which the proposed zoning is consistent with land use planning objectives, principles, and policies and with land use and zoning plans.

Finding: **The proposed rezoning is consistent with land use planning objectives, principles, and policies and with land use and zoning plans. This area is designated regional commercial and mixed use on the General Plan. Surrounding property uses are varied and include commercial, office, bank and residential.**

2. A determination of whether the proposed zoning is justified and/or needed at the time the rezoning is proposed.

Finding: **The proposed zoning is justified in that the CPZD has enabled staff, the applicant and neighbors to review a comprehensive project and to look at ways to mitigate the impact of a commercial development in this location (tree preservation areas, screening, traffic management).**

3. A determination as to whether the proposed zoning would create or appreciably increase traffic danger and congestion.

Finding: **The proposed zoning and associated development will increase traffic in this area. The traffic study provided by the applicant and reviewed by staff indicates that the provisions made by the developer as a part of this project will provide an effective means of managing the traffic generated by the project.**

4. A determination as to whether the proposed zoning would alter the population density and thereby undesirably increase the load on public services including schools, water, and sewer facilities.

Finding: **The proposed zoning will not alter population density.**

5. If there are reasons why the proposed zoning should not be approved in view of considerations under b (1) through (4) above, a determination as to whether the proposed zoning is justified and/or necessitated by peculiar circumstances such as:

   a. It would be impractical to use the land for any of the uses permitted under its existing zoning classifications;

   b. There are extenuating circumstances which justify the rezoning even though there are reasons under b (1) through (4) above why the proposed zoning is not desirable.

Finding: **N/A**

ORDINANCE NO. _____

AN ORDINANCE ESTABLISHING A COMMERCIAL PLANNED ZONING DISTRICT TITLED C-PZD 03-02.00 LOCATED AT THE SOUTHWEST CORNER OF FINGER ROAD AND HWY. 62; AMENDING THE OFFICIAL ZONING MAP OF THE CITY OF FAYETTEVILLE; AND ACCORDING TO THE ASSOCIATED DEVELOPMENT PROJECT AS APPROVED BY THE PLANNING COMMISSION.

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

Section 1: That the zone classification of the following described property is hereby changed as follows:

From R-1, C-2, Thoroughfare Commercial, R-O, Residential Office, and R-2, Medium Density Residential to C-PZD 03-02.00 as shown in Exhibit "A" attached hereto and made a part hereof.

Section 2. That the change in zoning classification is based upon the approved master development plan and development standards as shown on the Planned Zoning District plans for Lowe's Home Center and approved by the Planning Commission on April 28, 2003.

Section 3. That this ordinance shall not take effect and be in full force until all conditions of approval for the development are met.

Section 4. That the official zoning map of the City of Fayetteville, Arkansas, is hereby amended to reflect the zoning change provided in Section 1 above.

PASSED AND APPROVED this _____ day of _____, 2003.

APPROVED:

By:_____
DAN COODY, Mayor

By: _____
SONDRA SMITH, City Clerk

EXHIBIT "A"

PART OF THE NORTHWEST AND THE SOUTHWEST QUARTERS OF SECTION 19, TOWNSHIP 16 NORTH, RANGE 30 WEST OF THE 5TH P.M., CITY OF FAYETTEVILLE, WASHINGTON COUNTY, ARKANSAS, DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF SAID NORTHWEST QUARTER; THENCE NORTH 88°08'58" WEST 42.94 FEET ALONG THE SOUTH LINE OF SAID NORTHWEST QUARTER TO ITS INTERSECTION WITH THE WEST RIGHT OF WAY LINE OF FINGER ROAD SAID POINT ALSO BEING THE POINT OF BEGINNING; THENCE CONTINUING NORTH 88°08'58" WEST 387.36 FEET ALONG SAID SOUTH LINE; THENCE SOUTH 2°01'20" WEST 238.81 FEET; THENCE SOUTH 88°08'33" EAST, 294.91 FEET; THENCE SOUTH 23°09'36" WEST 107.33 FEET; THENCE NORTH 88°08'33" WEST 456.01 FEET; THENCE NORTH 1°51'27" EAST 100.00 FEET; THENCE SOUTH 90°00'00" WEST 62.76 FEET; THENCE SOUTH 1°02'36" WEST 39.63 FEET; THENCE SOUTH 54°47'38" WEST, 195.89 FEET; THENCE NORTH 88°57'24" WEST, 409.39 FEET; THENCE NORTH 42°46'02" WEST, 76.30 FEET; THENCE NORTH 88°57'24" WEST, 50.47 FEET; THENCE NORTH 38°42'54" WEST, 62.44 FEET; THENCE NORTH 1°02'36" EAST, 39.45 FEET; THENCE SOUTH 90°00'00" WEST, 28.97 FEET; THENCE NORTH 1°02'35" EAST, 656.56 FEET TO A POINT ON THE SOUTH RIGHT OF WAY OF US HIGHWAY 62; THENCE NORTH 74°35'55" EAST 1160.14 FEET ALONG SAID SOUTH RIGHT OF WAY; THENCE SOUTH 1°31'48" WEST, 179.34 FEET; THENCE SOUTH 88°26'54" EAST, 290.31 FEET TO A POINT ON THE WEST RIGHT OF WAY OF FINGER ROAD; THENCE SOUTH 1°49'53" WEST, 558.04 FEET ALONG SAID RIGHT OF WAY TO THE POINT OF BEGINNING. CONTAINS 26.934 ACRES OF LAND, MORE OR LESS.

AND ALSO:

PART OF THE SOUTHWEST QUARTER OF SECTION 19, TOWNSHIP 16 NORTH, RANGE 30 WEST OF THE 5TH P.M., CITY OF FAYETTEVILLE, WASHINGTON COUNTY, ARKANSAS, DESCRIBED AS FOLLOWS:
COMMENCING AT THE NORTHEAST CORNER OF SAID SOUTHWEST QUARTER; THENCE SOUTH 1°04'04" WEST, 23.26 FEET ALONG THE EAST LINE OF SAID SOUTHWEST QUARTER TO THE POINT OF BEGINNING; THENCE CONTINUING SOUTH 1°04'04" WEST, 386.66 FEET ALONG SAID EAST LINE TO THE NORTHEAST CORNER OF A TRACT OF LAND DESCRIBED IN BOOK 490 AT PAGE 18, WASHINGTON COUNTY CIRCUIT CLERK'S OFFICE; THENCE NORTH 88°14'56" WEST, 165.65 FEET ALONG THE NORTH LINE OF SAID TRACT; THENCE NORTH 24°21'49" EAST, 418.83 FEET TO THE POINT OF BEGINNING CONTAINING 0.735 ACRES OF LAND, MORE OR LESS.

TOTAL ACREAGE: 27.669 ACRES, MORE OR LESS.

PZD

C-PZD 03-2.00: Planned Zoning District (Lowe's, 557/596) was submitted by Lance Mills of Ozark Civil Engineering, Inc. on behalf of Lowe's Home Centers, Inc. for property located at the southwest corner of Finger Road and Highway 62. The property is zoned C-2, Thoroughfare Commercial, R-O, Residential Office, and R-2, Medium Density Residential containing approximately 21.53 acres. The request is for a Commercial Planned Zoning District for a Lowe's Home Center containing 13.9 acres (133,532 sq.ft. building) and a retail lot containing 6.05 acres (53,876 sq ft building) with lot splits to create a 1.3 acre parcel and a 4.59 acres parcel of tree preservation.

Hoover: Item nine on the agenda is PZD 03-2.00 for Lowe's. Sara, will you tell us about this?

Edwards: Yes. What we have is a Commercial Planned Zoning District for a Lowe's Home Center containing 13.9 acres with a retail outlet containing 7.9 acres. There is also a lot split being proposed, which is lot 2B to be developed later. There are 4.59 acres of tree preservation proposed. A private drive with a traffic signal on the west side of the property is proposed. A cross connection to the east to access Finger Road is also proposed. They are providing parking, which meets our code. Surrounding zoning to the north is A-1, to the south is R-1, to the east is C-2 and the west is R-O. Water and sewer are available. Additional right of way is being dedicated according to the Master Street Plan. Existing canopy on this site is 69%, proposed preservation is 15%, the requirement in a C-2 zone is 15%. On site detention is proposed. It is for a regional detention pond to the south of the Lowe's store, which will serve this development as well as future development. There is wetland mitigation off site that has been approved by the Corp. of Engineers. We are recommending that this be forwarded to the City Council with a recommendation of approval for the rezoning and that the Planning Commission approve the proposed development subject to the conditions of approval in the staff report. I just highlighted a couple of them, there are quite a few. They are requesting a waiver for parking spaces wider than 9', they are requesting 10' wide spaces to accommodate contractor traffic. They are requesting a waiver to allow for wider truck aisles. The allowance in the UDO is 24', they are requesting up to 55' in width. They are requesting a waiver from the landscape island in the front of the building in order to place utility equipment. ADA spaces have been redistributed along the retail store as shown on the development plan. Number eight I would like to amend. We have reexamined the proposal at the developer's request and found the landscape island as proposed to meet the ordinance requirements with regard to the amount of landscape islands.

Hoover: Sara, what does number eight need to read?

Edwards: It just needs to be deleted. It was requiring landscape islands near the ADA spaces. Also, sidewalk fees in the amount of $12,394.62 and that is for fees in lieu of sidewalk construction along the tree preservation area. We will require the tree preservation easement to be filed prior to any permits. A traffic signal is to be installed at the developer's expense prior to any occupancy permit. Street lights shall be installed along the south side of 6th Street every 300'. Number 15 has been amended with the new report you see and that is that all utilities shall be placed underground with the exception of an existing 14.4KV line that exists on lot 2A. Because it is over the 12KV that one is not required to be placed underground. I will skip ahead to number 20, which is Planning Commission determination of compliance with Commercial Design Standards. There are two signs that do not comply with the sign ordinance. The first is the Lowe's wall sign extends above the roof higher than allowed by ordinance and they are requesting a waiver from that. Secondly is the Lowe's free standing pole sign is greater than 75 sq.ft. The ordinance does limit the maximum square footage to 75 sq.ft. They are also requesting a waiver on that. Planning Commission determination of Commercial Design Standards with regard to the signs on the building. I would also like to go over some findings with regard to a Planned Zoning District because it does include a rezoning. The General Plan designates the area as regional commercial and mixed use. This proposal is in conformity with that designation. The applicant has met with property owners adjacent to the site to insure compatibility. Loading areas have been located away from residential areas and tree preservation buffers have been proposed. A traffic study has been submitted, which adequately addresses the adequacy of street systems with the additional traffic from this development. There is an access drive from Finger Road to provide connectivity as well as a new private drive with a traffic light as well as a third entry into the site. We do find that the proposal is for a single use commercial development. The rezoning of this property to the Planned Zoning District may be deemed appropriate due to the measures taken to insure compatibility with adjacent properties. We have found that the proposal will not have a negative impact on the development of adjacent property. We have also listed standards which meet the guiding policies of the General Plan 2020 which specifies that retail business and service base be provided to enable Fayetteville to realize it's full potential as a regional market, that we encourage improvements and expansion of regional shopping and entertainment attractions, that we ensure our transportation network is meeting acceptable levels as well as commercial site be landscaped in a manner that preserves the aesthetic character of their surroundings as well as some other findings. This will require a Planned Zoning District ordinance be approved by City Council. We have found that this is an appropriate rezoning for the property due to the compatibility and the consistency with the General Plan. We are also recommending approval

of the rezoning based on those same principles, consistency with our policies and compatibility with adjacent properties.

Hoover: Are you sure that's it?

Edwards: Yes.

Hoover: Ok. Can I ask the applicant to come forward?

Shackelford: Just for clarification so we know what we are talking about, this may be a record, three pages of conditions for approval. It looks like mine are numbered one through twenty-three and then there is a twenty and twenty-one. Just for a clarification I think there were 25 conditions of approval, we deleted number 8 so there are now 24 conditions, is that correct?

Hoover: Yes. Can I get you to do a presentation and also would you include a presentation from your traffic engineer?

Millis: Yes Ma'am. My name is Mark Millis. I am the site development director for Lowe's Home Centers. I have several other folks with me tonight that I would like to introduce. Matt Cobb and Benny Westphal are the sellers of the property, along with their engineer Matt Crafton. Jack Butt is our outside council who has helped us through the development process and the agreement that I will speak to later. David Cummings is with Dorado Development Company who Lowe's has the option with. Lance Mills with Ozark Civil Engineering, he is Lowe's engineer. David Riddle is the environmental and wetland consultant from Adams Engineering. Greg Simmons with Ernie Peters & Associates, the traffic consultant. Forest Culpepper with MBM Architects who is Lowe's architect and Mark Nebble who is Dorado's architect. I also want to thank staff who have helped us through this process and had additional meetings with us. Being a first PZD I must say they made it a very smooth process. In addition, the Subdivision Committee gave us a lot of guidance and direction getting to this point so we do appreciate their help in that. I know Sara covered quite a bit of the details of this project but due to the complexity I did want to give a brief presentation and try to guide everyone through where we have been and where we are now. Following with Lance Mills who will discuss some of the waiver requests and then Greg Simmons with the traffic information. The entire development encompasses 89 acres, which is the entire property that Cobb and Westphal currently own. From that, Dorado Development put under option approximately 21 acres and Lowe's ended up with about 13.9 of that. From the beginning we knew that Dr. Leffler who lives in the southeast corner of the project had some interest in the land and previously his family had owned the land. We met with him and subsequently included the buffer area, as you see, shaded

around his property on three sides and the triangle across Finger Road as a buffer to protect him from the development. We shifted the site west, flipped the Lowe's building to put the loading docks on the opposite side from him. From the neighborhood concerns, we looked at traffic, which you will hear of later. Of course, the tree preservation for the entire 89 acres was done to include the Lowe's project and the remaining acreage when it is developed in the future. The wetlands delineation as you see in the dark black colors is what has been delineated by the Corp. and included the entire 89 acres as well, which the sellers felt pertinent to do on the front end. Since our meetings with Dr. Leffler and the neighborhood we have entered into a four party agreement between Lowe's, Dr. Leffler, Dorado, and Cobb and Westphal. That agreement encompasses the sale of the buffer tract back to Dr. Leffler upon completion of this project and Lowe's closing on the deal and/or a long term lease depending on how all of that unfolds. Lighting restrictions, which reduced our pole heights to not more than 30' and that no poles would be located within 100' of his property. Screening restrictions with fencing around the buffer area, rooftop screening on the eastern portion of the Lowe's building to screen the rooftop equipment from his property. What we are here tonight to show you is the PZD for the Lowe's and Dorado development, which does include a mass grading and drainage plan which includes the detention pond here which will serve the Dorado Development, the Lowe's Development, Phase I of the Cobb residential and the future commercial, which is that 6 acres located just west of the Lowe's development. Again, as I stated, the wetlands was incorporated into the entire 89 acres. Upon the development of the Cobb commercial tract Sherman Way will be dedicated as public right of way and it has been designed to meet the city street requirements today. In addition, there will be private agreements between Lowe's, Dorado, and Cobb and Westphal. There is a declaration of covenants, conditions and restrictions which talks about cross access and as an attachment to that there will be a pond maintenance agreement and easements that carry throughout the entire development. A site development agreement which determines who will build what and how people will be reimbursed and the building elevations, we have gone with an earth tone coloring to this building. The standard is a Lowe's light gray and dark gray. We felt this was a little bit more upscale. We have added screening to the dumpster from Sherman Way as well as added a tennis type screen mesh to the garden center to further obstruct view from Sherman Way. With that, if there are no questions for me I will turn it over to Lance to discuss the variance requests.

Hoover: Thank you.

Mills: I am Lance Mills with Ozark Civil Engineering. I don't want to take up a lot of time but I just want to briefly go over some of their variance

requests or waivers that we are asking for as Sara mentioned. Over in this area here there are 24 parking spaces, that is the contractor area. We like to designate these for our contractors because a lot of them typically drive the bigger dually trucks and we would like to allow for that little bit of extra room. The next one is in regards to the truck accessibility around the building. These aisles here, the largest one is 55' and that is for when we turn our trucks through here, we use a lot of 18 wheelers through here and we like to have that full accessibility without running into the curbs or running into cars and the truck drivers like it a lot better. The other item was the landscaped island in front of the building, which is going to be right here. This island we are requesting not be landscaped. We have several utilities located in here, a fire hydrant, a light pole, and several utilities which doesn't allow us to actually put landscaping in this area so we are asking for a waiver on that. The other is on item 20, which is in regards to the waiver on the signage, as you can see if you draw a line straight across there the Lowe's lettering extends above. Then on the pylon sign for the Lowe's we would like for you to consider, and I apologize for not having a better exhibit, but I think as part of your package you have this. As you can see, the actual rectangular part of the sign cabinet itself, if you figure the square footage on that it comes to 71.25 sq.ft. and that is the intent. We fully intended on meeting the ordinance but when you calculate the roof architectural feature at the top that is what throws us over the edge. We do have the option just to put the rectangle there and forget the architectural feature but this is a nice development and we want it to match the front of our building. That is what we are asking there. It is not so much a variance of the square footage of the actual sign cabinet but maybe another interpretation of the ordinance on how you calculate that square footage. The other item I would like to briefly address that was brought up in our meeting with the neighbors, was a concern, we have some residents here that had a concern about drainage. In listening to them, it was probably a very legitimate concern about some existing problems that they are having here. As you can see, this is the creek, this low area here and this is where it drains across the road. For the record, I would like to say that the development that we are doing, this detention basin is releasing not into that, it is releasing to this right here. For the record, our discharge pipe right here is releasing into this existing ditch which is restricted by this culvert. These individuals here, we are not going to be adding to that already bad situation. We won't be solving it. We meet the city ordinance on drainage, we are not exceeding the pre development flows. The detention pond will serve the Lowe's, this six acres will go here, the remaining of the Lowe's will go here, the Dorado development will go here, this acreage here that this pond is designed for and this future commercial. I think, unless you have any specific questions I will let Greg Simmons come up and talk about traffic.

Hoover: Yes, if we could get all of the presentations first, thank you.

Simmons: Good evening Madam Chairman and other Commissioners. My name is Greg Simmons, I am with Peters & Associates Engineers out of Little Rock. We are the traffic consultants for this project. I would like to give you a brief overview of our traffic study. I am going to start with the methodology on how we arrived at our recommendations. We count to begin with, the existing traffic on the street on Hwy. 62 and on Finger Road during peak hours of the day, a.m. and p.m. and then we take those traffic volumes and using the same trip generation software that staff has, we generate projected trips for the new land use, being the Lowe's development and the retail. Those trip generation values that are generated in the software are then adjusted to account for what we call internal capture on the site. In other words, some of the people that go to some of the smaller retail areas will also go to the Lowe's site so they are not all single purpose trips coming to the site. They may visit more than one development on the site. Secondly, we also make some assumption based on historical data that some of the traffic that is coming to this site is already in the existing traffic stream. In other words, they are not all new trips coming to the site and that reduction is usually around 18% for that. Once we arrive at those numbers we assign driveway volumes at each of the individual access points and those driveway volumes are calculated for the p.m. peak hour, in other words, the afternoon heavy peak hour of the traffic, which would be the heaviest for the development as well as the adjacent street traffic. Once we have those values established for the access points then we run capacity calculations for each of the intersections and arrive at what is known as a level of service. I am sure that some of you have heard this terminology before, which is a measure of the operation of the intersection. Once we do that then we look to see what mitigated measures might be appropriate to arrive at the acceptable levels of service. Again, this is for the p.m. peak hour of a normal weekday, which is the typical analysis hour of the traffic study. In going through this process, we have recommended that a traffic signal be installed at the western most drive of the development, which I believe is referred to as Sherman Way on some of these figures and Hwy. 62. This traffic signal would be paid for by the developer. It would also be coordinated with the existing traffic signal at Finger Road and Hwy. 62, which in turn would be coordinated with the traffic signals at I-540. Staff has reviews this and is supportive of the installation of the traffic signal at this point. This study has been submitted to the Arkansas Highway and Transportation Department to the district office and it is my understanding that this morning it arrived at the headquarters office in Little Rock for review there. I will be happy to answer any questions as we go through the presentation or now.

Hoover: Thank you. We will come back to you I'm sure. Is that all of the presentation? Thank you. At this time I would like to ask any members of the public that would like to address this PZD to please come forward. Yes Sir, would you sign in on the sign in sheet also?

Leffler: I am Rob Leffler and I live at 1495 Finger Road, which is surrounded on the north and west sides by this proposed development. My grandfather, Charles J. Finger built that house more than 80 years ago and wrote about 40 books in that house and my mother grew up there and my brother and I grew up there for much of our childhood. As you could imagine, we had some serious concerns when this large project was proposed and many of the neighbors also had serious concerns. I will say that unlike some major developers in the past, these people, Lowe's and Dorado and Cobb and Westphal, have really come forward to try to address those neighborhood concerns in my view. As has been mentioned, there is going to be a buffer protecting the property and the traffic study was redone in response to neighborhood concerns. Runoff concerns I think were addressed. The truck turn around location was a problem at first and was addressed. My mother's old art studio and my grandfather's grave site will be able to be preserved because of this. To sum it up, we have been very pleased with the efforts that the developers have made on this and I think that the meeting with the neighbors was quite helpful as well. I am not speaking to any of the issues about the size of the signs, that is not something that we have made a part of the agreement, but with regard to the overall project it is ok with my wife Sara, me and my daughter as well. Thank you very much.

Hoover: Thank you. Are there any other members of the audience?

Wilkes: My name is Steve Wilkes I live at 4188 W. 6th Street, about a mile west of the current development and I would like to echo Rob Leffler's comments. I think that the developers and the engineers have all done a great job. I don't have a particular problem with this particular development. Although my wife does. She doesn't believe that we need anymore box stores in Fayetteville. I would like to address the issue of development in that corridor and to just put it on your radar screen that those of us who live on 6th Street, and have lived on 6th Street for many years, are very concerned about the level of development and more importantly the kind of development that we continue to build as we move toward Farmington and how we develop and what we develop. We are very concerned that as we build these large scale businesses like Lowe's, I think Lowe's is a great business and I look forward to shopping there, as we build Lowe's pretty soon the Ace Hardware and the Tractor Supply Store, at were where the commercial was, with the box stores and the fast food joints. It already is

there above the intersection, I certainly don't want to see it develop that way. That is a major concern. I am also concerned about the drainage. I believe that the drainage for this project doesn't affect me and I think it has been addressed very well. As we move down this corridor, Farmington Branch is the little creek that runs along and joins with Clear Creek and I believe ultimately the Illinois River, as this is developed, every time we pave one of those cow pastures that water runs a little faster and it runs right in front of my front door. To date it has cost me about $5,000 in remediation from the housing that was put in upstream from me. I really want to be on record in saying that it is extremely important that we pay attention to this, not just for my property although that is most important to me, but for the other folks who live downstream. I can't speak for the folks in Farmington particularly, but there are a lot of folks that live on that creek and as we develop that we need to make sure that the proper drainage is done and that we don't just shoot all the water into Farmington Branch as fast as we can. That really causes a lot of problems. I just had to have my section of the creek in front of my house re-channeled and it cost me over $1,000. I have lost retaining walls, I have lost a bridge. It has been very expensive to me. To date, nobody in the city will say "we are responsible for this problem." Although I have engineers that say "absolutely, that is what caused it." I want to make sure that going forward it doesn't happen again and that five or six or seven years from now I am not rebuilding those walls again because the velocity and the volume of water has once again increased. The last concern that I have is about traffic. I just want to address the fact that there are lots of folks that live there. There is a subdivision that is there now, there will be new subdivisions. Every time we add a street and we add a new group of houses, we have the children. I know that you can't do anything about the speed limit along there but it is 55 miles per hour. What that really means is that the people coming to work who are late, who live in Lincoln, Prairie Grove and Farmington, are really driving about 65 and 70. It is a death trap to pull out onto that little stretch of road right now. I am very concerned. I have seen in the past few days people actually running the stop signs that the school busses put out. The Fayetteville school busses have stopped on 6th Street and people shot right through it. This is a big concern of mine. I am just concerned that as we build large scale developments, big shopping, hopefully some good restaurants, as long as we are building these things we really need to pay attention to the quality of life for those of us who live there now. Those are my concerns.

Hoover: Thank you Mr. Wilkes. Are there any other members of the audience?

Brooks: Good evening, I am David Brooks, I live up on Finger Road at 3142. I have lived out there since I was 9 years old and we were on up the road from Mr. Leffler. I am really concerned about the traffic also. I have

children that are presently in school and I have seen the road go from a dirt road, with Hwy. 62 going from a two lane to a four lane road and Wal-Mart moved out there to the old 62 drive in that I used to work out. I am very upset with the potential for the traffic hazards and the traffic congestion at that site at the end of Finger Road. Right now Wal-Mart, who I work for, has got that Murphy's Oil down there and now we have got a bank down there. People coming in on Finger Road off of Hwy. 62 decide that they want to turn into the entrance to Murphy Oil to your left, they will hold up traffic every time. People are trying to get across that intersection. With the influx of cars coming from Lowe's, peak times of the day it is just terrible. The gentleman did this traffic study but I am tempted to just film it on a regular peak hour during the morning and it is just unbearable. You will be backed up almost to the skating rink down there on Dinsmore Trail. That really concerns me with the traffic coming in. I know that Wal-Mart has a lot of sales and Lowe's will have a lot of sales and that traffic that is generated on the weekend when people are off and trying to get things done it is just going to be unbearable. The life off of Hwy. 62 is a little bit different than what is on there. I live almost a mile up the road and it is a very nice place. We have deer in our backyard and the whole nine yards. The large scale that is going to go down there I am sure will have an effect on the environment. I am not really satisfied with the way that they are doing the drainage because I can see the projections later on with residential areas coming in behind there on the other property. That is going to be a concern for the environment also. Even though I am not a very good speaker I just wanted to come up here and voice my opinions because I have spoken to some of the neighbors, we are not going to go into the store. I am not going to shop there. I don't want it out there, I didn't want it out there to start with. I didn't want Wal-Mart out there and I fought that but I lost that battle too. I just wanted to voice my opinion and I appreciate you all for listening to me.

Hoover: Thank you Mr. Brooks, is there any other member of the audience?

Moorman: My name is Barbara Moorman, I live on Finger Road. I think the concerns that have been voiced by the last two speakers are my concerns. They were very well expressed and I certainly concur. The only thing I don't concur with is anything nice that was said about this development. I am glad to hear that the staff made this a smooth process for the developer. I wish that you all could make it a smooth process for the neighbors. I think first of all that there is a problem with overall planning on the part of the City of Fayetteville. What will Hwy. 62 look like when the whole growth area is developed? It seems to me that that should be uppermost in your mind before you start looking at particulars. This development, if it was needed at all, which I certainly don't think it is, the place for it was at the intersection of I-540 and 6th Street and when the

issue was raised about the Lindsey development, the apartments that are going in right now, there was an excellent talk that was given by a former member of the Planning Commission to the effect that that was a place for a commercial center. Out where I am at the corner of Finger Road, which as was just pointed out, just a few years ago was a dirt road. It has been used traditionally for walking. People walk their dogs, people ride bikes, children play. It is not appropriate to destroy that area which is getting to be quite unique. Getting back to where the commercial centers ought to be, I know your 2020 Plan says one thing. However, within my very short memory roughly 10 years ago the Planning Commission and the city was saying we weren't going to have any strip development west of the intersection of 540, west of the bypass. Then the Wal-Mart went in. You turn in and immediately the Wal-Mart went in and now we are talking about putting in this enormous 90 acre development. It is incremental. You can see your plan changes. The reason your plans change is you have no rational for your plans. You don't have a picture of what this area is going to look like and even if you do think you have that picture you have no rational to support why you think it is a good thing. For example, are you going for infill or are you going for complete development of the growth area? Getting back to more specific issues, traffic, this is just part of the big picture. Traffic is simply unbelievable on 6th Street. I know that you, when I say you please don't take it personally, when I say you I mean the City of Fayetteville, this is a generic plural you. Something is going to have to be done our there and I am sure that there are people, I'm not saying it is a conspiracy but it is a thought in people's minds, there are going to have to be other arteries cut through out there. Think about it, you are putting development down Finger Road past the Leffler's house. You are going to come up with the notion of widening Finger Road then you are going to come up with the notion, again, this is not you but the City will come up with the notion of cutting Finger Road through some other goofy way through to 265. It is a natural, it is going to happen. You ought to see all of that right now. I don't think that this should be an incremental thing. Five years down the road we are going to change our plans. You have a finite amount of space, it is encompassed by the boundary of the growth area. You can't go on with this foolishness, this madness forever. You are going to bump into somebody else's boundaries. I think you need to think in terms of a finite area and what are you going to do with the traffic on 6th Street? Are you going to cut a north and south road or several north/south roads? Just a few years ago the Planning Department wanted to make Finger Road a collector street. Finger Road is a dead end that ends up at the top of a mountain and I think that when that idea was put forth that there was some other idea in mind about what to do with Finger Road. Nobody could've wanted to run it up to the top of that mountain. This sounds like it is far fetched I know to you but if you knew the area you would know that what I am saying

makes perfect, logical sense. This is an issue that is going to come up within the next few years. Getting back to the overall planning, I just don't see that you have any long range plans that stick because of the very lack of rational. One thing that the UDO says, and it is part of the 2020 Plan, is that you need to protect significant environmental features. The tree preservation plan looks very nice for this property but you may be losing sight of the fact that ten years ago, and I know that is outside the statute of limitations, that land was filled in my opinion it was quite illegally done, fill was taken from somewhere else and it killed all the trees that are on that property, the very property that we are talking about now when you are talking about tree preservation. Secondly, it was mentioned that part of your policy says that developments have to be in harmony with the aesthetic qualities of the surroundings. Well that is just outrageous because there is going to be nothing in harmony with the part to the south. There is no harmony whatsoever between this huge development and the mountains and the trees and the creek that are back there. How do you reconcile that? The only way you can reconcile that is through a pre-conceived bias that you walk into this with. It is all basically about money. That is what this room is full of, people who are here for money. I am talking about the environment and the quality of life. I really think I want to get back to my initial point, which is that you need an overall rational. You need some underlying philosophy that backs up what you are permitting. It should not be just money. The 90 acres that I live on is in a conservation easement. I have seven pages here of just the native species on this property and I am not an expert and this is absolutely not complete, I don't pretend that it is complete, but when you talk about being in harmony with the surroundings I don't think you are looking at it from all the possible angles but only from one and that is speculation, money and fear of potential lawsuits. Thank you.

Hoover: Thank you. Do we have any other members of the audience? Seeing none, I will bring it back to the Commission. Can I first start with can we get a report from the Subdivision Committee on this project?

Bunch: The Subdivision Committee met twice on this. One of the things that was requested at the first meeting particularly after public comment, was an expanded version of the traffic report. At the second Subdivision Committee there was an expanded very comprehensive traffic report presented. Some of the questions were the concerns about Sherman Way being a private road or a public road and it will be built to public standards and at such time as was presented tonight, dedicated as a city street. Commercial design standards were reviewed and changes were made. ADA parking was redistributed to better access the retail stores on the Dorado portion. Public comment was taken at both meetings. Property lines were discussed and clarified as well as a concept plat was requested

between the first and second Subdivision Committee meeting so we could see how this project interrelated with the rest of the major block. Particularly since there were improvements that were shown that were on land but did not belong to this development. Some of the Cobb Westphal land I believe had the detention pond and also some wetlands. Also, one of the things that were brought up is some of the wetlands are lands that were created by materials that were dumped on this site from other construction projects. Again, the traffic was a major concern particularly with public comment. We did discuss signs and we forwarded basically everything to the full Planning Commission with the changes that were made by the design group.

Hoover: Thank you Commissioner Bunch. Going back to a few notes through public comment, Dawn would you just give us a little summary of our 2020 plan? From what we can find on the map this area has been zoned regional commercial since 1995, or planned to be regional commercial, is this true?

Warrick: That is true for a portion of the property. A portion of the subject property has also been designated as mixed use on the General Plan.

Hoover: Thank you. Commissioners?

Estes: I would like to respond to Ms. Moorman's comments, and I see that she left the room and I am sorry that she did because I would like for her to hear this. It wasn't raining when Noah built the arc. Planning is a good thing and this city has made an effort to achieve a certain level of urban planning that is consistent with growth. We have our 2020 Plan, which is our future land use plan. On that plan 6th Street is designated as a principal arterial. It is zoned regional commercial and then mixed use until the Farmington city limits. This plan was developed after extensive public hearings and offering of extensive comment, both by the general public and by professionals and it is the plan that we are mandated to follow. We don't make these decisions and we don't do these sort of things without any direction or without any guidance. We follow the 2020 plan. In response to where are we going and how are we going to get there, 6th Street is a principal arterial, it is regional commercial and then it becomes mixed use to the Farmington city limits. Ms. Moorman asked what you expect 6th Street to look like, I expect it to be regional commercial and mixed use to the Farmington city limits. With that said, I have several comments and several questions. I guess I would like to start with Matt, if you could help us out with Mr. Wilkes' concerns regarding the drainage, our requirement that post development flows not exceed pre-development flows, could you elaborate on that? Can you explain to Mr.

Millis: It should be the same.

Estes: Staff, did we give a waiver on the sign on the store across from the Northwest Arkansas Mall?

Edwards: We did not. We have had a shift in interpretation of our sign ordinance over the past couple of months, which I think you all will remember we went through on Shake's. There has not, other than the Shake's, been a waiver granted for this reason.

Estes: Is this proposed sign the same size of the sign on the store across from the Northwest Arkansas Mall?

Edwards: It appears to be to us. We didn't take exact measurements or pull a permit but it looks very similar.

Estes: I presume these are cookie cutter prototype or sign address, does the applicant know are you using the same size here as you did on the store across from the mall?

Millis: As far as I recall it is the same sign and same size.

Estes: Let me ask you about the pole sign. Your neighbor to the east did a real nice job with a monument sign, have you thought about a monument sign?

Millis: Actually we have, and we are willing to do that to match the building façade.

Estes: Sara, with a monument sign what is the permissible square footage?

Edwards: It is 75 sq.ft. also.

Warrick: It is permitted to be a whole lot closer to the street right of way. That is one of the allowances if the applicant chooses to erect a monument sign, the setback from the right of way is 10' as opposed to 30' for a pole sign of the same size, sorry, 40'.

Estes: Have you thought about a monument sign and you could move it out towards the street?

Millis: We would be agreeable to a monument sign.

Estes: That is all I have.

Shackelford: One comment and then a follow up question. First of all, I would like to concur with Commissioner Estes' statements regarding the overall development of this property. I too agree that this is in line with the 2020 plan. Although, I do understand the traffic concerns and share some of those, in particular, the speed limit on 6th Street in this area. I do feel that this is an appropriate location for this. It is on a five lane U.S. Highway within a half mile exchange of the interstate. I think it is properly zoned on the 2020 plan and I think we are following that plan. With that being said, one question to the applicant. I am obviously not an engineer but I want to make sure I understand this. Commissioner Estes had some very good questions regarding storm water runoff and the detention ponds. Is it my understanding that the plan and the detention ponds that are in place on this project address the overall project in addition to the development that will happen at a later date on this location?

Mills: Yes, a portion of it. Phase I is what we are calling the future conceptual plan for this acreage here and this future commercial. It will be sized to accommodate the acreage there and there. It is in the report specifically what areas.

Hoover: Thank you Commissioner. I would like to ask the Commissioners if anyone has any issues with any of the waivers in the first list of conditions of approval, number four and five, which is a waiver to allow the parking spaces wider than 9' and the aisles wider than 24', is there anyone who has any concerns about that that we need to discuss? Ok, did we discuss commercial design guidelines, does anyone have any comments about those or concerns about the commercial design guidelines in reference to this project?

Allen: I wanted to ask Commissioner Bunch, you said that there were some changes made as the result of comments made at Subdivision and I wondered what kind of changes were made to commercial design.

Bunch: Specifically I think there were some changes made to the Dorado development and one of the things that was more concern was that the Lowe's sign itself was part of an architectural element that helped break up a large, box like building. Even though it extended above the parapet it is in helping satisfy one part of our ordinance, it appears to be in conflict with another part. I do not recall if the changes of the screening on the landscape area, if that was an exact result of through the Subdivision Committee meeting because there were meetings with the neighbors that were going on simultaneously with this. With the two Subdivision Committee meetings and meetings with staff and the neighbors, there were a considerable number of changes that occurred in the total project, not all of them necessarily design standards.

Allen: I wondered if we could be more specific again about the south elevation and the east elevation.

Hoover: Can the applicant come address that please?

Millis: We are speaking of the Lowe's elevation?

Hoover: Yes.

Culpepper: What did you want to know of the south elevation?

Allen: Landscaping.

Culpepper: I don't know if I can answer that.

Millis: The south elevation located here does have landscaping screen for when the future residential does occur. Along the east line of Lowe's there will be an 8' fence along the property line here and then everything to the east of that is tree preservation buffer area that will ultimately be Dr. Leffler's property.

Allen: Then I had another question that was I wondered what hours will typically be delivery times for the Lowe's stores?

Millis: Delivery times are 7 a.m. to 4 p.m. Monday through Friday.

Allen: Thank you.

Estes: I have a question regarding the traffic study and to try to be responsive to Mr. Brooks' concerns. Your traffic study shows warrants for signalization and what you denominated as drive b, when that proposed traffic signal is in place and is synchronized with the existing traffic signal on Finger Road, will that help the traffic flow and will that help the traffic congestion that Mr. Brooks described and if so, how?

Simmons: Let me back up just a little bit. Somebody suggested that we go out and film this. Well I have been out and watched this and there is some cue that backs up there from the existing Finger Road traffic signal. Presently that traffic signal, although the traffic system can remotely communicate with it, it is not actually coordinated with I-540 at this time. When this new traffic signal at drive b is in fact, inner placed and inner connected to the system it is my understanding from talking with the City traffic personnel that the new signal at drive b, the Finger Road signal, will then both be coordinated with I-540. It should help minimize the cues that

build up. I am not going to sit here and tell you that we are going to solve a huge capacity problem that exists right now. I will say that Lowe's contributes very, very little to the a.m. rush hour traffic that is coming in from that direction. Is that responsive?

Estes: I think so. I just wanted to be sure I understand the traffic now that is running east on Hwy. 62 when the new signal device is in place, that traffic will cue up to the west of that device and then when that device releases it will go to Finger Road and then it will go to I-540. It should cue it in three separate cues.

Simmons: It should spread the cue out that is there now. It is not going to totally alleviate it but it will provide a progressive flow that presently doesn't exist from drive b to I-540.

Estes: Thank you.

Bunch: I have a question for the traffic. I know this isn't probably a part of the study but maybe in your expert opinion you can shed a little light on it. What impact will this Lowe's have at the current Lowe's location? What level of relief do we think we will see as far as the traffic in the mall area and Zion Road and will this alleviate that any or will it just be it's own business?

Simmons: Candidly, I don't know.

Millis: From a customer based standpoint when we add a new store within the same trade area we usually look at 15% to 20% of that traffic coming to the new store.

Bunch: One of the benefits of this, from the standpoint of long range planning, is that this project should help alleviate some of the traffic in the Joyce, Zion, North College area?

Millis: It should, at least from the customers that go to Lowe's specifically, and that is how we track that.

Hoover: I would like to pose a couple more questions to the Commissioners. Is there any discussion about the waiver from the requirement of a landscape island in front of the building? Does anyone have an issue with that? The last waivers were on the signage. Is there any issue with the sign extending more than 18" above the roof level? Commissioner Estes?

Estes: I have no issue with that and would vote in favor of that specific requested waiver.

Hoover: I have been going through the findings here that we need to determine for a PZD and I believe we have discussed just about every issue in the list. Maybe with the exception of the covenants. When will those be placed?

Warrick: The covenants will be required to be filed with the Final Plat for this project.

Shackelford: Commissioner Estes brought up a point. Visiting with the applicant about the waiver of a pole sign verses a monument sign. Obviously as it reads now if someone were to make a motion as it reads now we would be asked to grant a waiver on the pole sign. Is that something that the applicant wants us to do or should we try to work in the ability for a monument sign? I guess since Commissioner Estes started this conversation, how would you like to see that specific finding addressed?

Estes: My proposal would be that the first waiver request regarding the extending more than 18" be granted, that the second paragraph read that two monument signs be allowed not to exceed 75 sq.ft. in order to comply with the sign ordinance. It is my understanding that the applicant is in agreement with that.

Millis: Actually, Commissioner Estes, the one sign is a shopping center sign which has a different square footage requirement than the specific Lowe's sign so the wording would probably need to be different or separated.

Estes: I was giving you two monument signs of 75 sq.ft.

Millis: The ordinance allows for the sign that will be for the Dorado development to be 300 sq.ft.

Warrick: That is an area identification sign and it does have a larger provision.

Estes: Your next sentence is an area identification sign is proposed on lot 2b, which meets ordinance requirements. So you are ok with that but did you want two monument signs or just one monument sign?

Millis: Just one. If we just go with one do we get the additional square footage?

Estes: That is correct.

Hoover: Is there anymore discussion?

Warrick: I have a question. The last statement was If we just go with one do we get the additional square footage, so are we talking about recommending to

the Board of Sign Appeals a monument sign larger than 75 sq.ft. for the Lowe's store?

Estes: That was not my understanding. My understanding was the one monument sign not to exceed 75 sq.ft. but then the area identification sign will be the larger sign. Is that correct, is that what you are thinking?

Millis: That wasn't my thinking but I will agree with it.

Bunch: A question for Commissioner Estes, on our recommendation to the Board of Sign Appeals addressing the 75 sq.ft., is that to include just the naming portion of the sign or does it include the architectural peak at the top of the sign? I believe that the monument sign and pole sign both have been designed with the Lowe's theme peak on top of it that may make it exceed the 75 sq.ft.

Estes: Commissioner Bunch, as I think Dawn or Sara explained to us, in the last couple of months there has been a re thinking of how we calculate the square footage and we are now including the architectural features, where in the past we did not. Again, my thinking is if the applicant will give up that pole sign and substitute a monument sign they can have their architectural feature in addition to their 75 sq.ft.

Shackelford: I would concur with that, I think that is a great idea.

Estes: Let me explain the reason for that. That is not a negotiation or a bargain that we struck here this evening. What that is is that we heard from the Chair of our Subdivision Committee that this architectural feature actually enhances the general overall appearance of the project and meets the commercial design standards. Rather than break it up I would defer with the Chair of our Subdivision Committee and go with the architectural feature on the monument sign. Incidentally, that is my reason for granting the 18" above the roofline is to allow you to have the architectural feature, which as Commissioner Bunch said Subdivision reports that it adds to the architectural feature of the building and meets the commercial design standards but yet conflicts with the sign ordinance.

Anthes: I believe that we just heard Mark state that he would accept the sign with the 75 sq.ft. including the architectural element, are we then going to go back and give him that in addition?

Estes: That is what I have tried to explain. To have continuity in the architectural feature of the project I would say that if they want the architectural feature on the monument sign it is appropriate because it

carries over to the 18" above the roofline waiver that we are giving on the building sign.

Anthes: Did you plan to put the architectural element on as included in the 75 sq.ft.?

Millis: I would agree with Commissioner Estes' last statement.

Hoover: Do we have a motion?

MOTION:

Estes: I move for approval of PZD 03-2.00 granting the requested waiver to allow parking spaces wider than 9', that is a request for several 10' wide spaces to accommodate contractor parking. Granting the requested waiver to allow for aisles wider than 24' in width with the proposal being for aisles up to 55' to accommodate truck traffic. Granting the waiver of landscape islands to be added near the ADA spaces.

Shackelford: Number 8 was stricken from the conditions of approval.

Estes: I thought it was now a requested waiver from that condition, is staff just striking it?

Edwards: Yes.

Estes: Ok, then deleting previous condition number 8 that landscape islands shall be added near the ADA spaces. Making the finding of compliance with commercial design standards, including signage. Granting the waiver of the sign extending more than 18" above the roofline and allowing the sign to extend 46.25 inches above the roofline. Recommending to the Board of Sign Appeals that this variance be accepted providing that there is to be one monument sign not to exceed 75 sq.ft. in area, not including the architectural feature with an identification sign proposed on lot 2b, which meets the ordinance requirements. With a finding of fact that each of the requirements of the PZD have been met.

Hoover: We have a motion from Commissioner Estes. Sara, do you have a comment?

Edwards: I just wanted to point one thing out to make sure that everyone understood. A monument sign is defined by being no greater than 6' in height. I wanted to make sure that the applicant knew that they were agreeing to a sign no greater than 6' in height.

Hoover: So noted, applicant?

Estes: Your monument sign can't be anymore than 6' this way and you get the square footage going this way.

Shackelford: Does that include the architectural design on the top of the sign?

Estes: Sara, is it permissible for the architectural feature to go above 6' as long as it doesn't exceed what?

Warrick: It would require a variance from the Board of Sign Appeal. We are going there anyway. Is there a maximum height that the Commission feels to be appropriate?

Estes: Let's leave it with the 75 sq.ft. and not to exceed 6' in height because the applicant is going to have to go to the Board of Sign Appeals anyway and they can adjust this and do whatever they want to there.

Hoover: Is that correct staff?

Warrick: That's fine.

Hoover: We have a motion by Commissioner Estes, do we have a second?

Shackelford: I will second and I appreciate him making that motion.

Hoover: Thank you. We have a second by Commissioner Shackelford. Is there anymore discussion on this item?

Allen: I just would like to know if architectural features are often synonymous with advertising. The only architectural features that I see on the building, or things that we are calling architectural features are signage.

Estes: I think that architectural features are more often than not considered part of the trade dress.

Hoover: Ok, is there anymore discussion?

Anthes: On page 9.2a and on our original page 9.2 we have gone back and forth about the tree conservation area, whether it is on site or off site. This evening we heard that they plan to sell the property or lease the property to Mr. Leffler, does that change the text of this page in anyway?

Edwards: What we are looking at is the boundaries of the Planned Zoning District, which includes the tree preservation area and the off site detention. The

tree preservation area will still be within the boundary of the PZD although will not be owned physically by Lowe's or the Dorado development.

Anthes: Ok, so the 9.2a as it is currently written stands?

Edwards: Yes.

Hoover: Is there any other discussion? We have already closed it to public comment, I am sorry. I do appreciate the public coming and the neighbors' comments. If there is no more discussion then Renee, would you call the roll please?

Roll Call: Upon completion of roll call the motion to approve C-PZD 03-2.00 was approved by a vote of 7-0-0.

Hoover: Thank you. Do we have any other business?

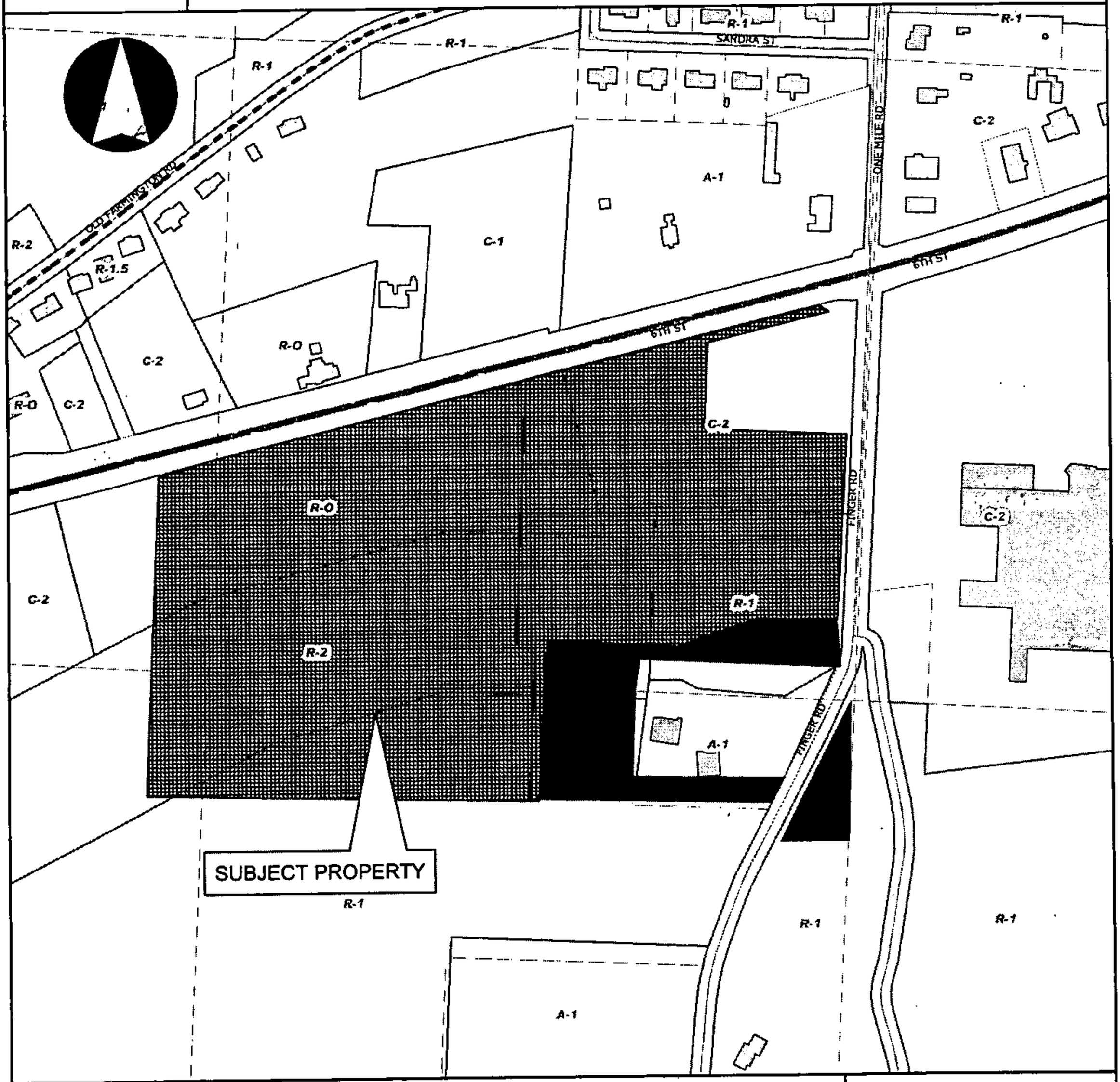
Warrick: I have a couple of announcements. Just so everyone knows this is Sara's last Planning Commission. We bid her a fond farewell and will miss her. I will be introducing our new Associate Planner at the next Planning Commission meeting but we will miss Sara, she is headed to Springfield for her new job. Also, with our next agenda session and Planning Commission I have arranged for OMI, the management company who runs the Paul Noland Waste Water Treatment Plan to provide us with a presentation at the Planning Commission meeting on May 12th. They have agreed to allow us to tour the facility and to assist in that tour during our agenda session on May 8th so that is going to be a part of our activities with the next meeting. I just wanted to give you a heads up that that is coming.

Hoover: Sara, we are going to miss you and I hope that you go off to bigger and better places and do great things.

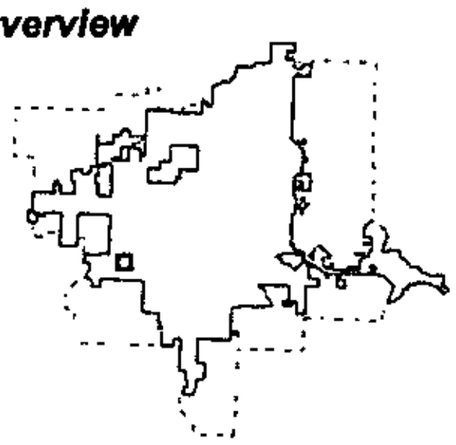
PZD03-2.00

Close Up View

LOWES



Overview



Legend

Subject Property

PZD03-2.00

Streets

Existing

Planned

Boundary

Planning Area

Overlay District

City Limits

Outside City

Master Street Plan

Freeway/Expressway

Principal Arterial

Minor Arterial

Collector

Historic Collector

0 125 250 500 750 1,000 Feet

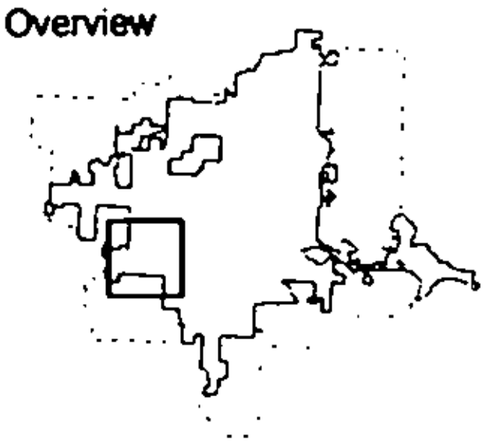
PZD03-2.00

One Mile View

LOWES

SUBJECT PROPERTY

Overview



Legend
Subject Property
PZD03-2.00

Streets
Existing
Planned

Boundary
Planning Area
Overlay District
City Limits
Outside City

Master Street Plan
Freeway/Expressway
Principal Arterial
Minor Arterial
Collector
Historic Collector

0 0.1 0.2 0.4 0.6 0.8 Miles

STAFF REVIEW FORM - NON-FINANCIAL OBLIGATION

x AGENDA REQUEST

For the Fayetteville City Council Meeting of: May 20, 2003

FROM:

Dawn Warrick	Planning	CP&E
Name	Division	Department

ACTION REQUIRED: Ordinance Approval

SUMMARY EXPLANATION:

VAC 03-7.00 was submitted by Geoffrey Bates of Keystone Consultants on behalf of BENCOR for property located at the northeast corner of Sixth Street and South School Avenue. The property is zoned C-2, Thoroughfare Commercial. The request is to vacate a drainage easement.

STAFF RECOMMENDATION: Approval

Dawn I. Warrick — 5/5/03
Division Head — Date

D. P. Whitaker — 5/7/03
City Attorney — Date

[signature] — 5-7-03
Department Director — Date

[signature] — 5-8-03
Finance & Internal Services Dir. — Date

[signature] — 5-7-03
Chief Administrative Officer — Date

[signature] — 5/7/03
Mayor — Date

Received in Mayor's Office _____ Date

Cross Reference:

Previous Ord/Res#: _____

Orig. Contract Date: _____

Orig. Contract Number: _____

New Item: Yes No

FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

113 W. Mountain St.
Fayetteville, AR 72701
Telephone: (479) 575-8267

PLANNING DIVISION CORRESPONDENCE

TO: Mayor Dan Coody
Fayetteville City Council
FROM: Dawn Warrick, Zoning & Development Administrator, AICP
THRU: Tim Conklin, AICP, Community, Planning & Engineering Services Director
DATE: May 5, 2003

VAC 03-7.00: Vacation (BENCOR), pp 523 was submitted by Keystone Consultants on behalf of BENCOR for property located at the northeast corner of Sixth and School. The property is C-2. The request is to vacate a drainage easement.

BACKGROUND
The applicant has submitted the required notification forms to the utility companies and to the City. The results are as follows:

UTILITIES	**RESPONSE**
Ozarks Electric	N/A
AEP/SWEPCO	No Objections – Any relocation of existing facilities will be at the owner's expense.
Arkansas Western Gas	No Objections
SW Bell	No Objections.
Cox Communications	No Objections.
City of Fayetteville:	
Water/Sewer	No Objections
Street Department	No Objections
Solid Waste	No Objections
Engineering	No Objections – A new drainage easement needs to be dedicated 10' on each side of the proposed storm sewer.

CURRENT STATUS
On April 28, 2003, the Planning Commission voted 7-0-0 (consent agenda) to forward this item to the City Council with a recommendation for approval.

RECOMMENDATION
Staff recommends approval of the proposed drainage easement vacation 03-7.00 subject to the following conditions:

1. Any relocation of existing utilities will be at the owner's expense.
2. Dedication of a drainage easement a minimum of 10' on each side of the proposed storm sewer through the site.

ORDINANCE NO. _____

AN ORDINANCE APPROVING VAC 03-7.00 TO VACATE AND ABANDON A DRAINAGE EASEMENT LOCATED ON PROPERTY AT THE NORTHEAST CORNER OF SIXTH STREET AND S. SCHOOL AVENUE AS DEPICTED ON THE ATTACHED MAP AND LEGAL DESCRIPTION.

WHEREAS, the City Council has the authority under A.C.A. §14-54-104 to vacate public grounds or portions thereof which are not required for corporate purposes, and

WHEREAS, the City Council has determined that the following described easement is not required for corporate purposes.

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

Section 1. That the City of Fayetteville, Arkansas hereby vacates and abandons all of its rights together with the rights of the public generally, in and to the following described utility easement:

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

Section 2. That this Vacation approval is subject to the conditions of approval listed in the staff report and Planning Commission recommendation as described in Exhibit "B" attached hereto and made a part hereof.

Section 3. That a copy of this Ordinance duly certified by the City Clerk shall be filed in the office of the Recorder of the County and recorded in the Deed Records of the County.

PASSED AND APPROVED this _____ day of _____, 2003.

APPROVED:

By_____
Dan Coody, Mayor

ATTEST:

By_____
Sondra Smith, City Clerk

DRAFT

EXHIBIT "A"
VAC 03-7.00

A PART OF LOTS 5 AND 6, BLOCK 10 OF FERGUSON'S ADDITION TO THE CITY OF FAYETTEVILLE, ARKANSAS; AS PER THE PLAT OF SAID SUBDIVISION RECORDED IN BOOK 4 AT PAGE 203 IN THE OFFICE OF THE CIRCUIT CLERK, WASHINGTON COUNTY, ARKANAS AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF SAID LOT 6 AND RUNNING NORTH 1°7'58" EAST 25.67 FEET TO THE POINT OF BEGINNING, SAID POINT BEING WHERE THE PROPOSED NORTH RIGHT OF WAY LINE OF 6TH STREET INTERSECTS THE WEST LINE OF LOT 6, THENCE LEAVING THE PROPOSED NORTH RIGHT OF WAY LINE OF 6TH STREET AND RUNNING ALONG THE WEST LINE OF LOTS 6 AND 5, NORTH 1°07'58" EAST – 40 FEET TO A POINT WHERE THE NORTH LINE OF THE PROPOSED PERMANENT DRAINAGE EASEMENT INTERSECTS THE WEST LINE OF LOT 5, THENCE LEAVING THE WEST LINE OF LOT 5 AND RUNNING ALONG THE PERMANENT DRAINAGE EASEMENT LINE, SOUTH 89°32'44" EAST – 9.80 FEET; THENCE SOUTH 0°27'16" WEST – 40.00 FEET TO A POINT ON THE PROPOSED NORTH RIGHT OF WAY LINE OF 6TH STREET; THENCE ALONG THE PROPOSED NORTH RIGHT OF WAY LINE OF 6TH STREET; NORTH 89°32'44" WEST-10.27 FEET TO THE POINT OF BEGINNING, CONTAINING APPROXIMATELY 401 SQ.FT. OR 0.009 ACRES, MORE OR LESS.

ALSO:

A PART OF LOTS 7 AND 8, BLOCK 10, OF FERGUSON'S ADDITION TO THE CITY OF FAYETTEVILLE, ARKANSAS, AS PER PLAT OF SAID SUBDIVISION RECORDED IN BOOK 4 AT PAGE 203 IN THE OFFICE OF THE CIRCUIT CLERK OF WASHINGTON CONTY, ARKANSAS AND BIENG MORE PARTIUCLARLY DESCRIBED AS FOLLOWS: COMMENCING AT THE SOUTHEAST CORNER OF SAID LOT 7 AND RUNNING NORTH 01°07'58" EAST – 25.77 FEET TO THE POINT OF BEGINNING; THENCE LEAVING THE EAST LINE OF LOT 7 AND RUNNING NORTH 89°32'44" WEST-7.72 FEET; THENCE NORTH 00°27'16" EAST – 40.00 FEET; THENCE SOUTH 89°32'44" EAST 8.19 FEET TO A POINT ON THE EAST LINE OF LOT 8; THENCE SOUTH 01°07'58" WEST – 40.00 FEET ALONG THE EAST LINES OF LOTS 7 AND 8 TO THE POINT OF BEGINNING AND CONTAINING 318FT SQUARED, MORE OR LESS, THE BEARINGS FOR THESE DESCRIPTIONS ARE BASED ON THE CITY OF FAYETTEVILLE GLOBAL POSITIONING SATELLITE SYSTEM, WHICH MAY VARY FROM THE BEARING SYSTEM PREVIOUSLY USED IN DESCRIBING THE SUBJECT PROPERTY.

DRAFT

VAC 03-08.00: Easement Vacation (Wallace, pp 295) was submitted by Johnny Hardcastle on behalf of Terry and Cindy Wallace for property located at 3704 Chatsworth Road. The property is zoned R-1, Low Density Residential and contains approximately 0.41 acres. The request is to vacate a portion of a utility easement along the eastern side property line for a swimming pool.

VAC 03-07.00: Drainage Easement Vacation (Bencor, pp 523) was submitted by Geoffrey Bates of Keystone Consulting Engineers on behalf of BENCOR for property located at the northeast corner of 6th Street and S. School Avenue. The property is zoned C-2, Thoroughfare Commercial. The request is to vacate a 318 sq.ft. drainage easement.

Hoover: Welcome to the Monday, April 28, 2003 meeting of the Fayetteville Planning Commission. Renee, would you call the roll?

Roll Call: Upon the completion of roll call there were seven commissioners present with Commissioner Ostner and Commissioner Church absent.

Hoover: On the consent agenda we have the approval of the minutes from the April 14th meeting and two items, VAC 03-08.00, an easement vacation and VAC 03-07.00, a drainage easement vacation. Is there any member of the audience or of the Planning Commission that would like to remove these from the consent agenda? Seeing none, do I have a motion?

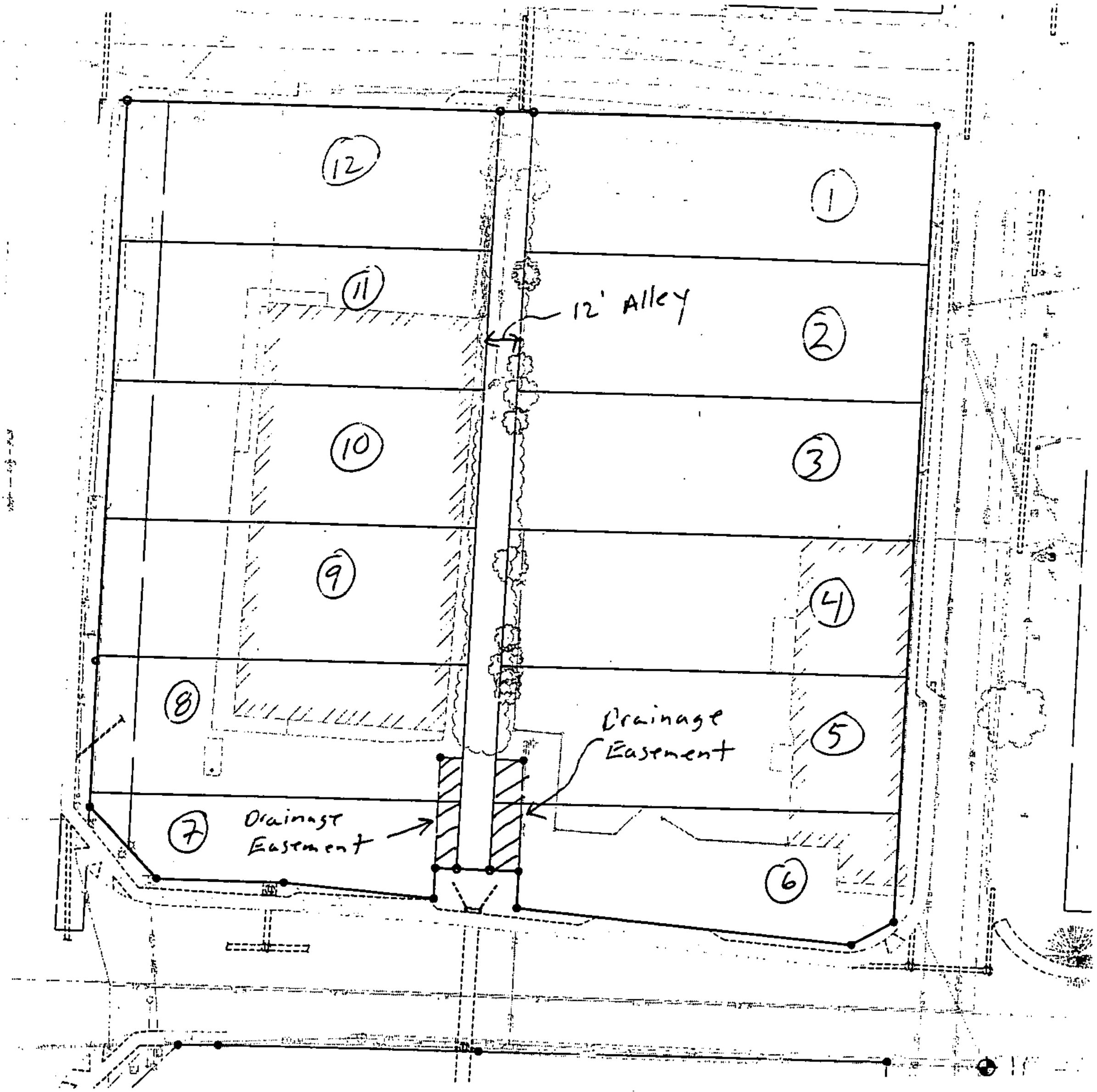
Allen: I move for approval of the consent agenda.

Bunch: I will second.

Hoover: Ok, there is a motion by Commissioner Allen and a second by Commissioner Bunch. Renee, will you call the roll?

Roll Call: Upon the completion of roll call the motion to approve the consent agenda was approved by a vote of 7-0-0.

Thomas: The motion carries by a vote of seven to zero.

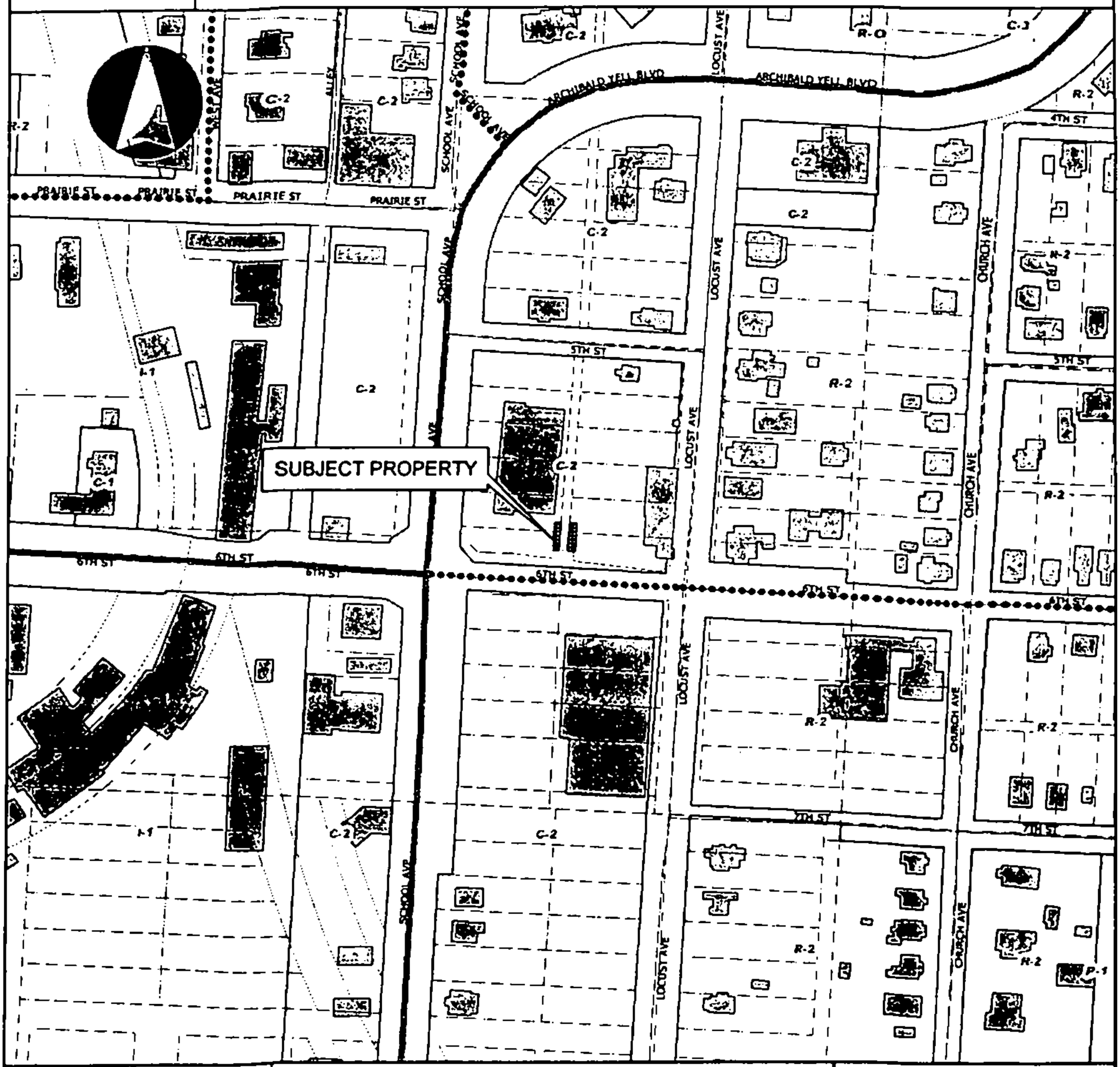

12
1
11
12' Alley
2
10
3
9
4
8
Drainage Easement
5
7
Drainage Easement
6

VAC03-07.00

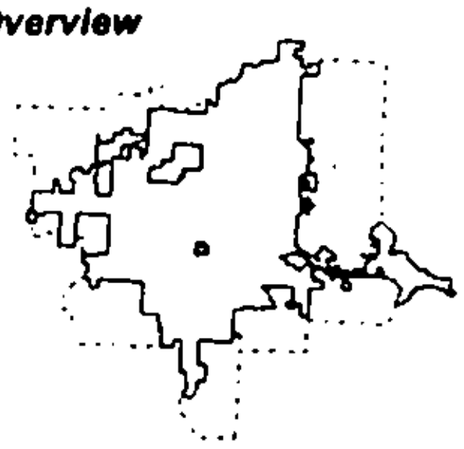
Close Up View

BENCOR

VAC 03-7.00
Bencor
C. 4. Page 7



Overview



Legend

Subject Property
VAC03-07.00

Streets
Existing
Planned

Boundary
Planning Area
Overlay District
City Limits
Outside City

Master Street Plan
Freeway/Expressway
Principal Arterial
Minor Arterial
Collector
Historic Collector

0 75 150 300 450 600
Feet

VAC 03-7.00
Bencor
C. 4. Page 8

BENCOR

One Mile View

STAFF REVIEW FORM - NON-FINANCIAL OBLIGATION

VAC 03-8.00
Wallace
C. 5. Page 1

x AGENDA REQUEST

For the Fayetteville City Council Meeting of: May 20, 2003

FROM:

Dawn Warrick	Planning	CP&E
Name	Division	Department

ACTION REQUIRED: Ordinance Approval

SUMMARY EXPLANATION:

VAC 03-8.00 was submitted by Burton Pools & Spa on behalf of Cindy and Terry Wallace for property located at lot 98 of Covington Park (3704 Chatsworth). The property is zoned R-1, Low Density Residential. The request is to vacate a portion of a drainage easement.

STAFF RECOMMENDATION: Approval

Dawn Warrick — Division Head — 5/5/03 Date

Received in Mayor's Office — Date

— City Attorney — 5.7/03 Date

— Department Director — 5-7-03 Date

Cross Reference:

— Finance & Internal Services Dir. — 5-8-03 Date

Previous Ord/Res#: _____

Orig. Contract Date: _____

— Chief Administrative Officer — 5-7-03 Date

Orig. Contract Number: _____

— Mayor — 5/7/03 Date

New Item: Yes No

ORDINANCE NO. _____

AN ORDINANCE APPROVING VAC 03-08.00 TO VACATE AND ABANDON A DRAINAGE EASEMENT LOCATED ON PROPERTY AT THE LOT 98 OF COVINGTON PARK AS DEPICTED ON THE ATTACHED MAP AND LEGAL DESCRIPTION.

WHEREAS, the City Council has the authority under A.C.A. §14-54-104 to vacate public grounds or portions thereof which are not required for corporate purposes, and

WHEREAS, the City Council has determined that the following described easement is not required for corporate purposes.

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

Section 1. That the City of Fayetteville, Arkansas hereby vacates and abandons all of its rights together with the rights of the public generally, in and to the following described utility easement:

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

Section 2. That this Vacation approval is subject to the conditions of approval listed in the staff report and Planning Commission recommendation as described in Exhibit "B" attached hereto and made a part hereof.

Section 3. That a copy of this Ordinance duly certified by the City Clerk shall be filed in the office of the Recorder of the County and recorded in the Deed Records of the County.

PASSED AND APPROVED this _____ day of _____, 2003.

APPROVED:

By_____
Dan Coody, Mayor

ATTEST:

By_____
Sondra Smith, City Clerk

DRAFT

EXHIBIT "A"
VAC 03-08.00

THE MOST EASTERLY FOUR FEET (4') OF A TWENTY FOOT (20') WIDE DEDICATED UTILITY EASEMENT BEGINNING 46' FROM THE NORTH PROPERTY LINE, RUNNING 19' SOUTH, ENDING 128.02' NORTH OF THE SOUTH PROPERTY LINE OF LOT 98 OF THE COVINGTON PARK SUBDIVISION TO THE CITY OF FAYETTEVILLE, WASHINGTON COUNTY, ARKANSAS, ALSO KNOWN AS 3704 CHATSWORTH ROAD.

DRAFT

CC Meeting May 20, 2003

FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

113 W. Mountain St.
Fayetteville, AR 72701
Telephone: (479) 575-8267

PLANNING DIVISION CORRESPONDENCE

TO: Mayor Dan Coody
Fayetteville City Council
FROM: Dawn Warrick, Zoning & Development Administrator, AICP
THRU: Tim Conklin, AICP, Community, Planning & Engineering Services Director
DATE: May 2, 2003

VAC 03-8.00: Vacation (Wallace), pp 295 was submitted by Burton Pools & Spa on behalf of Cindy and Terry Wallace for property located at lot 98 of Covington Park (3704 Chatsworth). The property is zoned R-1. The request is to vacate a portion of a drainage easement.

BACKGROUND
No objections from the adjacent property owners have been submitted to the City. The applicant has submitted the required notification forms to the utility companies and to the City. The results are as follows:

UTILITIES	**RESPONSE**
Ozarks Electric	No Objections.
AEP/SWEPCO	No Objections
Arkansas Western Gas	No Objections
SW Bell	No Objections.
Cox Communications	No Objections.
City of Fayetteville:	
Water/Sewer	No Objections
Street Department	No Objections
Solid Waste	No Objections
Engineering	No objections – Only the portion where the pool is to be constructed should be vacated.

CURRENT STATUS

On April 28, 2003, the Planning Commission voted 7-0-0 (consent agenda) to forward this item to the City Council with a recommendation for approval.

RECOMMENDATION

Staff recommends approval of the proposed drainage easement vacation 03-7.00 subject to the following conditions:

1. Any relocation of existing utilities will be at the owner's expense.
2. Only the portion where the pool is constructed shall be vacated.

Exhibit "B"

VAC03-08.00

One Mile View

WALLACE

SUBJECT PROPERTY

Overview

Legend

Subject Property
VAC03-08.00

Streets
Existing
Planned

Boundary
Planning Area
Overlay District
City Limits
Outside City

Master Street Plan
Freeway/Expressway
Principal Arterial
Minor Arterial
Collector
Historic Collector

0 0.1 0.2 0.4 0.6 0.8 Miles

VAC03-08.00

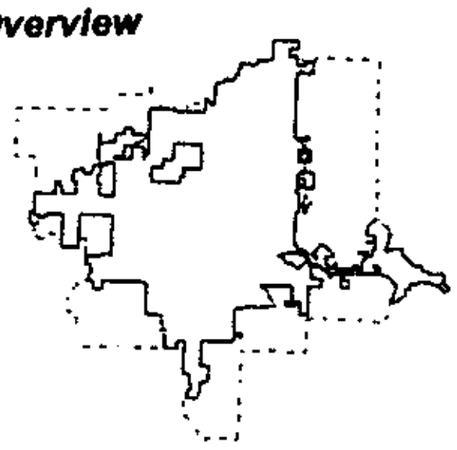
Close Up View

WALLACE

SUBJECT PROPERTY

SURREY XING
LEAWOOD WAY
LEAWOOD WAY
R-1
CHATSWORTH RD
CHATSWORTH RD
CHATSWORTH RD
CHATSWORTH RD
CHATSWORTH RD
KITTERY LN
KITTERY LN
LITCHFIELD LN
TOWNSHIP ST
TOWNSHIP ST
TOWNSHIP ST
HIDDLETON WAY
R-1
R-1
R-1
R-1

Overview



Legend

Subject Property
VAC03-08.00

Streets
Existing
Planned

Boundary
Planning Area
Overlay District
City Limits
Outside City

Master Street Plan
Freeway/Expressway
Principal Arterial
Minor Arterial
Collector
Historic Collector

0 75 150 300 450 600 Feet

STAFF REVIEW FORM

OMI Contract
C. 6. Page 1

X AGENDA REQUEST
____ CONTRACT REVIEW
____ GRANT REVIEW

For the Fayetteville City Council Meeting of: May 20, 2003

FROM:

Greg Boettcher	Water & Wastewater	Water Wastewater-Wastewater Treatment
Name	Division	Department

ACTION REQUIRED: A resolution approving Amendment No 9 to the contract with Operations Management International for: (1) extension contract term by 5-years to an expiration date of Devember 31, 2008, (2) modification of sludge disposal plan to accomodate dewatering and hauling to landfill, (3) repayment of OMI's actual capital equipment costs over 5-years, salvage to be granted to city (belt fitter, tractors and trailers), (4) net increase in fiscal year 2003 contract with OMI to be $36,209.00 (total 6-month increase = $111,133, less fiscal year 2003 cost offsets = $74,924, FY 2002 contract reconcilliaiton credit), (5) Fuel cost increase for 6-months in fiscal year 2003 = $40,000 and (6) predicted full-year cost increase in 2004 = $250,000.00.

COST TO CITY:

$36,209.00	$ 4,427,541.00	Water/Sewer-Wastewater Treatment
Cost of this request		Program Category / Project Name
5400.5100.5328.01 5400.5100.5328	$ 4,257,248.00	Wastewater Treatment
Account Number	Funds Used to Date	Program / Project Category Name
	$ 170,293.00	Water & Sewer
Project Number	Remaining Balance	Fund Name

BUDGET REVIEW: X Budgeted Item ____ Budget Adjustment Attached

Budget Manager — 5-2-03 Date

CONTRACT/GRANT/LEASE REVIEW:

Marsha Fuchs — 5/5/03 Date — Accounting Manager

Nancy Smith — 5/5/03 Date — Internal Auditor

D. J. Whit — 5/6/03 Date — City Attorney

Purchasing Manager — 5/8/03 Date

STAFF RECOMMENDATION:

Division Head — Date

Gty Boettcher — 5-2-03 Date — Department Director

Finance & Internal Services Dir. — 5-8-03 Date

Hugh Earnest — 5-8-03 Date — Chief Administrative Officer

Mayor — 5/8/03 Date

Cross Reference

New Item: Yes No

Previous Ord/Res#: _____

Orig. Contract Date _____

Orig. Contract Number _____

Rec'd in Mayor's Office 5/8/03 p.m.

Staff Review Form - Page 2

Description _____ Meeting Date _____

Comments:

Budget Manager

Reference Comments:

Accounting Manager

How did they determine 8% interest rate. This seems high in relation to market rates at this time.

Rates are to be changed to 6.75% in the note per the Arkansas State Banking Commission web site for max rate on short term loans

City Attorney

Appendix K still has "eight percent" in it. dfw

Appendix K has been changed to reflect 6.75%.

Purchasing Manager

ADA Coordinator

Internal Auditor

Grants Coordinator

RESOLUTION NO. _____

A RESOLUTION APPROVING AMENDMENT NO. 9 TO THE OMI CONTRACT PROVIDING FOR A NET INCREASE IN FISCAL 2003 OF THIRTY-SIX THOUSAND TWO HUNDRED NINE DOLLARS ($36,209.00) TO PURCHASE EQUIPMENT AND PERFORM SERVICES IMPLEMENTING A MODIFIED SLUDGE DISPOSAL PLAN FOR THE LAST SIX (6) MONTHS OF 2003.

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

Section 1. That the City Council of the City of Fayetteville, Arkansas hereby approves Amendment No. 9 to the OMI contract providing for a net increase in Fiscal 2003 of Thirty-Six Thousand Two Hundred Nine Dollars ($36,209.00) to purchase equipment and perform services implementing a Modified Sludge Disposal Plan for the last six (6) months of 2003. A copy of the Amendment, marked Exhibit "A" is attached hereto, and made a part hereof.

PASSED and **APPROVED** this 20th day of May, 2003.

APPROVED:

By: _____
DAN COODY, Mayor

ATTEST:

By: _____
SONDRA SMITH, City Clerk

DRAFT

FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

WATER AND WASTEWATER DIVISION

DEPARTMENTAL CORRESPONDENCE

TO: **Fayetteville City Council**

THRU: Dan Coody, Mayor of Fayetteville
Hugh Earnest

FROM: Greg Boettcher, P.E.
Water & Wastewater Director

Greg Boettcher

DATE: April 29, 2003

RE: **Wastewater Treatment Plant Operations Contract**
Operations Management International, Inc.
Modification of Term and sludge Disposal
Contract Amendment No. 9

BACKGROUND

The City of Fayetteville first recognized a need for wastewater treatment improvements as early as 1996 when the first facility planning activities were commenced. One of the justifications for this project was the development of alternative sludge management practices due to growing concerns over the long-term effects of such activity upon soil characteristics, as the site had been in use since 1985.

In 2002, a directive from the Arkansas Division of Environmental Quality prohibited use of the sludge management site for irrigation of plant effluent, requiring the city to secure a land application permit in order to continue this practice. The irrigation of plant effluent is an integral component of the NPDES permit compliance program, as the 187 million gallons of effluent holding capacity is not sufficient to satisfy the needs of normal summer weather conditions. During specific summer periods when the White River experiences low flow and high water temperature, the Noland Plant is not permitted to release treated wastewater effluent and must rely upon storage to comply with such NPDES Permit condition. In past years, the wastewater plant's flexibility to land apply treated effluent can effectively increase the summer holding capacity by an estimated 50% (irrigation of 90 million gallons). This option to irrigate wastewater effluent has the supplemental benefit of maximizing the sludge management site's nutrient uptake and crop production (Bermuda grass).

In order to apply for a permit to land apply wastewater effluent (zero discharge irrigation permit) the soils on the irrigation site must be classified and tested for chemical composition, such mandatory permit data validating the relatively high levels of

phosphorous (2,400-6,800 pounds of phosphorous per acre). These phosphorous results are considerably greater than the naturally occurring levels that range from 100 to 300 pounds per acre. It is the professional opinion of the permit consultant (CH2M Hill) that the state agency's approval of an effluent irrigation permit will be conditioned upon discontinuing the city's use of the site as its primary sludge disposal methods. The choice between effluent irrigation and land application of wastewater sludge requires consideration of multiple factors (future outcomes, analysis of costs and a comparison of benefits).

DISCUSSIONS

The city's current wastewater improvement program anticipated the need for alternative sludge disposal, and pursued several options during the facility planning process. Disposal of wastewater sludge is the subject of a thorough study by the Northwest Arkansas Conservation Authority, seeking strategies that may have regional applications and favorable economics of scale for the cities of Northwest Arkansas. At this point in time, none of the long-term sludge management strategies have materialized; however, it is known that any final concept will require every wastewater system authority to dewater the sludge. Continued management of wastewater sludge in liquid form will not be viable for a community the size of Fayetteville regardless of the final process selected to enable the sludge's beneficial reuse.

At this point in time, it is perceived that Fayetteville's foremost priority should be compliance with its NPDES permit conditions, as violations would pose threats to water quality as well as expose the city to fines. To reduce the possibility of summer season permit violations, the city must proceed with efforts to obtain a no discharge irrigation permit, as this is the only viable strategy to maximize effluent holding capacity. Pursuit of this approach requires the discontinuance of land application of sludge upon the 540 acres (as the primary disposal method). This interim sludge management approach is consistent with long-range planning as the increased sludge disposal costs are a part of the wastewater rate structure communicated to citizens in November of 2001. The proposed cessation of land disposal of wastewater sludge is one of the elements of the wastewater improvement program. The short-term solution to this need will involve the trucking of dewatered sludge to a landfill as an interim measure. Landfill disposal is deemed a more environmentally responsible approach that the current practice of land application of liquid sludge. This short-term landfill alternative is a more costly operating method, justified by the benefits of improved potentials for permit compliance and enhanced nutrient management. As other alternative disposal approaches materialize, or more economical strategies are discovered, this short-term solution may be quickly abandoned in favor of new opportunities.

The key components of the recommended Amendment NO. 9 are summarized as follows:

- Extend OMI contract 5-years to December 31, 2008
- Increase fiscal year 2003 operating contract by the total of $111,133.00, with a net contract increase being $36,209.00 by applying the fiscal year 2002 contract reconciliation credit of $74,924.00
- Capital expenditure for belt filter press, tractors and trailers to be amortized over

the 5-year period at 6.75 % based upon actual costs for purchases
- Belt filter press, tractors and trailers to become property of city at the end of 5-year period
- City will furnish diesel fuel, due to the existing favorable fuel contract, which will have an annual cost predicted at $75,000

The benefits that accrue to the citizens of Fayetteville include:

- More responsible sludge management program using landfill disposal for short-term benefits
- Reduced potential for adverse environmental impacts and negative publicity due to NPDES permit violations
- Decreased probability for summer discharge violations and fines by maximizing avenues for effluent storage and irrigation
- Positive posturing of sludge management program to capitalize on reuse opportunities by commencing sludge dewatering as part of treatment process
- Increase service levels to customers that will correspond to rate changes

This modified approach to the management of Fayetteville's wastewater sludge is directly connected to the Fayetteville Vision 2020 Guiding Principles listed below:

1. Naturally Beautiful City: Our Mountains and Hills, Our Creeks, Our Open Greenspaces
2. Well maintained City Infrastructure and Facilities

This action protects the quality of local streams by removing significant volumes of phosphorous from the watershed, using short-term disposal in an approved landfill to meet such goals. The provision of alternative sludge management is essential for the maintenance of the city-owned infrastructure (540 acre sludge management site) enabling high phosphorous levels to be naturally corrected by crop nutrient management.

RECOMMENDATIONS

To provide for the proper and responsible management of the Fayetteville Wastewater System it is recommended that the Fayetteville City Council approve Amendment No. 9 with Operations Management International for $4,096,765.00, with the increased costs for the balance of fiscal year 2003 to be addressed by a net line item increase of $36,209.00 (the total cost of $111,233.00 being a combination of the $74,924.00 2002 operating contract reconciliation adjustment and a $36,209.00 line item transfer). This fiscal year action will not require a budget adjustment. Full-year sludge management costs are predicted to increase by $250,000.00 for fiscal year 2004, subject to final cost analysis and operating cost experience. . The operating cost increase for diesel fuel will be absorbed by the current wastewater operations budget and is not expected to require a budget adjustment. This contract amendment was reviewed and approved by the Fayetteville Water and Sewer Committee on April 29, 2003.

Table SMP-1
Soils Analysis Data

	1-A	1-B	1-C	1-D	1-E	1-F	1-G	2-A	2-B	2-C	2-D	3-A	3-B	3-C	3-D	3-E	4-A	4-B	4-C	4-D
Aluminum (lb/acre)	62,000	18,000	16,000	14,000	15,000	19,000	13,000	11,000	27,000	32,000	30,000	32,000	31,000	33,000	31,000	29,000	27,000	31,000	43,000	26,000
Arsenic (lb/acre)	31	16	16	15	18	26	12	9.8	21	13	14	17	21	19	21	19	18	23	24	16
Cadmium (lb/acre)	3.5	1.2	1.6	1.2	1.2	2.1	0.83	<0.8	1.7	1.3	1.3	1.8	1.8	1.7	1.6	1.6	1.7	1.8	2.3	1.4
Chromium (lb/acre)	110	50	65	58	44	51	52	28	72	54	56	74	78	68	66	71	75	74	71	62
Copper (lb/acre)	39	35	59	60	37	35	37	26	46	32	39	57	40	51	27	33	44	34	24	42
Iron (lb/acre)	63,000	26,000	31,000	23,000	28,000	49,000	20,000	14,000	38,000	23,000	21,000	26,000	34,000	30,000	35,000	32,000	30,000	37,000	45,000	26,000
Lead (lb/acre)	38	30	29	25	520	32	25	18	31	23	25	34	37	37	40	30	34	45	31	32
Magnesium (lb/acre)	4,100	1,100	980	890	1,100	1,700	1,100	800	1,500	1,900	1,800	1,900	1,900	2,000	1,900	2,000	1,900	1,900	3,000	1,800
Mercury (lb/acre)	<0.2	<0.2	0.31	0.31	0.22	<0.2	0.21	<0.2	0.3	0.51	0.23	0.33	0.23	0.26	<0.2	<0.2	0.26	<0.2	<0.2	0.31
Molybdenum (lb/acre)	3.1	3.3	3.7	3.7	3	3.2	3.1	2	3.6	1.9	2.4	3.5	3.5	3.4	2.9	3.1	3.4	2.9	2.1	3.2
Nickel (lb/acre)	70	27	35	32	25	46	21	18	29	33	26	34	33	29	25	30	33	29	50	28
Nitrate as N (lb/acre)	71	21	74	55	83	120	29	110	31	62	64	31	19	29	8	28	19	22	67	27
Phosphorus (lb/acre)	3,700	4,000	6,800	6,900	4,500	3,800	4,400	3,400	5,200	3,700	4,700	6,700	4,500	5,100	3,200	3,600	5,100	3,700	2,400	4,800
Potassium (lb/acre)	8,400	1,100	850	820	1,000	1,700	750	740	1,900	3,900	3,000	2,700	2,800	2,800	2,700	3,300	2,900	3,300	6,400	2,200
Selenium (lb/acre)	<20	<20	<20	<20	<20	<20	<20	<20	<20	<20	<20	<20	<20	<20	<20	<20	<20	<20	<20	<20
Zinc (lb/acre)	200	110	160	180	120	150	100	79	130	120	120	170	120	130	95	110	150	110	130	130
Cation-Exchange Capacity (meq/100	28	21	22	23	23	27	19	18	21	19	20	20	19	19	17	19	23	22	28	24
Electrical Conductivity (umho/cm)	1,400	1,300	1,300	1,200	1,300	1,400	1,100	1,400	970	1,300	1,400	910	1,200	1,000	1,200	1,600	1,400	1,400	1,100	1,300
pH (pH units)	6.2	6.5	6.0	6.4	6.4	6.2	6.5	6.4	6.1	6.6	6.5	6.1	6.8	6.3	6.9	6.9	6.9	6.8	6.5	6.9

NOLAND PLANT

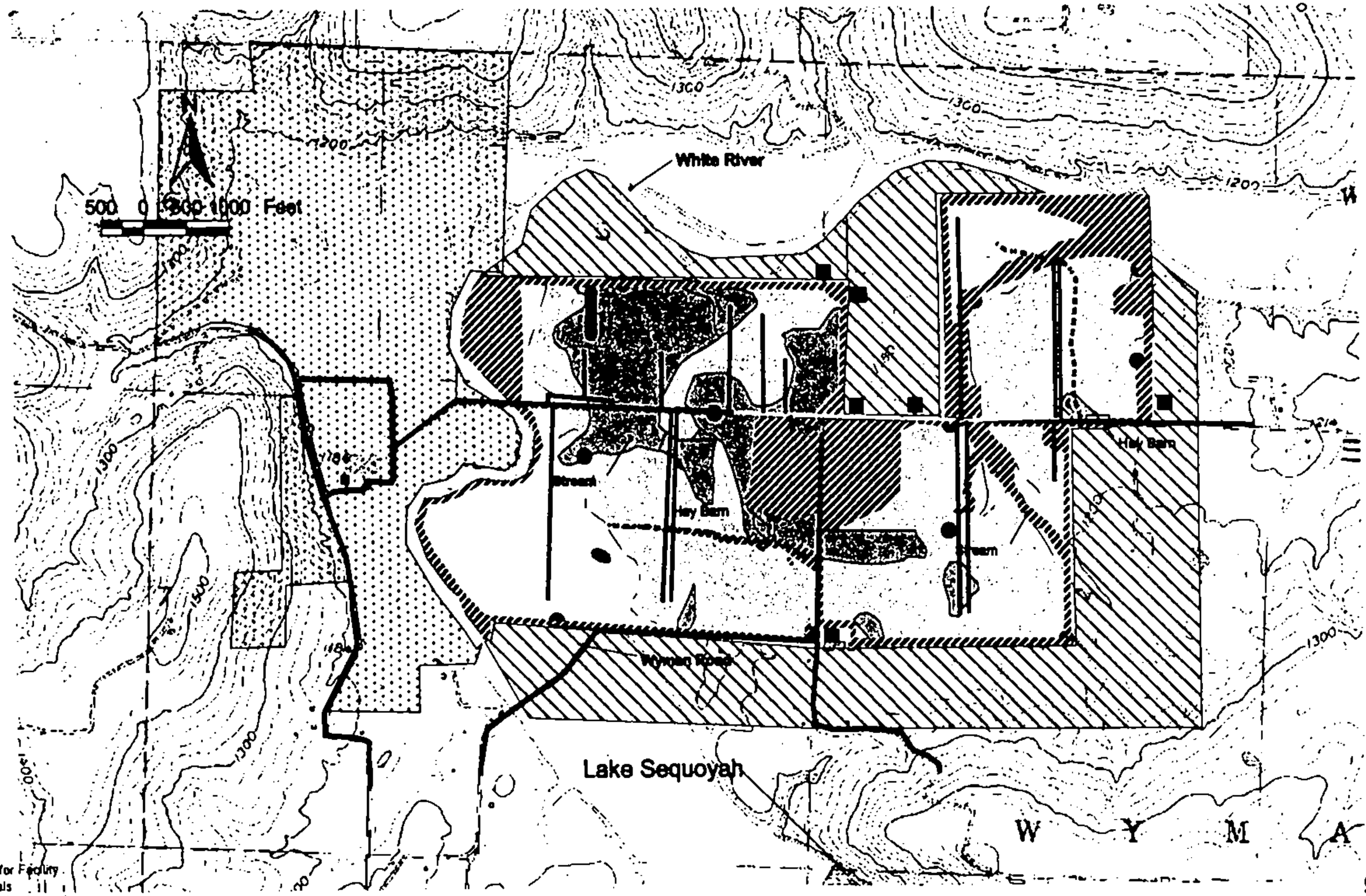
SLUDGE MANAGEMENT SITE-540 ACRES

LAKE SEQUOYAH

City of Fayetteville, Arkansas

N
W E
S

HARTFORD DR
BUCKLEY DR
STARR DR
WYMAN RD
SUMMER RAIN RD
PRIVATE DR
BALDWIN AVE
HUNT LN
ED EDWARDS RD
MALLY WAGNON RD
HUMMINGBIRD RD
CENTER ST



NOTES:

1. Distance from land application facility to nearest State Highway: 2.1 miles NW along Fox Hunter Road.
2. Background map taken from USGS topographic map, Elkins, AR quadrangle.
3. Waste Generating Facility is the Fayetteville Municipal Pollution Control Facility, located in the Northeast quarter of the Northeast quarter of Section 7, Township 16 North, Range 29 West.
   Latitude: 36 deg 4 min 50 sec
   Longitude: 94 deg 5 min 10 sec

OMI Contract
C. 6. Page 9

Figure SMP-1
Land Application Facility Features

CH2MHILL

AMENDMENT NO. 9
TO THE
AGREEMENT FOR OPERATIONS,
MAINTENANCE, AND MANAGEMENT SERVICES
FOR THE CITY OF FAYETTEVILLE, ARKANSAS
WASTEWATER TREATMENT PLANT

THIS AMENDMENT, entered into this _____ day of _____, 2003, by and between the City of Fayetteville, Arkansas, whose address for any formal notice is 113 W. Mountain St, Fayetteville, Arkansas 72701 and Operations Management International, Inc., (hereinafter "OMI") with offices at 9193 S. Jamaica Street, Suite 400, Englewood, Colorado 80112 is made and entered into for purposes of amending certain provisions of the "Agreement for Operations, Maintenance, and Management Services for the City of Fayetteville's Wastewater Treatment Plant," dated August 16, 1994 (the "Agreement") to prevent the facilities covered by the Agreement from being deemed to be used in the trade or business of OMI pursuant to Section 141 (b) of the Internal Revenue Code of 1986, as amended.

This is Amendment No. 9 to the Agreement dated the 16th day of August, 1994, between the City of Fayetteville and OMI.

NOW THEREFORE, The City of Fayetteville and OMI agree to amend the Agreement as follows:

1. Article 4.1 is hereby deleted in its entirety and replaced with the following Article 4.1:

   4.1 For services rendered during the last half of the eighth year of this Agreement the City of Fayetteville shall pay to OMI the actual cost of services performed plus an annualized management fee of Seventy Three Thousand Thirty One Dollars ($73,031.00). This revised fee and estimated cost (base fee) shall be paid in equal monthly installments. Any adjustments required for the six months of the calendar year shall be made in July 2003. The management fee for subsequent years will be determined proportional to the increase in estimated cost.

2 Article 4.3 is hereby deleted in its entirety and replaced with the following Article 4.3:

   4.3 OMI estimates the revised cost for services for the calendar year 2003 shall be Four Million Ninety-Six Thousand Seven-Hundred Sixty Five Dollars ($4,096,765.00) annually. OMI shall invoice City of Fayetteville for the first six months of the calendar year according to Amendment No. 8 and the last six months of the calendar year shall be invoiced based upon the above stated cost of Four Million Ninety Six Thousand Seven Hundred Sixty Five Dollars ($4,096,765). Details of said cost are shown in Appendix J with the increased payments to be prorated for the balance of the fiscal year, beginning on July 1, 2003. The base fee shall be negotiated each year in

September, beginning in 2003 for calendar year 2004. Should the City of Fayetteville and OMI fail to agree, the base fee will be determined by the application of the base fee adjustment formula shown in Appendix F. Should the actual expenditures exceed estimated expenditures by more than Twenty Thousand Dollars ($20,000), in any year of this Agreement, specific approval will be obtained from the City of Fayetteville.

3. Article 4.4 is hereby deleted in its entirety and replaced with the following Article 4.4:

4.4 An administrative fee of 35 percent is added to personnel services and 10 percent to all other costs for administration, support, management and overhead, with the exception of electricity and lift station odor control direct expenses. These rates shall be revised effective 7/1/2003 to 30 percent and 10 percent respectively.

4. Article 7.1 is hereby deleted in its entirety and replaced with the following Article 7.1:

7.1 This initial term of this Agreement shall be five (5) years and four (4) months commencing on September 1, 1994 and ending on December 31, 1999, followed by two (2) successive five (5) year options, each renewable at the sole discretion of the Owner. The City of Fayetteville is amending its second extension option for a period of five years, the start date for the option to be December 31, 2003 and the ending date for the contract period to be December 31, 2008., said 5-year contract period to overlap the final year of the current option.. All contract periods and renewals are subject to and contingent upon yearly budget approval by the Owner.

5. Appendices J and K are hereby deleted in their entirety and replaced with the attached Appendices J and K.

All other terms and conditions remain in effect in accordance with the Agreement referenced in this Amendment.

Both parties indicate their approval of this Amendment to the Agreement by their signatures below as of the date shown above.

Authorized Signature:

_____

Edward F. Forbes, Jr.
Executive Vice President for Project Delivery

OPERATIONS MANAGEMENT
INTERNATIONAL, INC.

Date: _____

Authorized Signature:

_____

Dan Coody
Mayor

CITY OF FAYETTEVILLE

Date: _____

Appendix J

COST DETAIL

The revised annualized estimated costs for the calendar year of 2003 were calculated as follows:

	Modified 2003 (5 Yr Amortization)
Direct Labor & Benefits	$1,519,208
Labor Markup	$455,762
Electricity	$738,000
Electrical Markup (0% Markup for 2003)	$0
Existing Other Direct Costs	$692,083
Other Direct Costs Markup	$69,208
Additional Other Direct Costs*	$253,501
Other Direct Costs Markup	$25,350
Subtotal	$3,753,112
Fixed Fee	$73,031
Lift Station Odor Control	$170,000
Capital Item Amortization	$100,622
Total O & M Budget	$4,096,765
SCADA Upgrade Project	$0
Total Annualized Budget	$4,096,765
Net Annualized Increase	$222,264

The following are some of the major reasons for cost circumstances:

1. Projected electrical costs due to the experience of 2001 with full utilization of the second aeration basin, as well as the experience of enormous increases in 'fuel cost adjustments' to the electrical costs in 2001. The reoccurrence of this situation cannot be ruled out in 2003, even though this adjustment did not occur in 2002.

2. Continued increase in the cost of providing skilled professional labor in Northwest Arkansas' highly competitive job market, as well as a remarkable increase in the cost of benefits.

3. Projected decrease in spending to control odors in the collection system since the tanks, pumps, and controls installed in 2002 will be sufficient for 2003 as well.

4. Revised sludge management plan eliminating land application of liquid and utilizing dewatering to enable landfill disposal of the dewatered biosolids.

Appendix K

INTERIM SLUDGE DISPOSAL PROJECT- SCOPE OF WORK

Due to a series of interrelated conditions and circumstances beyond the control of OMI or the City of Fayetteville, it has become expedient for the City of Fayetteville to adopt an alternative method for disposal of sludge produced at the Paul R. Noland wastewater treatment facility (WWTF). OMI will provide the equipment necessary to effect the implementation of this alternative, as described below. OMI will locate, procure and finance the cost of the necessary equipment at an annual interest rate of six and three-quarters percent over the course of 60 months, according to the amortization schedule listed below. The costs for the equipment will include the costs of purchase, delivery and any applicable sales tax, copies of the purchase orders, bills of sale or invoices to be furnished to substantiate the final principal amount. At the end of the amortization period, OMI will arrange for ownership of the equipment described herein be transferred to the City of Fayetteville. All operating costs excepting diesel, including labor, benefits, chemicals, electricity, landfill tipping fees, turnpike fees, licensing fees, tires, service of equipment and insurance are included in the regular Operations and Maintenance budget and are not part of the scope of work defined in Appendix K. Diesel for this operation, estimated to be $70,000 per year, will continue to be provided directly by the City of Fayetteville as described in Article 3.8 of this Agreement.

The following equipment will be provided for the express purpose of de-watering sludge from the WWTF and transporting that sludge to a landfill.

1. An Andritz CPF, Low Profile, SMX-S8 skid-mounted 2.0-meter belt filter press or equal. This unit will include an emulsion polymer system and high-pressure belt wash pump. Estimated cost for this belt-filter press is $216,000.
2. Three (3) used ten-wheel tri-axle semi-tractors suitable for hauling up to 80,000 pound gross vehicle weight payloads over public roads. Estimated costs for these tractors is $45,000 each or $135,000.
3. Three (3) new eight-wheel double-axle end-dump trailers suitable for hauling semi-liquid de-watered sludge over public roads. Estimated costs for these trailers is $25,000 each or $75,000.

OMI will amortize the actual costs of this equipment (currently estimated at $426,000.00) over the course of 60 months at an estimated monthly cost of $8,385.15, according to the amortization schedule below (six and three quarter's percent (6.75%) annual compound interest). The first payment will be due with the July, 2003 invoice, and the last payment will be included as part of the June 2008 invoice. If for any reason this contract is terminated prior to the completion of the capital cost amortization, the City of Fayetteville will pay to OMI the remaining capital improvement principal amount, in full, within 30 days following contract termination.

Estimated Amortization Costs for the $426,000.00 equipment purchase

Total Capital Investment	$426,000
Terms of Amortization	6.75%
Length of Amortization	60
Monthly Payment	$8,385.15

Month	Payment	Principal	Interest	Balance
1	$8,385.15	$5,988.90	$2,396.25	$420,011.10
2	$8,385.15	$6,022.59	$2,362.56	$413,988.50
3	$8,385.15	$6,056.47	$2,328.69	$407,932.04
4	$8,385.15	$6,090.54	$2,294.62	$401,841.50
5	$8,385.15	$6,124.80	$2,260.36	$395,716.70
6	$8,385.15	$6,159.25	$2,225.91	$389,557.45
7	$8,385.15	$6,193.89	$2,191.26	$383,363.56
8	$8,385.15	$6,228.73	$2,156.42	$377,134.83
9	$8,385.15	$6,263.77	$2,121.38	$370,871.06
10	$8,385.15	$6,299.00	$2,086.15	$364,572.05
11	$8,385.15	$6,334.44	$2,050.72	$358,237.62
12	$8,385.15	$6,370.07	$2,015.09	$351,867.55
13	$8,385.15	$6,405.90	$1,979.25	$345,461.65
14	$8,385.15	$6,441.93	$1,943.22	$339,019.72
15	$8,385.15	$6,478.17	$1,906.99	$332,541.55
16	$8,385.15	$6,514.61	$1,870.55	$326,026.94
17	$8,385.15	$6,551.25	$1,833.90	$319,475.69
18	$8,385.15	$6,588.10	$1,797.05	$312,887.58
19	$8,385.15	$6,625.16	$1,759.99	$306,262.42
20	$8,385.15	$6,662.43	$1,722.73	$299,599.99
21	$8,385.15	$6,699.90	$1,685.25	$292,900.09
22	$8,385.15	$6,737.59	$1,647.56	$286,162.50
23	$8,385.15	$6,775.49	$1,609.66	$279,387.01
24	$8,385.15	$6,813.60	$1,571.55	$272,573.41
25	$8,385.15	$6,851.93	$1,533.23	$265,721.48
26	$8,385.15	$6,890.47	$1,494.68	$258,831.01
27	$8,385.15	$6,929.23	$1,455.92	$251,901.78
28	$8,385.15	$6,968.21	$1,416.95	$244,933.57
29	$8,385.15	$7,007.40	$1,377.75	$237,926.17
30	$8,385.15	$7,046.82	$1,338.33	$230,879.35
31	$8,385.15	$7,086.46	$1,298.70	$223,792.89
32	$8,385.15	$7,126.32	$1,258.83	$216,666.57
33	$8,385.15	$7,166.40	$1,218.75	$209,500.16
34	$8,385.15	$7,206.72	$1,178.44	$202,293.45
35	$8,385.15	$7,247.25	$1,137.90	$195,046.20
36	$8,385.15	$7,288.02	$1,097.13	$187,758.18
37	$8,385.15	$7,329.01	$1,056.14	$180,429.16

38	$8,385.15	$7,370.24	$1,014.91	$173,058.92
39	$8,385.15	$7,411.70	$973.46	$165,647.22
40	$8,385.15	$7,453.39	$931.77	$158,193.83
41	$8,385.15	$7,495.31	$889.84	$150,698.52
42	$8,385.15	$7,537.48	$847.68	$143,161.05
43	$8,385.15	$7,579.87	$805.28	$135,581.17
44	$8,385.15	$7,622.51	$762.64	$127,958.66
45	$8,385.15	$7,665.39	$719.77	$120,293.28
46	$8,385.15	$7,708.50	$676.65	$112,584.77
47	$8,385.15	$7,751.86	$633.29	$104,832.91
48	$8,385.15	$7,795.47	$589.69	$97,037.44
49	$8,385.15	$7,839.32	$545.84	$89,198.12
50	$8,385.15	$7,883.41	$501.74	$81,314.70
51	$8,385.15	$7,927.76	$457.40	$73,386.94
52	$8,385.15	$7,972.35	$412.80	$65,414.59
53	$8,385.15	$8,017.20	$367.96	$57,397.39
54	$8,385.15	$8,062.29	$322.86	$49,335.10
55	$8,385.15	$8,107.64	$277.51	$41,227.46
56	$8,385.15	$8,153.25	$231.90	$33,074.21
57	$8,385.15	$8,199.11	$186.04	$24,875.09
58	$8,385.15	$8,245.23	$139.92	$16,629.86
59	$8,385.15	$8,291.61	$93.54	$8,338.25
60	$8,385.15	$8,338.25	$46.90	$0.00

Interim Sludge Disposal Alternatives

For the City of Fayetteville Wastewater Treatment Facility

Prepared by:

OMI
March 2003

OMI Contract
C. 6. Page 17

Executive Summary

The City of Fayetteville treats and discharges wastewater and associated process residuals in accordance with a permit regulated through the State of Arkansas. In recent months, the State has altered previous interpretations of that permit, obliging the City to alter the method of operation of its treatment facilities in order to remain in compliance. Additionally, the process of expanding and upgrading the City's solids handling facilities has required much more time for ultimate design and construction than was originally anticipated, further obliging the City to take interim steps for solids handling.

Several potential alternatives were investigated by the City's Water and Wastewater Department to meet the interim solids handling needs of the treatment facility. Because most beneficial reuse alternatives require long-term commitments and facilities to be constructed, the only viable short-term option available to the City is dewatering of raw sludge combined with landfill disposal. It is fully understood that the City will work toward a more environmentally friendly solution in the long-term, most likely at a Regional level.

To facilitate implementation of the selected short-term alternative, the City has the opportunity to expand its existing contractual agreement with OMI to include acquisition of the necessary equipment, supplies, and personnel. OMI has agreed to provide these necessary services in a cost-effective manner that takes advantage of OMI's national and local alliances and allows the City to amortize the capital costs over a five-year period. At the end of this amortization period, OMI would convey ownership of the purchased equipment to the City of Fayetteville.

An amendment is therefore proposed to the current operating contract with OMI that would authorize OMI to proceed with steps necessary to perform these actions, at a net increase to the City of $36,209 for the last six months of 2003. Subsequent budgets would continue to be negotiated beginning in September of each year, as has been the previous practice.

General Circumstances

The City of Fayetteville's Paul R. Noland Wastewater Treatment Facility (WWTF) routinely treats an annual average of approximately 12.0 million gallons per day (MGD) of influent wastewater, and safely recycles the treated water back into the water environment of Northwest Arkansas via the White River and the Illinois River drainage basins. The effluent discharged from the WWTF is routinely of higher quality than required by the City's very stringent National Pollutant Discharge Elimination System (NPDES) permit and the City of Fayetteville should be justifiably proud of the compliance record and environmental protection efforts demonstrated over the life of the facility. Another important aspect of wastewater treatment is the disposal of the residuals of the treatment process, commonly known as sludge. It is well known and often publicly discussed that the City has been working for several years toward an eventual solution to the complex problems surrounding the need for a second WWTF and the ongoing problem of wet-weather overflows from the sewer collection system, as well as the issue of sludge disposal. Circumstances beyond the City's control have now created a situation where the sludge disposal issue needs to be addressed on an interim basis well before the final design decisions are made pertaining to the second treatment plant and the collection system improvements.

The City has always dealt with the issue of sludge disposal, as well as the actual discharged plant effluent, in an environmentally responsible manner and has employed the concepts of Beneficial Reuse to the greatest degree possible. The City's Sludge Management Site (SMS) was given an EPA Region VI Environmental Excellence Award for Beneficial Reuse in 1996, and was recognized as an innovative and highly desirable sludge disposal method throughout the early 1990's. As early as 1993, however, WWTF operating personnel were becoming anxious about the increasing levels of phosphorus in the soil of the SMS. Subsequent investigation done in conjunction with the University of Arkansas in the summer of 1993 indicated that much more phosphorus was being applied to the land than could be utilized by normal plant growth, and that the City likely needed to begin the process of identifying a different ultimate sludge disposal plan. Phosphorus cannot be destroyed and any phosphorus applied to the land must be used by the crop being grown or build up in the soil. The exact level of soil phosphorus that is acceptable varies depending upon soil type and land use practices, but the level found at the SMS is very high by any standard.

Also during the early 90's, the EPA and State of Arkansas were becoming insistent that the City address the wet-weather overflow issue within the City's collection system, giving the City two issues that needed to be addressed, i.e. wet-weather overflows and sludge disposal. Subsequently, the long-range facility planning process, which was started by the City, resulted in the completion of the original facility plan in 1997. At that time, it was expected that the planning process would move into the design and construction phases relatively quickly and that the plan would be fully implemented well before the end of 2002. For various reasons the entire planning/design/construction process has been delayed to the point that final construction and startup of new facilities is not expected to occur until mid 2006. The delay in implementation of an alternative sludge disposal option has now reached the point where an interim solution very much needs to be implemented as soon as reasonably possible.

Two other contributing factors to the entire set of issues come from the Arkansas Department of Environmental Quality (ADEQ). One of these issues involves the use of plant effluent for irrigation and the other with the level of allowed nitrogen that can be applied to the SMS in any given year. During the summer of 2002, the ADEQ reached the conclusion that the City's NPDES permit did not allow plant effluent to be used as irrigation water on the SMS, even though that practice had been followed every year since 1988 and was always a part of the plan of operations for the Noland WWTF. Using plant effluent for irrigation is done mainly for two reasons.

- First, the NPDES permit restricts the ability of the plant to discharge effluent to the White River during the months of July-September. While some effluent storage is available and City-owned Lake Sequoyah can be used to augment the flow of the White River for a time, it is necessary during normal summertime weather patterns that a large amount of plant effluent be disposed of via irrigation on the land application site in order to comply with those summertime flow restrictions.
- Second, the crop being grown on the SMS needs the additional moisture provided by plant effluent in order to maximize the beneficial reuse of the nutrients from the sludge. Failure to provide this supplemental moisture further aggravates the potential buildup of nutrients beyond the already undesirable levels previously mentioned.

The ADEQ required the City to develop an application for a permit to use plant effluent for this purpose, which process began in the fall of 2002. The application process is remarkably involved and has been further complicated by the very high levels of phosphorus found in the soil of the SMS. In fact, the nutrient balancing calculations required as part of the application to apply plant effluent to the site cannot yield acceptable results as long as sludge continues to be applied to the existing SMS.

The second regulatory issue involves the amount of nitrogen that can be applied to the site in any given year. In 1992, the EPA promulgated new rules for Beneficial Reuse of Biosolids under 40 CFR Part 503. These rules were 'self-implementing', meaning that each municipality had to follow these rules as a minimum, even if their NPDES permit had other or different restrictions. ADEQ officials verbally informed plant staff on numerous occasions that the old NPDES permit rules no longer applied and that the City had to comply with the new 503 rules. The ADEQ enforcement group, however, has recently altered their view of this situation as well as their view on the use of plant effluent for irrigation. The upshot of this change in viewpoint is that the nitrogen limits expressed in the 1992 NPDES permit must still be met.

Organic loadings to the wastewater plant have continued to rise over the years. While the plant is still producing high quality effluent, the result of the process removing increased levels of organics is increased levels of sludge and the nitrogen that goes along with that sludge. Under the current regulatory stance, it is probable that more nitrogen will be available from the sludge being produced from the WWTF in 2003 than can be applied to the SMS.

The result of the combination of events and circumstances mentioned above is that the City needs to use an alternative method of sludge disposal other than the existing SMS on an interim basis

beginning in July of 2003. Failure to take decisive action at this juncture will greatly increase the risk of potential excursions of the City's NDPES permit, both as it relates to discharge restrictions to the White River basin and to nutrient application on the SMS.

Assuming that the City does choose to move ahead with a change in sludge disposal on an interim basis, the chosen alternative should be viable for at least several years, giving the final design and construction efforts time to be completed and a long-range solution found. The problem of what to do with sludge from the WWTF has been addressed by planners working for the City of Fayetteville on numerous occasions over the past several years, and their investigations need not be duplicated for this effort. Other area Cities are also facing this dilemma and at least one has had to use an interim solution as well, which is also valuable information for the City Fayetteville to use in making this decision. There are many potential long-range ideas, including drying the sludge to use it in a fertilizer product, composting the sludge to make it available to area residents, and lime-stabilizing the sludge to use it in mine-reclamation efforts in Southern Missouri. Each of these solutions and any others that might be proposed are at best several years from actual implementation, which will not be of benefit to the City of Fayetteville in solving the current dilemma. The only viable short-term alternative as identified by the previous consultants as well as our neighboring City has been to dewater the sludge and send it to a landfill on a short-term basis. Use of this alternative will in no way preclude Fayetteville's participation in a regionally based long-term solution, when that solution materializes. The landfill option will let the City address most of the current problems and provide a short-term buffer for making the decisions about a long-term solution without duress.

With that in mind, OMI has developed a series of alternatives that could be implemented to enable sludge disposal to occur from the Fayetteville WWTF while the final planning and implementation of a more environmentally friendly disposal method is completed, most likely at the Regional level. (Please note that it is very likely that all future sludge disposal alternatives, including this interim one, will be considerably more expensive than the method that has been used on the existing SMS.)

There are two distinct actions that must be performed to implement the landfill alternative, i.e. dewatering of the sludge and transport of the sludge from Fayetteville to a viable landfill site. There are various methods of dealing with both of these actions, the most viable and cost-effective of which are further detailed below.

Dewatering

Dewatering of the sludge is a process whereby most available free water is removed from the sludge, producing a thick mud-like material that occupies less space and can therefore be transported more cost-effectively. The raw sludge currently being produced from the Fayetteville treatment process contains only about 2% solids and would fill approximately 22 trucks per day in this condition. It is expected that dewatered sludge would be a minimum of 15% solids and would fill about three trucks per day. It should also be noted that straight liquid sludge is not allowed to be disposed of in a landfill and that some sort of dewatering is required for this option.

The most common method of achieving a dewatered sludge 'cake' is to use a belt-filter press (BFP). An absolute minimum 2.0-meter wide BFP unit is recommended for sludge that will need to be processed, if a high quality unit is selected. There are many different manufactures of these units, but only two of the most highly rated brands (Ashbrook, manufactured in Houston, TX and Andritz, manufactured in Pittsburg, TX) have been considered for this comparison. (Since this is an interim step, it is expected that only one dewatering unit would be acquired. With only one unit available, it is critical that the unit function dependably and operate at a high level. Therefore, only the units made by these two companies were considered) Three methods of acquisition were considered including short-term leasing of a trailer-mounted unit, long-term (five years) lease-to-own and short-term (one year) lease-to-own.

- Short term leasing of a trailer-mounted unit is certainly a viable option to consider. The advantages of this option include ready availability and no long-term commitment requirement. The best price for one of these units, however, can be obtained by making at least a one-year commitment. The disadvantages of this option include the relatively high cost for a several year lease program and the difficulty of using temporary piping for power, water, and sludge to and from the unit.

- The City could go ahead and directly purchase a new BFP through standard purchasing procedures, but the extended time required for equipment acquisition renders it nearly impossible to have this system in place in time for summertime flow restrictions to be avoided in 2003. It is possible that OMI could purchase this equipment and amortize the cost over a one-year period, but the upfront costs are very high.

- A long-term lease-to-own program would allow OMI to negotiate directly with the BFP suppliers to arrange for delivery of a new unit for use at the Fayetteville WWTF. The unit would be installed inside the old south operations building and the original loading arrangement that was part of the 1968 plant design could be re-used. This option would allow the unit to be leased for five years, at the end of which time ownership would be transferred to the City of Fayetteville. The advantages of this option include the ability of OMI to procure the necessary equipment and installation services in a timely manner, the relatively low cost of this type of procurement, and the ability to re-use existing infrastructure and still have an enclosed handling process. OMI could also acquire the equipment in the least amount of time, which provides the best chance for installation to occur before the summertime restriction period goes into effect.

Acquisition Method for BFP	One Year Cost	Five Year Cost
Lease of Trailer Mounted Unit	$123,000	$615,000
Short Term Lease-to-Own	$ 225,474	$225,474
Long Term Lease-to-Own	$ 52,556	$262,782

Installation costs for all three options are expected to be approximately the same, as will normal operating expenses.

The two main budget areas to be affected by the dewatering activity from an ongoing operational viewpoint are labor/benefits and chemicals. The operation of the BFP will not require full-time monitoring, but will have an impact on personnel availability during normal working hours. Staffing increases may be required, however some labor can be shifted from current activities during some parts of the year. Only one additional staff member will be added at the outset of this activity.

Chemical costs will be impacted, as polymer must be used to condition the sludge prior to introduction to the BFP. These costs will vary somewhat depending upon the characteristics of the sludge at a given time. A conservative estimate for pounds of polymer per dry ton of solids and average costs per pound of polymer yields an annual estimated cost for polymer of almost $100,000.

OMI recommends that the City choose the long-term lease-to-own option. This option would allow the entire system to be put in place in a timely fashion, allowing use of the SMS for irrigation purposes during the flow restriction of the summer period, assuming the ADEQ approves the application for that practice to be re-instituted. This option is much more cost-effective than a trailer mounted unit and has much less immediate impact than the short-term option.

Transport to Landfill

Transportation of the dewatered sludge cake to the landfill can also be accomplished in various ways. A contract hauler could be retained, another City Department such as Solid Waste could be given the responsibility of transportation, or the Wastewater Department (through OMI) could be responsible.

- Use of a contract hauler is often required, depending upon the actual landfill selected, and costs for this option are included in this comparison. The main advantage of this option is that equipment would not have to be purchased. Disadvantages include the difficulty in scheduling of activities between two separately controlled entities, reliability of third party, and cost.

- The City's Solid Waste Division could be delegated this responsibility and would have the ability to perform this function. Advantages of this option would be that City personnel already involved in providing waste hauling could help provide oversight. Disadvantages include the difficulty in scheduling of activities between two separately controlled entities, the probability that equipment could not be obtained in a timely fashion, and the need to hire additional personnel and devote them to an activity that is not the main objective of their division.

- The Wastewater Department, through OMI, could also be delegated this responsibility. Advantages of this option include: OMI as a company has a great deal of experience in performing the specific task of hauling of dewatered sludge; OMI has previously negotiated a favorable tipping fee with the Porter, OK landfill that could be used to the City's benefit in this situation; and OMI could acquire the necessary equipment in a timely fashion. There are no obvious disadvantages of selecting this option. Additionally, it should be noted that removal of the dewatered cake will be a critical job function to be able to complete the wastewater treatment process. This action will be of the most importance to the people most involved in that treatment process, so that any obstacles to full permit compliance can be minimized.

There are also several viable options for the acquisition of the necessary equipment to perform this action, which could include any combination of new and/or used equipment and could include acquisition by OMI and/or outright purchase by the City.

OMI is willing and able to procure the necessary equipment to perform this function and again amortize the costs of that acquisition over a five-year period. After some review of available equipment, the best value would appear to be relatively late-model used tractors and new end-dump trailers.

- Late-model tractors are very likely to perform more than adequately for this service application, since the haul distance is relatively short, high-quality maintenance services are readily available, and the initial depreciation of a new tractor has already been factored in to produce a lower purchase price.

- It is imperative that the trailers be 'sludge-tight' and allow no dripping or leaking of any kind. Most used equipment of this type has been used for hauling rough material that makes this a difficult proposition at best. The use of roll-off containers instead of the dump trailers was also investigated, but previous sludge hauling experience with the existing WWTF loading infrastructure clearly points in the direction of trailers that are always connected to a tractor during loading operations. Each container must be moved during the filling cycle and the roll-off containers become unwieldy when loaded with sludge.

Virtually the same set of advantages and disadvantages exist for this equipment acquisition as for the BFP, i.e. very similar costs with direct City purchase being slightly less expensive and OMI acquisition being very timely and easier to match to the needs at hand. Given that time is again a critical component of the scenario, OMI proposes to make these purchases and amortize the equipment over a 5-year period. Diesel fuel, however, must be purchased for either hauling option, and since the City obtains a very favorable bulk price it is clear it would be much better for the City to directly purchase this commodity, as has been the standard practice for many years.

OMI attempted to contact all operating landfills within a reasonable hauling distance to ascertain the actual viability of sludge disposal at those locations, including the 'local' landfill in Tontitown. There are at least three landfills that will accept dewatered sludge: the Waste Management landfills at Tontitown, AR and Tulsa, OK, and the BFI landfill in Porter, OK. Each of these landfills were somewhat reasonable in pricing, although there is likely an elevated risk of liability in using the Tontitown location, due to previous permit compliance issues with ADEQ. The following table summarizes the actual costs to dispose of sludge at each of these three landfills, as well as the estimated trucking costs associated with each landfill.

Landfill/Location	Tipping Fee @ Ton	Hauling Cost/Trip	Total Cost @ 20 Ton Load	Annual Cost
Waste Management Landfill/Tontitown	$20	$150	$550	$629,200
Smithee Environmental/ BFI Landfill/Porter		$510	$510	$583,440
BFI Landfill/Porter – OMI 1 Year Amortization	$6.25	$415	$535	$612,040
BFI Landfill/Porter – OMI 5 Year Amortization	$6.25	$300	$425	$486,200

As another point of comparison, the estimated cost per load with OMI responsible for the hauling is also about $72 less than what our neighboring City to the north would pay for a 20-ton load.

The use of existing project staff and the previously existing favorable arrangement for tipping fees at the Porter landfill make this price possible, and it is expected that only two additional staff members will be added for this activity initially.

Other Factors

Selecting the dewatering/landfill alternative for an interim solution to solids disposal does have some positive budgetary impacts. The current digestion operation consumes large amounts of electrical power for aeration, many pounds of chemicals for odor control, and significant operation and maintenance labor and parts to maintain. These costs would not all be immediately recoverable, however, since the digestion system will still be full when the dewatering option is put in place, and the 4-6 million gallons of liquid sludge in that system will have to be disposed of over the next 3-4 months. The overall costs associated with the digestion process are approximately $314,000 per year, of which about $80,000 will be available in 2003 to help offset other expenses. Another positive impact in the short-term could be gleaned from re-directing the $44,000 SCADA project cost toward implementation of the dewatering project. Lastly, the rebate due to the City from the 2002 operating contract reconciliation for $74,924

could be directly applied to the potential increase in costs for 2003. All of the pertinent cost considerations could be resolved through amending the current operating contract with OMI.

The net impact could be summed up in two reasonable alternatives, one that would place a high burden on initial costs for equipment acquisition, and one that would allow these impacts to be spread out over a five-year period. Please note that OMI, in consideration of the enhanced stability provided by the potential 5-year contract extension, is willing to reduce the fixed fee portion of the contract as well as the markup on labor and benefits. Below is a comparison of these alternatives.

	Budgeted 2003	Modified 2003 (1 Yr Amortization)	Modified 2003 (5 Yr Amortization)
Direct Labor & Benefits	$1,487,466	$1,519,208	$1,519,208
Labor Markup	$520,613	$531,723	$455,762
Electricity	$780,000	$738,000	$738,000
Electrical Markup (0% Markup for 2003)	$0	$0	$0
Existing Other Direct Costs	$709,012	$692,083	$692,083
Other Direct Costs Markup	$70,901	$70,208	$69,208
Additional Other Direct Costs*		$253,501	$253,501
Other Direct Costs Markup		$25,350	$25,350
Subtotal	$3,567,992	$3,840,073	$3,753,112
Fixed Fee	$92,509	$98,729	$73,031
Lift Station Odor Control	$170,000	$170,000	$170,000
Capital Item Amortization		$448,371	$100,622
Total O & M Budget	$3,830,501	$4,557,173	$4,096,765
SCADA Upgrade Project	$44,000	$44,000	$0
Total Annualized Budget	$3,874,501	$4,601,173	$4,096,765
Net Annualized Increase		$726,672	$222,264

DRAFT

*Additional Other Direct Costs includes landfill tipping fees, turnpike fees, various vehicle maintenance expense items, and chemicals

Assuming the City chose to exercise the 5-year amortization option and wanted to apply the full 2002 contract reconciliation rebate as a 'credit' toward projected expenses; the final contract amendment would only require $36,209 in additional funding to complete calendar year2003.

Conclusion

Based upon the discussion of each of the above factors, we recommend that the City continue efforts to obtain a permit from ADEQ to land apply WWTF effluent to the existing SMS. In conjunction with acquisition of the permit, the City would direct OMI to proceed with the purchase and installation of a new BFP to allow dewatering of sludge from the Fayetteville WWTF, and acquire the equipment necessary to transport the dewatered sludge to the BFI landfill in Porter, OK. The existing operating contract would be modified to include these actions as part of OMI's scope of work, and the contract would be renewed for a period of five

years. Proceeding with these steps on an interim basis will provide the City the most cost-effective method to maintain compliance with existing NDPES permit limitations, while at the same time allow the City to consider all potential long-term disposal options without undue pressure to act quickly.

STAFF REVIEW FORM

OMI Hamstring Lift Station C. 7. Page 1

X AGENDA REQUEST
____ CONTRACT REVIEW
____ GRANT REVIEW

For the Fayetteville City Council Meeting of: May 20, 2003

FROM:

Greg Boettcher	Water & Wastewater	Water/Wastewater-Wastewater Treatment
Name	Division	Department

ACTION REQUIRED: A resolution approving an out-of-scope contract amendment with Operations Management International, for the upgrading of the Hamestring Lift Station as per the Technical Memorandum recommendation of March 2003 by RJN Group. Existing OMI contract amount for fiscal year 2003 to be increased by $250,000.00, funds to be allocated from lift station repair and maintenance line item. No budget adjustment necessary as costs were anticipated in 2003.

COST TO CITY:

$250,000.00	$ 332,803.00	Water/Sewer-Wastewater Treatment
Cost of this request		Program Category / Project Name
5400-5800-5400-00	$ 11,608.80	Wastewater Treatment Improvement
Account Number	Funds Used to Date	Program / Project Category Name
02068.1	$ 321,194.20	Water and Sewer
Project Number	Remaining Balance	Fund Name

BUDGET REVIEW: X Budgeted Item ____ Budget Adjustment Attached

Budget Manager — 5-2-03 Date

CONTRACT/GRANT/LEASE REVIEW:

Marsha Fairley — 6/6/03 Date — Accounting Manager
Nancy Smith — 5/5/03 Date — Internal Auditor
City Attorney — 5/5/03 Date
____ — ____ Date — Purchasing Manager

STAFF RECOMMENDATION:

____ — ____ Date — Division Head
Greg Boettcher — 5-2-03 Date — Department Director
Steph Dawson — 5-5-03 Date — Finance & Internal Services Dir.
Hugh Garner — 5-6-03 Date — Chief Administrative Officer
Dan Coody — 5/6/03 Date — Mayor

Cross Reference

Rec'd in Mayor's Office ____

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

Previous Ord/Res#: ____

Orig. Contract Date ____

Orig. Contract Number ____

Staff Review Form - Page 2

Description _____ Meeting Date _____

Comments:

Reference Comments:

Budget Manager

Accounting Manager

City Attorney

Purchasing Manager

ADA Coordinator

Internal Auditor

Grants Coordinator

RESOLUTION NO. _____

A RESOLUTION TO APPROVE AN OUT-OF-SCOPE AMENDMENT WITH OPERATIONS MANAGEMENT INTERNATIONAL, INC. IN THE AMOUNT OF $250,000.00 TO UPGRADE THE HAMSTRING SEWER LIFT STATION

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

Section 1. That the City Council of the City of Fayetteville, Arkansas approves the out-of-scope amendment pursuant to the terms specified in the October 1, 2002 letter to Greg Boettcher from Billy Ammons in the amount of $250,000.00 for the upgrade of the Hamstring Sewer Lift Station pursuant to section 2.26 of the existing contract.

PASSED and **APPROVED** this the 20th day of May, 2003.

APPROVED:

DRAFT

By: _____
DAN COODY, Mayor

ATTEST:

By: _____
Sondra Smith, City Clerk

FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

WATER AND WASTEWATER DIVISION

DEPARTMENTAL CORRESPONDENCE

TO: **Fayetteville City Council**

THRU: Dan Coody, Mayor of Fayetteville
Hugh Earnest

FROM: Greg Boettcher, P.E.
Water & Wastewater Director

DATE: April 30, 2003

RE: **Wastewater Treatment Plant Operations Contract**
Operations Management International, Inc.
Out-of-Scope Services – Hamestring Station

BACKGROUND

The Arkansas Department of Health has become increasingly concerned over the frequency and magnitude of wet weather overflows at municipal sewage pumping stations. Such emphasis has impacted the cities of Farmington and Elkins in recent months. When this focus included the Hamestring Lift Station, as a result of the normal ADH plan review, the city administration also became concerned over the impacts of growth and development in the sewer system sub-basin. Growth and development in the Hamestring lift station's service area (west of I-540 along Wedington Drive) has been relatively intense, causing concerns over the adequacy of the lift station capacity for the short-term needs of this sub-system. Accordingly, a technical analysis of the service area growth and the lift station capacity was performed by RJN Group, said report being finalized in March of 2003. In essence this report has confirmed suspicions that the demands of this service area have the potential to overload the existing wastewater pumping station, causing the threat of dry weather overflows. While this pollution hazard is not immediate, it is a situation that requires prompt attention.

As the owners and operator of a wastewater system, Fayetteville is obligated to sustain the facilities in an operable condition and to maintain adequate service capacity for the customer demands. The correction of the Hamestring Lift Station capacity problem is a functional responsibility that must be addressed.

DISCUSSION

The Technical Memorandum by RJN Group titled "Hamestring Lift Station, Interim Overflow Elimination", evaluated several alternative strategies to correct this forthcoming capacity shortfall. These alternatives ranged from a cost of $3 million for sewer rehabilitation, $1.7 million for force main replacement and $0.18 million for installation of an upgraded pumping system. This lowest construction cost alternative, with cost allowances for engineering design (20%), supervisory control and data acquisition (SCADA) equipment ($7,000.00), backup pump control equipment ($25,000.00) and contingencies (15%) represents a project cost of approximately $256,000.00. The most expedient and economical approach to this wastewater system need is the installation of the new higher capacity pumping unit. This alternative can be implemented using the direct services of OMI under our current contract, with OMI being responsible for all equipment purchases, construction, electrical, force main investigation, SCADA installation, coordination of operations and start-up. Under the current contract terms, the City may authorize OMI to perform such work by an out-of-scope task order. In essence, this approach involves the authorization of OMI to proceed with all necessary activities and to furnish a direct cost accounting. The margin provided to OMI for administration and management is a net overwrite of 18% as per the agreement terms. Due to OMI's access to national purchasing contracts and economics of direct contracting, it is expected that the project can be completed for less than proposed $250,000.00 out-of-scope task budget.

The performance of the Hamestring Lift Station improvements using this methodology will not require a budget adjustment, as the funding can be secured from the current budgeted amount in the lift station maintenance account. The Water and Wastewater Operations were aware of the potential needs for the Hamestring Lift Station upgrading and minimized, to the greatest intent possible, lift station expenditures to plan for this forthcoming expense. A lesser scale of improvement to the Hamestring Lift Station was deferred in 2002 consisting of the purchase of a backup lead pumping unit, said cost being approximately $25,000.00. This deferred purchase helps offset the $250,000.00 budget for the out-of-scope work.

The key components of the out-of-scope task order included:

- Provide excess capacity for 3,000 single family equivalents, approximately 1,300 of which are platted but not occupied within the lift station service area
- Execute an out-of-scope agreement with OMI under the current contract, in the amount of $250,000.00 to fund the out-of-scope work
- Install new large pumping unit, variable speed pump controls, new wet well, piping connections, valving, force main connection, electric service, SCADA equipment, expose/inspect force main condition and blowing and start-up unit.

The benefits that will accrue to the citizens of Fayetteville include:

- Responsible wastewater system management, providing capacity to serve needs
- Improved lift station reliability
- Reduced wet weather overflow frequency and volumes
- Overall improvement in lift station functions due to improved cycle times increasing pump motor life.
- Pump and motor controls can be salvaged at end of interim period for other system applications
- Improved lift station reliability by the addition of another pumping unit

This out of scope contract amendment is associated with the Fayetteville Vision 2020 Guiding Principles listed below:

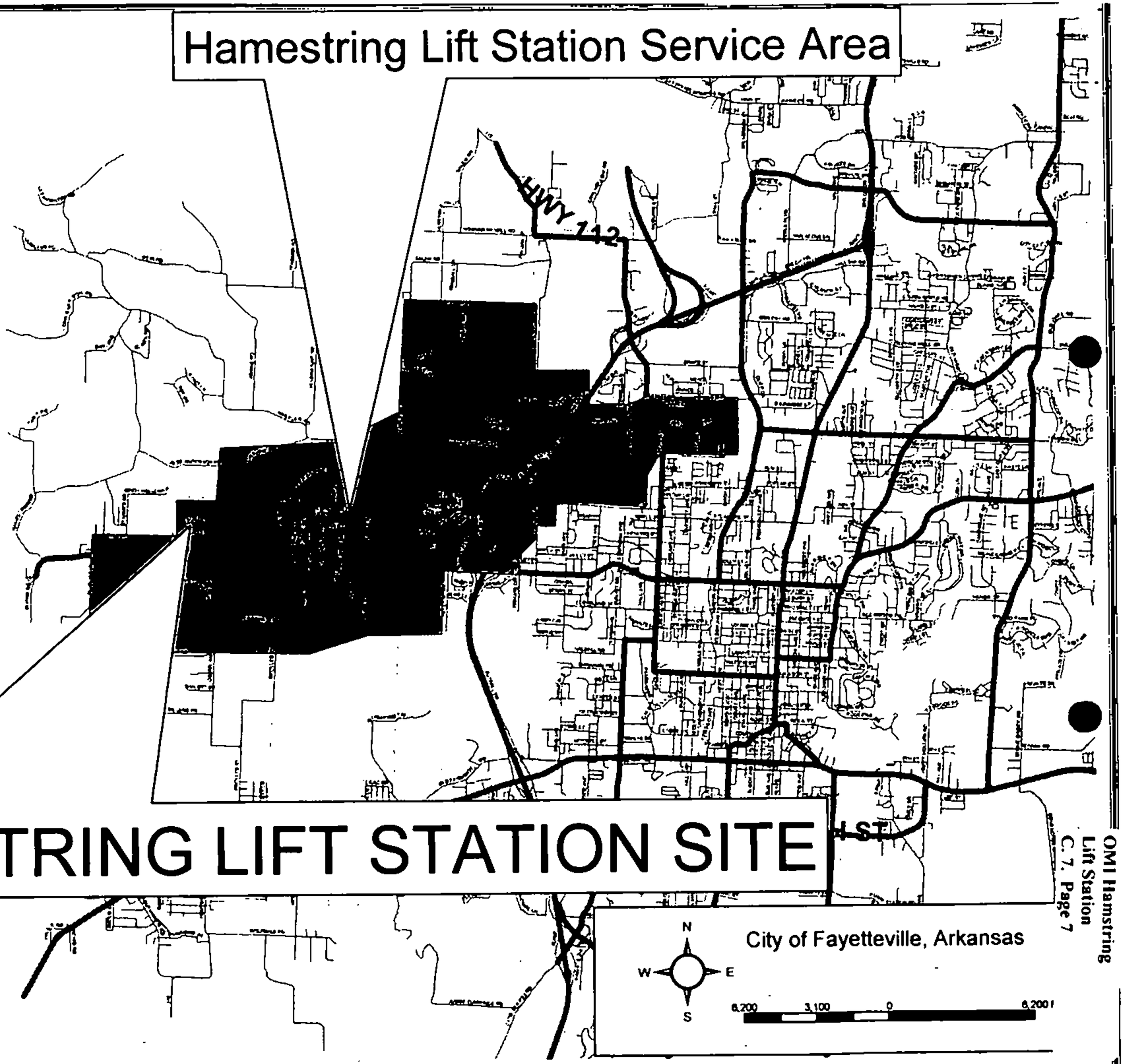
1. Naturally Beautiful City: Our Mountains and Hills, Our Creeks, Our Open Greenspaces
2. Well maintained City Infrastructure and Facilities

This action protects the quality of water in our steams by reducing the potentials, frequency and magnitude of lift station bypasses at the Hamestring facility. Maintenance of public infrastructure requires a combination of operability and the continued provision of sufficient capacity is necessary to properly maintain the municipal wastewater system.

RECOMMENDATIONS

To provide for the proper and responsible management of the Fayetteville Wastewater System it is recommended that the Fayetteville City Council approve an out-of-scope contract amendment with Operations Management International for $250,000.00. The fiscal year 2003 budgeting process coupled with the fiscal year 2002 cost deference has provided necessary funding in the lift station maintenance and replacement account to complete this improvement. This activity was reviewed and approved by the Fayetteville Water and Sewer Committee on April 29. 2003.

Hamestring Lift Station Service Area



OMI Hamstring
Lift Station
C. 7, Page 7

October 1, 2002

Greg Boettcher
Public Works Director
113 West Mountain
Fayetteville, AR

Dear Mr. Boettcher:

In accordance with section 2.26 of our Agreement, OMI would be pleased to provide the necessary professional services to modify an existing lift station owned by the City of Fayetteville, Arkansas, and to perform inspection of the sewer force main responsible for conveyance between the lift station to be modified and the "downstream" receiving lift station. The lift station is physically located at 2034 N. County Road 877 and more generally known as the Hamestring Creek Lift Station.

The modification effort is intended to increase the lift station's pumped flow capacity by installation of a third pump and additional wet well.

The force main inspection portion of this Scope entails inspection of the sewer force main at judiciously selected locations including points of directional change and other locations where engineering concerns deem necessary.

Specifically, the Scope of Work includes the following:

A. Providing or causing to be provided:

1. Engineering design services necessary to effect design of all structural modifications required under the Engineer's proposal,
2. Engineering inspection and evaluation services of the force main as necessary, with all required excavation and replacement of soil to be performed by the City's Water and Sewer division,
3. Construction services necessary to implement the Engineer's design,
4. Acquisition and installation of required pump and its appurtenances,
5. Acquisition and installation of all associated electrical devices, conduit, and wiring,
6. Integration of new pump into the existing SCADA system,
7. Modification of the electrical service feed capacity to the lift station to accommodate addition load, if necessary,
8. Removal of all construction debris and restoration of the landscape to near pre-construction conditions,
9. Provision of an assessment of the current pump capacities at the receiving lift station located at Porter Road and Hatfield Street. The assessment will be provided to the engineering firm responsible for the design of the lift station modifications to insure the receiving lift station's capacity has been considered in the project's design, and,
10. Project management and construction oversight services necessary to coordinate and deliver the project.

This scope specifically excludes services necessary to improve, reinforce, repair, or modify any section, part, or appurtenance of the force main. Every effort will be made to execute this Scope with minimal disruption of service to the function of the collection system.

OMI proposes to provide the above at our cost plus 18%, as per our agreement. The total cost to the City of Fayetteville shall not exceed $250,000 without further approval. OMI expects to complete the work within six months following an approved start date and will invoice the City for 1/6th of the total approved amount of $250,000.00 per month beginning the 1st of the month following execution of this letter. Upon completion of this task, OMI will provide the City of Fayetteville with a detailed list of expenses and a rebate of any monies not expended. All other terms and conditions of our Agreement remain in full force and effect.

If these terms are acceptable, please have the Mayor sign two copies of this agreement letter and return one fully executed copy to me. As always, we appreciate the opportunity to work in partnership with you and the City of Fayetteville.

Sincerely,

Billy L. Ammons, Project Manager

Both Parties indicate their approval of the above services by their signature below.

Authorized signature

_____

Dan Coody
Mayor
City of Fayetteville, Arkansas

Date:_____

Authorized signature

_____

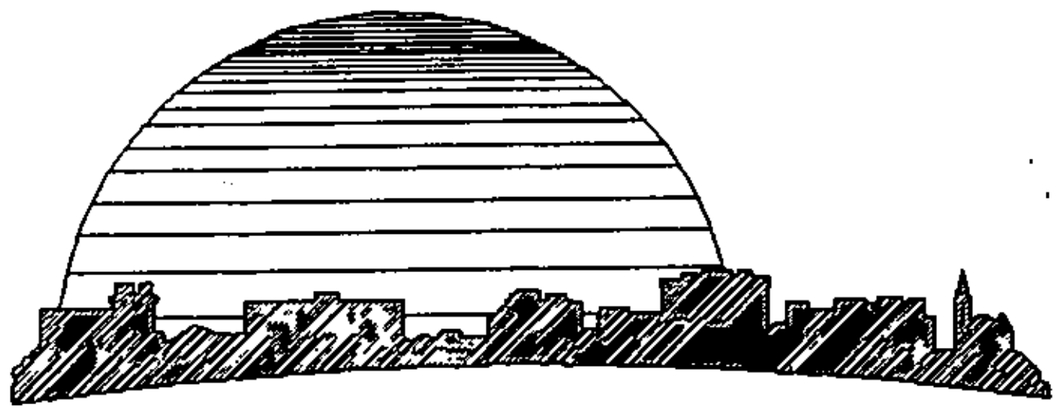
Edward F. Forbes, Jr.
Executive Vice President of Project Delivery
Operations Management International

Date:_____

TECHNICAL MEMORANDUM

Presented to

CITY OF FAYETTEVILLE, ARKANSAS



HAMESTRING LIFT STATION
INTERIM OVERFLOW ELIMINATION

TECHNICAL MEMORANDUM

DATE: March 2003

Prepared by

RJN Group, Inc
12160 Abrams Road, Suite 206
Dallas, Texas 75243
rjndallas@rjn.com

RJN GROUP, INC.
An Employee-Owned Firm
Engineering Consulting and
Information Technology Services

972.437.4300
fax 972.437.2707
www.rjn.com

March 31, 2003

Mr. Greg Boettcher, P.E.
Water and Wastewater Director
City of Fayetteville
113 W. Mountain Street
Fayetteville, AR 72701

Subject: Technical Memorandum
Hamestring Lift Station Assessment

Dear Mr. Boettcher:

RJN Group Inc. is pleased to submit the attached assessment of the Hamestring Lift Station. The assessment of the lift station addresses the reduction of overflows at the lift station for current wet weather flows and projected flows through the year 2005. It is assumed for the basis of recommendations that this is an interim measure to eliminate overflows during a 1-year/60-minute design storm. The lift station is scheduled to be replaced as part of the Wastewater System Improvements planned for implementation by 2005.

It appears that the cost effective solution to resolve overflows at Hamestring is the addition of a large pump and wet well at an estimated construction cost of $180,000. This does present concerns over the condition of the force main and the hydraulic impacts of increasing the flow in the main over 2 times current conditions. Assuming that the existing cast iron main is in reasonably good shape, other issues such as water hammer effects and securing joints can be addressed in the design. If the main is in poor condition, the addition of the large pump may cause more problems than it solves. As part of the design of the pump improvements, an assessment of the force main will be required to confirm that it will be adequate for the additional flow.

We appreciate the opportunity to provide this analysis for the City of Fayetteville. If you have questions or concerns, please contact Hugh Kelso or me at (972) 437-4300 or mmckay@rjn.com.

Sincerely,

RJN GROUP, INC.

Michael G. McKay, P.E.

Executive Summary

A large portion of the northwest side of the City of Fayetteville's wastewater collection system flows into the Hamestring Lift Station. Originally designed for a design flow of 550 gallons per minute in the early 1970s and expanded to 800 gallons per minute in the late 1980s, the station provides adequate capacity to meet dry weather wastewater flows. Unfortunately, during mild to heavy rain events, flows to the station increase substantially (over 2,500 gallons per minute), potentially causing wastewater overflows at the lift station. This report investigates several interim solutions to reduce the probability of overflows at the lift station. These measures are temporary in nature since the future west side wastewater collection system and plant improvements will resolve issues with overflows at the Hamestring Lift Station.

The following options were investigated to reduce the overflow potential at Hamestring Lift Station

- Addition of a new pump to meet wet weather flows (with and without additional storage)
- Addition of new storage without new pumps
- Rehabilitation of the upstream collection system to minimize rainfall impacts
- Replacement of the existing force main with minimal pumping improvements

The most cost effective temporary solution is the addition of a new pump and additional storage for an estimated construction cost of $180,000. This provides both additional capacity to address wet weather flow as well as providing a 50 percent increase in dry weather flow capacity at the lift station. This additional dry weather capacity equates to an increase of nearly 3,000 residential units in the basin (based on a firm capacity of 1,200 gpm). This significantly exceeds the current 2006 flow projections.

It is also recommended that these improvements be constructed as soon as possible, since there have been between four and six overflows per year for the past three years at the site. It is anticipated that these improvements could be in place by late summer, 2003.

October 1, 2002

Greg Boettcher
Public Works Director
113 West Mountain
Fayetteville, AR

Dear Mr. Boettcher:

In accordance with section 2.26 of our Agreement, OMI would be pleased to provide the necessary professional services to modify an existing lift station owned by the City of Fayetteville, Arkansas, and to perform inspection of the sewer force main responsible for conveyance between the lift station to be modified and the "downstream" receiving lift station. The lift station is physically located at 2034 N. County Road 877 and more generally known as the Hamestring Creek Lift Station.

The modification effort is intended to increase the lift station's pumped flow capacity by installation of a third pump and additional wet well.

The force main inspection portion of this Scope entails inspection of the sewer force main at judiciously selected locations including points of directional change and other locations where engineering concerns deem necessary.

Specifically, the Scope of Work includes the following:

A. Providing or causing to be provided:

1. Engineering design services necessary to effect design of all structural modifications required under the Engineer's proposal,
2. Engineering inspection and evaluation services of the force main as necessary, with all required excavation and replacement of soil to be performed by the City's Water and Sewer division,
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4. Acquisition and installation of required pump and its appurtenances,
5. Acquisition and installation of all associated electrical devices, conduit, and wiring,
6. Integration of new pump into the existing SCADA system,
7. Modification of the electrical service feed capacity to the lift station to accommodate addition load, if necessary,
8. Removal of all construction debris and restoration of the landscape to near pre-construction conditions,
9. Provision of an assessment of the current pump capacities at the receiving lift station located at Porter Road and Hatfield Street. The assessment will be provided to the engineering firm responsible for the design of the lift station modifications to insure the receiving lift station's capacity has been considered in the project's design, and,
10. Project management and construction oversight services necessary to coordinate and deliver the project.

This scope specifically excludes services necessary to improve, reinforce, repair, or modify any section, part, or appurtenance of the force main. Every effort will be made to execute this Scope with minimal disruption of service to the function of the collection system.

OMI proposes to provide the above at our cost plus 18%, as per our agreement. The total cost to the City of Fayetteville shall not exceed $250,000 without further approval. OMI expects to complete the work within six months following an approved start date and will invoice the City for 1/6th of the total approved amount of $250,000.00 per month beginning the 1st of the month following execution of this letter. Upon completion of this task, OMI will provide the City of Fayetteville with a detailed list of expenses and a rebate of any monies not expended. All other terms and conditions of our Agreement remain in full force and effect.

If these terms are acceptable, please have the Mayor sign two copies of this agreement letter and return one fully executed copy to me. As always, we appreciate the opportunity to work in partnership with you and the City of Fayetteville.

Sincerely,

Billy L. Ammons, Project Manager

Both Parties indicate their approval of the above services by their signature below.

Authorized signature

_____
Dan Coody
Mayor
City of Fayetteville, Arkansas

Date:_____

Authorized signature

_____
Edward F. Forbes, Jr.
Executive Vice President of Project Delivery
Operations Management International

Date:_____

EXISTING CONTRACT

AGREEMENT
for
OPERATIONS, MAINTENANCE AND MANAGEMENT SERVICES
for the
CITY OF FAYETTEVILLE, ARKANSAS

THIS AGREEMENT is made on this 16TH day of AUGUST 1994, between City of Fayetteville (hereinafter "Owner"), whose address for any formal notice is 113 West Mountain, Fayetteville, Arkansas 72701 and Operations Management International, Inc., (hereinafter "OMI") with offices at Englewood, Colorado, whose address for any formal notice is 5299 DTC Blvd., Suite 1200, Englewood, Colorado 80111-3333.

Owner and OMI agree:

1. GENERAL

1.1 All definitions of words or phrases used in this Agreement are contained in Appendix A.

1.2 All grounds, facilities, equipment, and vehicles now owned by Owner or acquired by Owner shall remain the property of Owner.

1.3 This Agreement shall be governed by and interpreted in accordance with the laws of the State of Arkansas and venue shall be in Washington County, Arkansas.

1.4 This Agreement shall be binding upon the successors and assigns of each of the parties, but neither party will assign this Agreement without the prior written consent of the other party. Consent shall not be unreasonably withheld.

1.5 All notices shall be in writing and transmitted by certified mail to the address noted above.

1.6 This Agreement, including Appendices, is the entire Agreement of the parties. This Agreement may be modified only by written agreement signed by both parties. Wherever used, the terms "OMI" and "Owner" shall include the respective officers, agents, directors, elected or appointed officials, and employees.

2.23 Verify the capacity and efficiency of each pump in the sewage pump stations in year one (1) of the contract and to repeat the operation once every three (3) years thereafter.

2.24 Travel expenses and labor to provide visits and consultation with regulatory agencies for all items within the scope of this contract.

2.25 Provide recommendations for Capital Improvements with a schedule for improvements and expenditures within thirty (30) days of contract renewal and in the month of January of each successive contract year. A five (5)year schedule will be presented for all capital improvements and ten (10) year projections will be made for major improvements. These recommendations will be based on requirements determined from facility operations and does not include detailed engineering studies. In addition, OMI will prepare the required forms and documentation required during budget and capital improvements budget preparation time each year. OMI shall meet deadlines as set forth in the budget and CIP preparation manual. Except for the improvements requiring an engineering study, the following will be included for each project:

- Improvement needed
- Justification of improvements
- Cost of improvements
- Any projected increase or decrease in O&M costs created by the Project
- Proposed expenditure schedule
- Proposed capital recovery schedule
- Impact of early termination

OUT-OF-SCOPE TASK ORDER

2.26 Perform other services that are incidental to the Scope of Services upon written notification by Owner. Such services will be invoiced to Owner at OMI's Cost plus eighteen percent (18%).

2.27 Provide Owner with oral and written reports as requested.

2.28 Operate and maintain all existing wastewater lift station facilities including buildings and grounds. However, maintenance of inlet and outlet pipeworks shall terminate at the wall of lift station. Should the owner add in excess of Six (6) additional lift stations a corresponding change of scope would be negotiated.

2.29 OMI will comply with present and future, federal, state and local laws in performing their obligations under the terms of this agreement.

STAFF REVIEW FORM - FINANCIAL OBLIGATION

Carter Burgess
C. 8. Page 1

XX AGENDA REQUEST
XX CONTRACT REVIEW
GRANT REVIEW

For the Fayetteville City Council Meeting of: May 20, 2003

FROM:

Connie Edmonston — Name
Parks and Recreation — Division
Operations — Department

ACTION REQUIRED: Approval of contract with Carter Burgess Architects/Engineers, Inc for design and engineering services for a pedestrian bridge across Lake Fayetteville spillway in the amount of $42,536 plus a ten percent project contingency of $4,254, for a total cost of $46,790.

COST TO CITY:

$46,790.00 — Cost of this request
44/0-94/0-5400.00
2250-9255-5315.00 — Account Number
02043.01 — Project Number

$ 280,295.00 — Category/Project Budget
$ 75.00 — Funds Used to Date
$ 280,220.00 — Remaining Balance

Lake Fayetteville/Sequoyah Impro — Program Category / Project Name
Parks Development — Program / Project Category Name
Parks Development — Fund Name

BUDGET REVIEW: x Budgeted Item ____ Budget Adjustment Attached

Budget Manager — 4-24-03 Date

CONTRACT/GRANT/LEASE REVIEW:

Marsha Fawthrop — Accounting Manager — 4/29/03 Date
Danny Smith — Internal Auditor — 4/29/03 Date
D.J. White — City Attorney — 4/30/03 Date
Purchasing Manager — 5/1/03 Date

STAFF RECOMMENDATION: Approval of contract.

Division Head — 4-29-03 Date
Department Director — 5-2-03 Date
Finance & Internal Services Dir. — 5-2-03 Date
Chief Administrative Officer — 5-4-03 Date
Mayor — 5/5/03 Date

Received in Mayor's Office 5/1/03 pm

Cross Reference:

Previous Ord/Res#:
Orig. Contract Date:
Orig. Contract Number:

New Item: **Yes** NO

Staff Review Form - Page 2

Description Lake Fayetteville Sprillway Bridge Meeting Date May 20, 2003

Comments: Reference Comments:

Budget Manager

Accounting Manager

City Attorney

Purchasing Manager

ADA Coordinator

Internal Auditor

Grants Coordinator

RESOLUTION NO. _____

A RESOLUTION APPROVING A CONTRACT WITH CARTER BURGESS ARCHITECTS/ENGINEERS, INC. IN THE AMOUNT OF FORTY-TWO THOUSAND FIVE HUNDRED THIRTY-SIX DOLLARS ($42,536.00) FOR DESIGN AND ENGINEERING SERVICES ASSOCIATED WITH THE LAKE FAYETTEVILLE SPILLWAY PEDESTRIAN BRIDGE PROJECT; AND APPROVING A TEN PERCENT (10%) PROJECT CONTINGENCY .

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

Section 1. That the City Council of the City of Fayetteville, Arkansas hereby approves a contract with Carter Burgess Architects/Engineers, Inc. in the amount of Forty-Two Thousand Five Hundred Thirty-Six Dollars ($42,536.00) for design and engineering services associated with the Lake Fayetteville Spillway Pedestrian Bridge Project.

Section 2. That the City Council of the City of Fayetteville, Arkansas hereby approves a ten percent (10%) project contingency.

PASSED and **APPROVED** this 20th day of May, 2003.

DRAFT

APPROVED:

By: _____
DAN COODY, Mayor

ATTEST:

By: _____
SONDRA SMITH, City Clerk

FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

TO: Mayor Coody and City Council
THRU: Gary Dumas, Operations Director
Connie Edmonston, Parks and Recreation Director
FROM: Steve Hatfield, RLA, ASLA, Trails & Greenways Coordinator
DATE: April, 18 2003
SUBJECT: Approval of contract with Carter Burgess Architects/Engineers, Inc. for design and engineering of a pedestrian bridge across the Lake Fayetteville spillway.

Background
Lake Fayetteville was completed in late 1949 and included 147 acres of land surrounding the lake. Lake Fayetteville has since become the source of much pride for Fayetteville. The Lake is currently used for fishing, canoeing, hiking, mountain biking, softball, volleyball, and picnicking. The park amenities at Lake Fayetteville include five and one-half miles of extensive hiking and biking trails around the Lake.

During a series of public meetings held during the Parks Master Plan update process, last year, citizens repeatedly and overwhelmingly indorsed continued improvements to the Lake Fayetteville trail and through out the city

The bridge will be a tremendous asset to the trail system and to the City. Constructing a bridge across the spillway area will complete the loop trail connecting Veterans Memorial Park to the North Shore Site. This Project, (Lake Fayetteville Spillway Bridge) will open up this wonderful trail experience to many Fayetteville citizens and visitors alike.

Current Status
A Professional Services Selection Committee had the arduous task of reviewing 4 proposals from some of the top Engineering firms in the area. Of the firms that submitted proposals Carter Burgess was selected to provide professional bridge design and engineering services for the Spillway Bridge.

Recommendation
The Parks and Recreation Division staff negotiated the scope of services and recommends a contract be entered into with Carter Burgess Architects/Engineers, Inc. for the amount of $42,536.24 plus a ten (10%) percent project contingency of $4,255 for a total project cost of $46,791.24

If you have any questions or need additional information, please call me at 718-7688.

Attachments:
Contract
Scope of Services
Cost Justification

CITY OF FAYETTEVILLE
CONTRACT FOR SERVICES

This Contract is entered into on this _____ day of _____, 2003, between the City of Fayetteville, a municipal corporation, and Carter & Burgess Architects/Engineers, Inc.

In consideration of the mutual covenants contained herein, and other good and valuable consideration, the City of Fayetteville and Carter & Burgess Architects/Engineers, Inc. agree as follows:

1. All of the provisions of Attachment-A are hereby incorporated by reference as if set forth word for word herein.

2. Carter & Burgess Architects/Engineers, Inc. agrees and understands that it shall make available all records for review by the City of Fayetteville and its auditors as requested. Carter & Burgess Architects/Engineers, Inc. agrees and understands that it shall submit, upon request, to the City of Fayetteville, any and all documents demonstrating compliance with all federal, state, and local rules and regulations. The City of Fayetteville's failure to request supporting documentation, however, shall not excuse any failure on the Carter & Burgess Architects/Engineers, Inc.'s part to have complied with the applicable federal, state, and local rules and regulations. Carter & Burgess Architects/Engineers, Inc. agrees and understands that all contracts for services and other procurement for materials, services or construction shall be carried out in compliance with applicable federal, state, and local rules and regulations.

3. Carter & Burgess Architects/Engineers, Inc. shall hold harmless, defend and indemnify the City from any and all claims, actions, suits, charges and judgments whatsoever that arise out of performance or nonperformance of the services or subject matter called for in this contract, provided that nothing herein shall be construed to alter, limit or otherwise compromise that immunity afforded the City of Fayetteville under the Constitution and Statutes of the State of Arkansas.

4. Carter & Burgess Architects/Engineers, Inc. agrees and understands that any changes, modifications, or amendments in scope, price or fees to this contract shall not be allowed without a prior formal contract amendment approved by the Mayor and the City Council **in advance** of the change in scope, cost or fees.

5. Nothing in this agreement shall be construed to give any rights or benefits to any party other than Carter & Burgess Architects/Engineers, Inc. and the City of Fayetteville.

6. Carter & Burgess Architects/Engineers, Inc. agrees and understands that City contracts and documents prepared while performing city contractual work are subject to the Arkansas Freedom of Information Act. If a Freedom of Information Act request is presented to the City of Fayetteville, Carter & Burgess Architects/Engineers, Inc. will do everything possible to provide the documents in a prompt and timely manner as prescribed in the Arkansas

Freedom of Information Act (A.C.A. §25-19-101 et. seq.). Only legally authorized photocopying costs pursuant to the FOIA may be assessed for this compliance.

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

8. The parties agree and understand that this contract is exclusive of any and all previous contracts which may exist, and that it in no way alters, amends or abridges any rights, obligations or duties of the parties contained in such contracts.

9. It is agreed that the failure of any party to invoke any of the available remedies under this agreement or under law in the event of one or more breaches or defaults by any party under the agreement shall not be construed as a waiver of such provisions and conditions and shall not prevent the parties from invoking such remedies in the event of any future breach or default.

10. Each paragraph of this 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 shall remain in full force and effect.

11. This contract constitutes the entire understanding of the parties and no modification or variation of the terms of this contract shall be valid unless made in writing and signed by the duly authorized agents of the City of Fayetteville and Carter & Burgess Architects/Engineers, Inc.

12. Each of the undersigned warrants that he or she has the full right, power and authority to execute this contract on behalf of the party indicated for the purposes herein contained.

IN WITNESS WHEREOF, we have hereunto set our hands on the date first written above.

ATTEST:

By: _____
SONDRA

Signed Contracts will be forwarded as soon as they are received.

CITY OF FAYETTEVILLE

By: _____
DAN COODY, Mayor

CARTER & BURGESS ARCHITECTS/ENGINEERS, INC.

By: _____

Attachment - A

SCOPE OF SERVICES

Lake Fayetteville Spillway Bridge
Fayetteville, Arkansas

The Basic Services proposed for this project include bridge design, development of plans, specifications and cost estimates, review of bids, shop drawing review and participation in the final inspection for a bridge over the spillway on Lake Fayetteville in Fayetteville, Arkansas.

PROJECT ASSUMPTIONS

The cost, fees, and scope of services for this proposal has been prepared using the following assumptions:

- The total budget at this time is 300,000.00 Dollars for design and construction.
- The superstructure will be supplied by a pre-engineered pedestrian bridge manufacturer.
- The bridge may be multi-span, 200 to 300 feet in length, requiring no more than one design for the abutments and one for the intermediate bents.
- Bridge will be 10 to 12 feet wide.
- All trail design will be performed by the owner, including horizontal and vertical geometry.
- The project will require only six meetings.
- No substantial changes will be made to the bridge by the owner after the 35 percent review.
- The owner will perform the bidding process and construction observation.

INFORMATION TO BE SUPPLIED BY THE CITY OF FAYETTEVILLE

The City of Fayetteville will arrange for the exchange of information and engineering data between other consultants who have prepared plans within the project locale and the Carter & Burgess Design team. The following specific items will be supplied by the City to the Design Team:

Existing Utility Information - The City will provide as-built plans for all existing utilities located within the limits of design or construction for the project, including electrical, water, sanitary sewer, and storm drainage facilities.

Inspection Reports – The City will provide inspection reports performed on the dam and weir for the last three years.

Dam and Spillway Plans – The City will provide all available plans and reports for the construction of the dam, spillway, and weir.

SCOPE OF SERVICES

The Basic Services are defined as follows:

1. **Meetings**
   - Kick-Off Meeting – set parameters and define goals and objectives for the design of the bridge
   - Site visit – discuss bridge alternatives and select preferred bridge type and location
   - Three (3) Construction Site Visits – as directed by the City to observe construction and give recommendations
   - Final Inspection – walk through project with the City after construction is complete

2. **Alternative Bridge and Alignment Study**
   - Work with the City through the development of alternate bridge types at select locations to determine the preferred alternative.
   - Carter and Burgess will develop three (3) to five (5) alternatives that meet the parameters, goals, and objective of the project as set forth in the design meeting.

- Alternatives will be developed to a schematic level with deliverables to include a profile sketch of the bridge, plan view showing a possible trail alignment and projected toes of slope, and an estimated cost of the bridge based on available information.

3. **Site Survey**
   - Topographic surveys will be conducted within the limits of construction of bridge for the preferred alternative.

4. **Geotechnical Investigation**
   - Geotechnical investigations will be performed by Grubbs, Hoskyn, Barton & Wyatt, Inc.

5. **Bridge Design**
   - The selected bridge alternative will be designed and plans developed in accordance with AASHTO *Standard Specifications for Highway Bridges* and *Guide Specifications for Design of Pedestrian Bridges.*

6. **Construction Documents**
   - Provide plans, specifications, and cost estimate for the construction of a single bridge over the spillway.

7. **Bidding**
   - Review bids for the bridge construction and make an award recommendation.

8. **Construction Observation**
   - Review of contractor shop drawings submittals required by construction documents.
   - Visit the project site with the City during the final inspection.

CORRESPONDANCE

1. The City of Fayetteville's representative shall be Steve Hatfield, until written notice is provided to Carter and Burgess designating a new representative.
2. The Carter and Burgess representative shall be Mark Asher, P.E., until written notice is provided to the City of Fayetteville designating a new representative.

REIMBURSABLE EXPENSES

1. Out of pocket expenses related to mileage, meals with travel, courier expenses, printing, postage and graphic reproduction shall be reimbursed at cost as set forth in the cost justification.
2. Cost of Geotechnical Engineering services provided by Grubbs, Hoskyn, Barton and Wyatt, Inc. shall be reimbursed at cost as set forth in the cost justification.
3. Cost of permits or filing fees required by regulatory agencies or departments obtained for the City of Fayetteville shall be paid by the City of Fayetteville.

ADDITIONAL SERVICES

4. Additional services shall consist of, but not be limited to, the following items:
   - Client generated changes to design once work is in progress, will be billed at hourly rates per proposals approved by the City of Fayetteville, until the work is at the same level of completion as it was prior to the change.
   - Design of elements outside the limits of the project scope.
   - Additional meetings at the request of the City.
   - The City of Fayetteville shall approve all changes to the contract and authorize all additional services.

EXCLUDED SERVICES

The following services are specifically excluded from this proposal, but may be added at the Client's request:

- Hydraulic and Scour Analysis.
- Design and construction documents for trail approaches to the bridge.

COST JUSTIFICATION

Lake Fayetteville Spillway Bridge

Fayetteville , Arkansas

Carter::Burgess

1. Direct Labor		**Rate/Hour**	**Manhours**	**Cost**	**Subtotals**
	Principal	$50.00	0.00	$0.00	
	Project Manager	$41.35	96.00	$3,969.60	
	Senior Engineer	$36.22	94.00	$3,404.68	
	Design Engineer	$20.19	80.00	$1,615.20	
	Senior Tech/Designer	$26.00	36.00	$936.00	
	Tech/CADD	$16.75	130.00	$2,177.50	
	Survey Crew	$30.00	20.00	$600.00	
	Secretary	$13.00	16.00	$208.00	
			472.00	$12,910.98	$12,910.98
2. Burden		**Rate**	**Base**	**Cost**	
	General Office Overhead	162.97 %	$12,910.98	$21,041.02	
				$21,041.02	$21,041.02
3. Direct Costs					
	Computer/CADD	0.00 Hrs @	$11.00 /Hr =	$0.00	
	Plots	30.00 Shts @	$2.00 /Sht =	$60.00	
	Draft Plots	60.00 Shts @	$1.00 /Sht =	$60.00	
	Photo copies	200.00 Shts @	$0.08 /Sht =	$16.00	
	Telephone/FAX Charges	0.00 min @	$0.09 /min =	$0.00	
	Express Deliveries	4.00 @	$20.00 /Ea =	$80.00	
	Courier Deliveries	4.00 @	$20.00 /Ea =	$80.00	
	Auto Mileage	2400.00 mi @	$0.36 /mi =	$864.00	
	Air Travel	0.00 RT @	$200.00 /RT =	$0.00	
	Per Diem		$80.00 /Day =	$0.00	
	Other				
				$1,160.00	$1,160.00
4. Subcontracts					
	1. Geotechnical Engineer - Grubbs, Hoskyn, Barton & Wyatt			$3,350.00	
				$3,350.00	$3,350.00
5. Fee					
	Fee			$4,074.24	
				$4,074.24	$4,074.24
6. Carter & Burgess Total Contract Cost					**$42,536.24**

See Attachment -A for proposed scope and assumptions used in preparing this cost estimate.

- Receipt of bids and award of contract.
- Daily construction inspection or observation.
- Review of contractor submittals not required by construction documents.

FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

Item # 9 Hotel & Restaurant Bonds (Series 2003): Additional Information:

The Preliminary Official Statement, Trust Indenture, Bond Purchase Agreement, Escrow Deposit Agreement, and Continuing Disclosure Agreement documents that are related to this Agenda Item are available for your review in the City Clerk's Office.

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

STAFF REVIEW FORM

XX AGENDA REQUEST
____ CONTRACT REVIEW
____ GRANT REVIEW

For the Fayetteville City Council Meeting of: **May 20, 2003**

FROM:

Stephen Davis	Finance & Internal Services Div.	Finance & Internal Services
Name	Division	Department

ACTION REQUIRED: Approval of an ordinance authorizing the issuance and sale of not to exceed $6,620,000 of Hotel and Restaurant Gross Receipts Tax Refunding Bonds, Series, 2003.

COST TO CITY:

Cost of issuance is deducted from bond proceeds		
Cost of this request		Program Category / Project Name
	$ -	
Account Number	Funds Used to Date	Program / Project Category Name
	$ -	
Project Number	Remaining Balance	Fund Name

BUDGET REVIEW: N/A Budgeted Item ____ Budget Adjustment Attached

Budget Manager — 4-28-03 Date

CONTRACT/GRANT/LEASE REVIEW:

Marsha Fairchild — 4/28/03 Date — Accounting Manager
Nancy Smith — 4/28/03 Date — Internal Auditor
[signature] — 4/30/03 Date — City Attorney
[signature] — 5/1/03 Date — Purchasing Manager

STAFF RECOMMENDATION:

5/1/03 RH

Division Head — Date

Department Director — Date

Finance & Internal Services Dir. — 4-28-03 Date

Chief Administrative Officer — 5-1-03 Date

Mayor — 5/1/03 Date

Cross Reference

New Item: Yes (No)

Previous Ord/Res#: Res. 43-03 April 1, 2003

Orig. Contract Date ____

Orig. Contract Number ____

Staff Review Form - Page 2

Description _____ Meeting Date _____

Comments:

Reference Comments:

Budget Manager

Accounting Manager

City Attorney

Purchasing Manager

ADA Coordinator

Internal Auditor

Grants Coordinator

FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

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

LEGAL DEPARTMENT

DEPARTMENTAL CORRESPONDENCE

TO: **Steve Davis**, Finance & Internal Services Director

FROM: **Kit Williams**, City Attorney

DATE: **April 30, 2003**

RE: **Refunding Ordinance for Town Center Bond**

Section 1:

The original Town Centers Bonds were specifically limited to a number of years before they would be paid off. It appears that the October 1, 2015 date complies with that requirement. Please confirm we are within the allotted pay off period if we refinance.

FAYETTEVILLE

DEPARTMENTAL CORRESPONDENCE

TO: Fayetteville City Council

THROUGH: Dan Coody, Mayor
Hugh Earnest, Chief Administrative Officer

FROM: Stephen Davis, Finance & Internal Services Director

DATE: April 28, 2003

SUBJECT: City of Fayetteville, Arkansas Hotel and Restaurant Gross Receipts Tax Bonds – Series 1998

Background

The City issued bonds to pay for a portion of the construction cost of the Fayetteville Town Center in 1998. The City's bond underwriter for the original bond issue, Stephen's Inc, has previously provided the City with an analysis that predicts a net present value benefit of approximately $334,000 when the bonds are re-financed.

Discussion

City Council previously authorized Staff, Kutak Rock (bond counsel), and Stephens, Inc (bond underwriter) to begin developing the necessary bond documents to re-finance the 1998 Town Center Bond Issue. This bond re-financing proposal has been made to the Advertising & Promotion Commission and they approved a resolution in support of re-financing the bonds.

This request places the re-financing ordinance before City Council for approval. Additionally, a draft of the City of Fayetteville Hotel and Motel Gross Receipts Tax Refunding Bonds, Series 2003 Trust Indenture is included for Council review. The series 2003 bonds are expected to be sold and the bond issue closed on July 10, 2003.

Conclusion

The Advertising & Promotion Commission and Staff recommend enactment of the re-financing ordinance.

KUTAK ROCK LLP
DRAFT 4/25/03

ORDINANCE NO. _____

AN ORDINANCE AUTHORIZING THE ISSUANCE AND SALE OF NOT TO EXCEED $6,620,000 OF HOTEL AND RESTAURANT GROSS RECEIPTS TAX REFUNDING BONDS, SERIES 2003, BY THE CITY OF FAYETTEVILLE, ARKANSAS FOR THE PURPOSE OF REFUNDING THE CITY'S OUTSTANDING HOTEL AND RESTAURANT GROSS RECEIPTS TAX BONDS, SERIES 1998; AUTHORIZING THE EXECUTION AND DELIVERY OF A TRUST INDENTURE PURSUANT TO WHICH THE SERIES 2003 BONDS WILL BE ISSUED AND SECURED; AUTHORIZING THE EXECUTION AND DELIVERY OF AN OFFICIAL STATEMENT PURSUANT TO WHICH THE SERIES 2003 BONDS WILL BE OFFERED; AUTHORIZING THE EXECUTION AND DELIVERY OF A BOND PURCHASE AGREEMENT PROVIDING FOR THE SALE OF THE SERIES 2003 BONDS; AUTHORIZING THE EXECUTION AND DELIVERY OF AN ESCROW DEPOSIT AGREEMENT PROVIDING FOR THE REDEMPTION OF THE SERIES 1998 BONDS; AUTHORIZING THE EXECUTION AND DELIVERY OF A CONTINUING DISCLOSURE AGREEMENT; AND PRESCRIBING OTHER MATTERS RELATING THERETO.

WHEREAS, the City of Fayetteville, Arkansas (the "City") is authorized under the provisions of the Advertising and Promotion Commission Act, Arkansas Code Annotated (1997 Repl.) §§26-75-601 *et seq.* (as from time to time amended, the "Act"), to issue its bonds secured by and payable from the revenues derived by the City from the one percent (1%) tax (the "Tax") levied by the City pursuant to Ordinance No. 2310 adopted by the City on March 1, 1977, as subsequently amended, upon the gross receipts or gross proceeds (i) derived from renting, leasing or otherwise furnishing hotel or motel accommodations for profit within the boundaries of the City and (ii) of restaurants, cafes, cafeterias, delis, drive-in restaurants, carry-out restaurants, concession stands, convenience stores, grocery store-restaurants, caterers and similar businesses within the boundaries of the City engaged in the business of selling prepared food for on-premises or off-premises consumption; and

WHEREAS, pursuant to the provisions of Ordinance No. 4038, duly adopted by the City on June 3, 1997, there was submitted to the qualified electors of the City the question of the issuance of not to exceed $6,950,000 in principal amount of bonds pursuant to the Act, said bonds to be secured by a pledge of and lien upon the City's receipts of the Tax (the "Tax Receipts"); and

WHEREAS, at a special election held August 5, 1997, a majority of the qualified electors of the City voting on the aforementioned question approved the issuance of the bonds and the corresponding pledge of the Tax Receipts to the payment thereof; and

WHEREAS, pursuant to the Act and the results of the aforementioned election, the City issued its City of Fayetteville, Arkansas Hotel and Restaurant Gross Receipts Tax Bonds, Series

1998, dated November 1, 1998 (the "Series 1998 Bonds"), for the purpose of financing a portion of the costs of constructing the Fayetteville Town Center (the "1998 Project"); and

WHEREAS, the Series 1998 Bonds were originally issued in the aggregate principal amount of $6,950,000, of which $6,620,000 presently remains outstanding; and

WHEREAS, the City has also, pursuant to the Act and an ordinance duly adopted by the City, previously issued its $2,675,000 City of Fayetteville, Arkansas Hotel and Restaurant Gross Receipts Tax Refunding Bonds, Series 1995, dated October 1, 1995 (the "Series 1995 Bonds"), of which $700,000 in principal amount presently remains outstanding, for the purpose of financing the construction and equipping of convention facilities; and

WHEREAS, the City has now determined that debt service savings can be realized with respect to the Series 1998 Bonds by issuing its Hotel and Restaurant Gross Receipts Tax Refunding Bonds, Series 2003 (the "Series 2003 Bonds"), for the purpose of refunding the Series 1998 Bonds; and

WHEREAS, the payment of debt service on the Series 2003 Bonds will be secured by a pledge of the Tax Receipts on a junior and subordinate basis to the pledge of Tax Receipts securing the payment of debt service on the Series 1995 Bonds; and

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

Section 1. Under the authority of the Constitution and laws of the State of Arkansas, including particularly Amendment 65 to the Constitution of the State of Arkansas and the Act, there is hereby authorized the issuance of bonds of the City to be designated as "Hotel and Restaurant Gross Receipts Tax Refunding Bonds, Series 2003" (the "Series 2003 Bonds"). The Series 2003 Bonds shall be issued in the original aggregate principal amount of not to exceed Six Million Six Hundred Twenty Thousand Dollars ($6,620,000), shall mature not later than October 1, 2015, and shall bear interest at the rates specified in the Bond Purchase Agreement. The average yield on the Series 2003 Bonds as a whole shall not exceed 3.75% per annum. The proceeds of the Series 2003 Bonds will be utilized to finance a portion of the cost of redeeming the Series 1998 Bonds, to establish a debt service reserve for the Series 2003 Bonds or purchase a surety bond for reserve purposes, to pay a premium for bond insurance, if deemed economically beneficial, and to pay printing, underwriting, legal and other expenses incidental to the issuance of the Series 2003 Bonds. The Series 2003 Bonds shall be issued in the forms and denominations, shall be dated, shall be numbered, shall mature, shall be subject to redemption prior to maturity, and shall contain such other terms, covenants and conditions, all as set forth in the Trust Indenture submitted to this meeting.

The Mayor is hereby authorized and directed to execute and deliver the Series 2003 Bonds in substantially the form thereof contained in the Trust Indenture submitted to this meeting, and the City Clerk is hereby authorized and directed to execute and deliver the Series 2003 Bonds and to affix the seal of the City thereto, and the Mayor and City Clerk are hereby authorized and directed to cause the Series 2003 Bonds to be accepted and authenticated by the Trustee. The Mayor is hereby authorized to confer with the Trustee, Stephens Inc., Fayetteville,

Arkansas (the "Underwriter"), and Kutak Rock LLP, Little Rock, Arkansas ("Bond Counsel"), in order to complete the Series 2003 Bonds in substantially the form contained in the Trust Indenture submitted to this meeting, with such changes as shall be approved by such persons executing the Series 2003 Bonds, their execution to constitute conclusive evidence of such approval.

Section 2. In order to pay the principal of and interest on the Series 2003 Bonds as they mature or are called for redemption prior to maturity, there is hereby pledged all of the Tax Receipts. This pledge of Tax Receipts is made on a junior and subordinate basis to the prior pledge of Tax Receipts securing repayment of the Series 1995 Bonds. The levy and collection of the Tax shall not be discontinued or reduced while any of the Bonds are outstanding unless sufficient funds are on deposit with the Trustee under the Trust Indenture to redeem the Series 2003 Bonds in full. The City covenants and agrees that all Tax Receipts will be accounted for separately as special funds on the books of the City, and all Tax Receipts will be deposited and will be used solely as provided in the Trust Indenture.

Section 3. To prescribe the terms and conditions upon which the Series 2003 Bonds are to be executed, authenticated, issued, accepted, held and secured, the Mayor is hereby authorized and directed to execute and acknowledge a Trust Indenture (the "Trust Indenture"), by and between the City and Bank of Oklahoma, N.A., Tulsa, Oklahoma (the "Trustee"), and the City Clerk is hereby authorized and directed to execute and acknowledge the Trust Indenture and to affix the seal of the City thereto, and the Mayor and the City Clerk are hereby authorized and directed to cause the Trust Indenture to be accepted, executed and acknowledged by the Trustee. The Trust Indenture is hereby approved in substantially the form submitted to this meeting, including, without limitation, the provisions thereof pertaining to the pledge of Tax Receipts and the terms of the Series 2003 Bonds. The Mayor is hereby authorized to confer with the Trustee, the Underwriter and Bond Counsel in order to complete the Trust Indenture in substantially the form submitted to this meeting, with such changes as shall be approved by such persons executing the Trust Indenture, their execution to constitute conclusive evidence of such approval.

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

Section 4. There is hereby authorized and approved a Preliminary Official Statement of the City, including the cover page and appendices attached thereto, relating to the Series 2003 Bonds. The Preliminary Official Statement is hereby "deemed final" by the City within the meaning of U.S. Securities and Exchange Commission Rule 15c2-12. The distribution of the Preliminary Official Statement is hereby approved. The Preliminary Official Statement, as amended to conform to the terms of the Bond Purchase Agreement, including Exhibit A thereto, and with such other changes and amendments as are mutually agreed to by the City and the Underwriter, is herein referred to as the "Official Statement," and the Mayor is hereby authorized to execute the Official Statement for and on behalf of the City. The Official Statement is hereby approved in substantially the form of the Preliminary Official Statement submitted to this meeting, and the Mayor is hereby authorized to confer with the Trustee, the Underwriter and Bond Counsel in order to complete the Official Statement in substantially the form of the

Preliminary Official Statement submitted to this meeting, with such changes as shall be approved by such persons, the Mayor's execution to constitute conclusive evidence of such approval.

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

Section 5. In order to prescribe the terms and conditions upon which the Series 2003 Bonds are to be sold to the Underwriter, the Mayor is hereby authorized and directed to execute a Bond Purchase Agreement on behalf of the City, to be dated as of the date of its execution (the "Bond Purchase Agreement"), by and between the City and the Underwriter, and the Bond Purchase Agreement is hereby approved in substantially the form submitted to this meeting, and the Mayor is hereby authorized to confer with the Underwriter and Bond Counsel in order to complete the Bond Purchase Agreement in substantially the form submitted to this meeting, with such changes as shall be approved by such persons executing the Bond Purchase Agreement, their execution to constitute conclusive evidence of such approval.

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

Section 6. In order to provide for the redemption of the Series 1998 Bonds, the Mayor is hereby authorized and directed to execute an Escrow Deposit Agreement to be dated as of the date of its execution (the "Escrow Agreement"), by and between the City and Bank of Oklahoma, N.A., as escrow trustee (the "Escrow Trustee"), and the Mayor is hereby authorized and directed to cause the Escrow Agreement to be executed by the Escrow Trustee. The Escrow Agreement is hereby approved in substantially the form submitted to this meeting, and the Mayor is hereby authorized to confer with the Underwriter, the Escrow Trustee and Bond Counsel in order to complete the Escrow Agreement in substantially the form submitted to this meeting, with such changes as shall be approved by such persons executing the Escrow Agreement, their execution to constitute conclusive evidence of such approval.

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

Section 7. In order to provide for continuing disclosure of certain financial and operating information with respect to the Tax and the City in compliance with the provisions of Rule 15c2-12 of the U. S. Securities and Exchange Commission, the Mayor is hereby authorized and directed to execute a Continuing Disclosure Agreement to be dated as of the date of its execution (the "Continuing Disclosure Agreement"), by and between the City and the Trustee, and the Mayor is hereby authorized and directed to cause the Continuing Disclosure Agreement to be executed by the Trustee. The Continuing Disclosure Agreement is hereby approved in substantially the form submitted to this meeting, and the Mayor is hereby authorized to confer with the Trustee, the Underwriter and Bond Counsel in order to complete the Continuing Disclosure Agreement in substantially the form submitted to this meeting, with such changes as shall be approved by such persons executing the Continuing Disclosure Agreement, their execution to constitute conclusive evidence of such approval.

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

Section 8. In order to secure lower interest rates on the Series 2003 Bonds, the Underwriter has proposed that the City consider the purchase of a policy of bond insurance with a portion of the proceeds of the Series 2003 Bonds, which policy would guarantee the payment of the principal of and interest on the Series 2003 Bonds when due. If deemed economically advantageous by the Mayor, upon the advice of the Underwriter, the Mayor is hereby authorized to execute an insurance commitment and to do any and all things necessary to accomplish the delivery of a bond insurance policy with respect to the Series 2003 Bonds.

Section 9. The Mayor and City Clerk, for and on behalf of the City, are hereby authorized and directed to do any and all things necessary to effect the issuance, sale, execution and delivery of the Series 2003 Bonds and to effect the execution and delivery of the Trust Indenture, the Bond Purchase Agreement, the Official Statement, the Escrow Agreement, the Continuing Disclosure Agreement and a Tax Regulatory Agreement relating to the tax exemption of interest on the Series 2003 Bonds, and to perform all of the obligations of the City under and pursuant thereto. The Mayor and the City Clerk are further authorized and directed, for and on behalf of the City, to execute all papers, documents, certificates and other instruments that may be required for the carrying out of such authority or to evidence the exercise thereof.

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

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

ADOPTED AND APPROVED THIS _____ DAY OF _____, 2003.

APPROVED:

_____
Mayor

ATTEST:

_____
City Clerk

(S E A L)

CITY OF FAYETTEVILLE, ARKANSAS,
Issuer

to

BANK OF OKLAHOMA, N.A.,
Trustee

TRUST INDENTURE

Dated as of July 1, 2003

Providing for:

$_____
City of Fayetteville, Arkansas
Hotel and Restaurant Gross Receipts Tax Refunding Bonds
Series 2003

Prepared by:

Kutak Rock LLP
425 West Capitol Avenue, Suite 1100
Little Rock, Arkansas 72201

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Exhibit A Form of Series 2003 Bond A-1
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TRUST INDENTURE

THIS TRUST INDENTURE, made and entered into as of July 1, 2003, by and between the CITY OF FAYETTEVILLE, ARKANSAS, a city of the first class organized under and existing by virtue of the laws of the State of Arkansas (the "City"), as party of the first part, and BANK OF OKLAHOMA, N.A., a national banking association organized under and existing by virtue of the laws of the United States of America, with its principal office, domicile, and post office address in Tulsa, Oklahoma (the "Trustee"), as party of the second part;

W I T N E S S E T H:

WHEREAS, the City is authorized under the provisions of the Advertising and Promotion Commission Act, Arkansas Code Annotated (1997 Repl.) §§26-75-601 *et seq.* (as from time to time amended, the "Act"), to issue its bonds secured by and payable from the revenues derived by the City from the one percent (1%) tax (the "Tax") levied by the City pursuant to Ordinance No. 2310 adopted by the City on March 1, 1977, as subsequently amended, upon the gross receipts or gross proceeds (i) derived from renting, leasing or otherwise furnishing hotel or motel accommodations for profit within the boundaries of the City and (ii) of restaurants, cafes, cafeterias, delis, drive-in restaurants, carry-out restaurants, concession stands, convenience stores, grocery store-restaurants, caterers and similar businesses within the boundaries of the City engaged in the business of selling prepared food for on-premises or off-premises consumption; and

WHEREAS, pursuant to the provisions of Ordinance No. 4038, duly adopted by the City on June 3, 1997, there was submitted to the qualified electors of the City the question of the issuance of not to exceed $6,950,000 in principal amount of bonds pursuant to the Act, said bonds to be secured by a pledge of and lien upon the City's receipts of the Tax (the "Tax Receipts"); and

WHEREAS, at a special election held August 5, 1997, a majority of the qualified electors of the City voting on the aforementioned question approved the issuance of the bonds and the corresponding pledge of the Tax Receipts to the payment thereof; and

WHEREAS, pursuant to the Act and the results of the aforementioned election, the City issued its City of Fayetteville, Arkansas Hotel and Restaurant Gross Receipts Tax Bonds, Series 1998, dated November 1, 1998 (the "Series 1998 Bonds"), for the purpose of financing a portion of the costs of constructing the Fayetteville Town Center (the "1998 Project"); and

WHEREAS, the Series 1998 Bonds were originally issued in the aggregate principal amount of $6,950,000, of which $6,620,000 presently remains outstanding; and

WHEREAS, the City has also, pursuant to the Act and an ordinance duly adopted by the City, previously issued its $2,675,000 City of Fayetteville, Arkansas Hotel and Restaurant Gross Receipts Tax Refunding Bonds, Series 1995, dated October 1, 1995 (the "Series 1995 Bonds"), of which $700,000 in principal amount presently remains outstanding, for the purpose of financing the construction and equipping of convention facilities; and

WHEREAS, pursuant to the Act and the provisions of Ordinance No. ____ of the City, adopted by the City Council of the City on _____, 2003 (the "Authorizing Ordinance"), the City has now determined that debt service savings can be realized with respect to the Series 1998 Bonds by issuing its Hotel and Restaurant Gross Receipts Tax Refunding Bonds, Series 2003 (the "Series 2003 Bonds"), for the purpose of refunding the Series 1998 Bonds; and

WHEREAS, the payment of debt service on the Series 2003 Bonds will be secured by a pledge of the Tax Receipts on a junior and subordinate basis to the pledge of Tax Receipts securing the payment of debt service on the Series 1995 Bonds; and

WHEREAS, the Series 2003 Bonds and the Trustee's Certificate of Authentication to be endorsed thereon are to be in substantially the forms set forth in Exhibit A hereto, with necessary and appropriate variations, omissions and insertions as permitted or required by this Indenture; and

WHEREAS, the execution and delivery of this Indenture and the issuance of the Series 2003 Bonds have been in all respects duly and validly authorized by the Authorizing Ordinance; and

WHEREAS, all things necessary to make the Series 2003 Bonds, when authenticated by the Trustee and issued as in this Indenture provided, the valid, binding and legal obligations of the City according to the import thereof, and to constitute this Indenture a valid obligation of the City and a valid pledge of the Tax Receipts to the payment of the principal of and premium, if any, and interest on the Series 2003 Bonds, as specified in and in accordance with the provisions of the Act and the provisions hereof, have been done and performed, and the creation. execution and delivery of this Indenture and the creation, execution, issuance and delivery of the Series 2003 Bonds, subject to the terms hereof, have in all respects been duly authorized;

NOW, THEREFORE, KNOW ALL PERSONS BY THESE PRESENTS, THIS INDENTURE WITNESSETH:

That the City, in consideration of the premises and the acceptance by the Trustee of the trusts hereby created and of the purchase and acceptance of the Series 2003 Bonds by the holders and owners thereof, and the sum of Ten Dollars ($10.00), lawful money of the United States of America, to it duly paid by the Trustee, at or before the execution and delivery of these presents, and for other good and valuable consideration, the receipt of which is hereby acknowledged, and in order to secure the payment of the principal of and premium, if any, and interest on the Series 2003 Bonds and all Additional Bonds (hereinafter defined), if any, according to their tenor and effect, and to secure the performance and observance by the City of all the covenants expressed or implied herein and in the Series 2003 Bonds and Additional Bonds (collectively, the "Bonds"), subject to all of the provisions hereof, does hereby grant, bargain, sell, convey, mortgage, assign, transfer and pledge unto the Trustee, and unto its successor or successors in trust, and to them and their assigns forever, for the security of the performance of the obligations of the City hereinafter set forth, the following:

1.

Subject to the prior pledge securing the payment of debt service with respect to the Series 1995 Bonds, the revenues derived by the City from the Tax levied by the City upon the gross receipts or gross proceeds (i) derived from renting, leasing or otherwise furnishing hotel or motel accommodations for profit within the boundaries of the City and (ii) of restaurants, cafes, cafeterias, delis, drive-in restaurants, carry-out restaurants, concession stands, convenience stores, grocery store-restaurants, caterers and similar businesses within the boundaries of the City engaged in the business of selling prepared food for on-premises or off-premises consumption (the "Tax Receipts"). The Tax has been levied by Ordinance No. 2310 adopted March 1, 1977, as amended, of the City pursuant to the authority of the Act, at the rate of one percent (1%).

2.

The Bond Fund, Debt Service Reserve Fund, Redemption Fund, Project Fund and all other funds held by the Trustee pursuant to the Indenture except the Rebate Fund and Cost of Issuance Fund, and all moneys and investments in the pledged funds but subject to the provisions of this Indenture pertaining thereto, including the making of disbursements therefrom.

3.

Any and all other moneys, rights and interests of every kind and nature which is from time to time hereafter conveyed, pledged, assigned or transferred by delivery or by writing or transfer of any kind, as and for additional security hereunder, by the City or by any other person, firm or corporation, to the Trustee, which is hereby authorized to receive any and all such property at any time and at all times and to hold and apply the same subject to the terms hereof.

TO HAVE AND TO HOLD all the same (the "Trust Estate") with all privileges and appurtenances hereby conveyed and assigned, or agreed or intended so to be, to the Trustee and its successors in said trusts and to them and their assigns forever;

IN TRUST NEVERTHELESS, upon the terms and trusts herein set forth for the equal and proportionate benefit, security and protection of all owners of the said Bonds issued under and secured by this Indenture without privilege, priority or distinction as to lien or otherwise of any of said Bonds over any of the other Bonds; provided, however, that if the City, its successors or assigns, shall well and truly pay, or cause to be paid, the principal of, premium, if any, and interest due on the Bonds, at the times and in the manner provided in the Bonds according to the true intent and meaning thereof, and shall make the payments as required under this Indenture or shall provide, as permitted hereby, for the payment thereof by depositing with or causing to be deposited with the Trustee the entire amount due or to become due thereon, and shall well and truly keep, perform and observe all of the covenants and conditions pursuant to the terms of this Indenture to be kept, performed and observed by it, and shall pay to the Trustee all sums of money due or to become due to it in accordance with the terms and provisions hereof, then upon such final payments or deposits this Indenture and the lien and rights hereby granted shall cease, determine and be void; otherwise, this Indenture to be and remain in full force and effect.

THIS INDENTURE FURTHER WITNESSETH that, and it is expressly declared that, all Bonds issued and secured hereunder are to be issued, authenticated and delivered and all said revenues and income hereby pledged are to be dealt with and disposed of under, upon and subject to the terms, conditions, stipulations, covenants, agreements, trusts, uses and purposes as hereinafter expressed, and the City has agreed and covenanted, and does hereby agree and covenant, with the Trustee and with the holders from time to time of the Bonds or any part thereof, as follows, that is to say:

ARTICLE I
DEFINITIONS

Section 101. Definitions. In addition to the words and terms elsewhere defined in this Indenture, the following words and terms as used in this Indenture shall have the following meanings:

"Account" means an Account established by Article V of this Indenture.

"Act" means the Advertising and Promotion Commission Act, Arkansas Code Annotated (1997 Repl.) §§ 26-75-601 *et seq.*, as from time to time amended.

"Additional Bonds" means Bonds in addition to the Series 2003 Bonds which are issued under the provisions of Section 212 of this Indenture.

"Additional Convention Facilities" means land, buildings, structures, machinery, furniture, fixtures, equipment and all related or necessary tangible property constituting convention center improvements which are permitted to be financed under the provisions of the Act.

"Annual Debt Service" means, with respect to all or any particular amount of Bonds, the Debt Service for any particular Fiscal Year required to be paid or set aside during such Fiscal Year, less the amount of such payment which is provided from the proceeds of the sale of Bonds or from sources other than Tax Receipts.

"Authorized Representative" means either the Mayor or the Finance & Internal Services Director of the City and such additional persons as from time to time may be designated to act on behalf of the City by a Certificate furnished to the Trustee containing the specimen signature thereof and executed on behalf of the City by its Mayor.

"Authorizing Ordinance" means Ordinance No. _____, adopted by the City on _____, 2003, which authorized the issuance of the Series 2003 Bonds pursuant to this Indenture.

"Beneficial Owner" means any Person who acquires beneficial ownership interest in a Bond held by the Securities Depository. In determining the Beneficial Owner of any Bond, the Trustee may rely exclusively upon written representations made and information given to the

Trustee by the Securities Depository or its Participants with respect to any Bond held by the Securities Depository in which a beneficial ownership interest is claimed.

"Bond Counsel" means any firm of nationally recognized municipal bond counsel designated by the City and acceptable to the Trustee.

"Bond Fund" means the fund by that name created and established in Section 501 of this Indenture.

"Bonds" means the Series 2003 Bonds and all Additional Bonds, if any, authenticated and delivered under this Indenture.

"Book-Entry System" means the book-entry system maintained by the Securities Depository and described in Section 215 of this Indenture.

"Certificate" means a document signed by an Authorized Representative of the City attesting to or acknowledging the circumstances or other matters therein stated.

"City" means the City of Fayetteville, Arkansas.

"City Clerk" means the person holding the office and performing the duties of the City Clerk of the City.

"Closing Date" means, with respect to any series of Bonds, the date upon which there is an exchange of such series of Bonds for the proceeds representing the purchase price for such series of Bonds by the Original Purchaser or Purchasers thereof.

"Code" means the Internal Revenue Code of 1986, as from time to time amended, and applicable regulations issued or proposed thereunder.

"Commission" means the Advertising and Promotion Commission of the City of Fayetteville, Arkansas, or any successor thereto.

"Completion Date" means the date upon which a Project is first ready for normal continuous operation or the date upon which damaged Project facilities are replaced in normal and continuous operation.

"Continuing Disclosure Agreement" means, collectively, each Continuing Disclosure Agreement between the City and the Trustee, dated the date of issuance and delivery of a series of Bonds, as originally executed and as amended from time to time in accordance with the terms thereof.

"Cost of Issuance Fund" means the fund by that name created and established in Section 501 of this Indenture.

"Costs of Issuance" means all items of expense payable or reimbursable directly or indirectly by the City and related to the authorization, sale and issuance of the Bonds, including,

but not limited to, underwriting discounts, fees and expenses, election expenses, publication expenses, expenses of printing, reproducing, filing and recording documents, initial fees and charges of the Trustee and Paying Agent, fees and expenses for legal, accounting and other professional services, rating fees, costs of securing any credit enhancement for the Bonds, costs of execution, transportation and safekeeping of the Bonds, and other costs, charges and fees incurred in connection with the foregoing.

"Debt Service" means, with respect to all or any particular amount of Bonds for any Payment Period, the amount required to pay the sum of the interest on such Bonds payable during the Payment Period and the principal of, and any other amount required to effect any mandatory redemption of, such Bonds, if any, during the Payment Period.

"Debt Service Reserve Fund" means the fund by that name created and established in Section 501 of this Indenture.

"Event of Default" means any event of default specified in Section 801 hereof.

"Fiscal Year" means the 12-month period used, at any time, by the City for accounting purposes, which may be the calendar year.

"Fund" means a fund confirmed or established by Article V of this Indenture.

"Government Securities" means (i) bonds, notes, certificates of indebtedness, treasury bills or other securities constituting direct obligations of, or obligations on which the full and timely payment of principal and interest is fully and unconditionally guaranteed by, the United States of America (including any such securities issued or held in book-entry form on the books of the Department of Treasury of the United States of America), and (ii) evidences of direct ownership or proportionate or individual interest in future interest or principal payments on specified direct obligations of, or obligations on which the full and timely payment of principal and interest is fully and unconditionally guaranteed by, the United States of America, which obligations are held by a bank or trust company organized and existing under the laws of the United States of America or any state thereof in the capacity of custodian in form and substance satisfactory to the Trustee.

"Holder" or "Bondholder" or "Owner of the Bonds" means the registered owner of any Bond.

"Indenture" means this Trust Indenture dated as of July 1, 2003, between the City and the Trustee, together with all indentures supplemental hereto.

"Interest Payment Date" means any date on which interest is payable on the Bonds.

"Investment Obligations" means, if and to the extent the same are at the time legal for investment of Funds and Accounts held under this Indenture:

(a) Government Securities;

(b) bonds, notes or other obligations of any state of the United States of America or any political subdivision of any state, which at the time of their purchase are rated in either of the two highest rating categories by a nationally recognized Rating Agency;

(c) certificates of deposit or time or demand deposits constituting direct obligations of any bank, bank holding company, savings and loan association or trust company organized under the laws of the United States of America or any state thereof (including the Trustee or any of its affiliates), except that investments may be made only in certificates of deposit or time or demand deposits which are:

(1) insured by the Federal Deposit Insurance Corporation, or any other similar United States Government deposit insurance program then in existence; or

(2) continuously and fully secured by Government Securities, which have a market value, exclusive of accrued interest, at all times at least equal to the principal amount of such certificates of deposit or time or demand deposits;

(d) short term discount obligations of the Federal National Mortgage Association and the Government National Mortgage Association;

(e) money market mutual funds (1) that invest in Government Securities or that are registered with the federal Securities and Exchange Commission (SEC), meeting the requirements of Rule 2a-7 under the Investment Company Act of 1940, and (2) that are rated in either of the two highest categories by a nationally recognized Rating Agency; and

[(f) with respect to the Debt Service Reserve Fund only, the Surety Bond.]

"Mayor" means the person holding the office and performing the duties of the Mayor of the City.

"Original Purchaser" means the first purchaser(s) of a series of Bonds from the City.

"Outstanding" means, as of any date of computation, Bonds theretofore or thereupon being delivered under this Indenture, except:

(a) Bonds cancelled at or prior to such date or delivered to or acquired by the Trustee at or prior to such date for cancellation;

(b) Bonds deemed to be paid in accordance with Article VII of this Indenture; and

(c) Bonds in lieu of or in exchange or substitution for which other Bonds shall have been authenticated and delivered pursuant to this Indenture.

"Participants" means those financial institutions for whom the Securities Depository effects book-entry transfers and pledges of securities deposited with the Securities Depository in the Book-Entry System, as such listing of Participants exists at the time of such reference.

"Payment Period" means a period from, but not including, a Principal Payment Date up to, and including, the next succeeding Principal Payment Date.

"Person" means any natural person, firm, association, corporation, limited liability company, partnership, joint stock company, joint venture, trust, unincorporated organization or firm, or a government or any agency or political subdivision thereof or other public body.

"Principal Payment Date" means any date on which principal is payable on the Bonds, whether at maturity, by operation of the mandatory sinking fund, or otherwise.

"Project" means the 1998 Project and any Additional Convention Facilities that may be acquired, constructed or equipped in the future with the proceeds of Bonds issued hereunder.

"1998 Project" means the construction of the Fayetteville Town Center, financed in part with the proceeds of the Series 1998 Bonds.

"Project Costs" means, to the extent permitted by the Act or other applicable laws, with respect to a Project, all costs of planning, designing, purchasing, acquiring, constructing, improving, enlarging, extending, repairing, financing and placing in operation, including obtaining governmental approvals, certificates, permits and licenses with respect thereto, heretofore or hereafter paid or incurred by or on behalf of the City and which shall include, but shall not be limited to:

(a) interest accruing in whole or in part on the Bonds prior to and during construction of a Project, including all amounts required by this Indenture to be paid from the proceeds of the Bonds into the Bond Fund;

(b) preliminary investigation and development costs, engineering fees, contractors' fees, labor costs, the cost of materials, equipment, utility services and supplies, costs of obtaining permits, licenses and approvals, costs of real property, insurance premiums, legal and financing fees and costs, administrative and general costs, and all other costs properly allocable to the acquisition, construction and equipping of a Project and placing the same in operation;

(c) all costs relating to injury and damage claims arising out of the acquisition, construction or equipping of a Project;

(d) all other costs incurred in connection with, and properly allocable to, the acquisition, construction and equipping of a Project; and

(e) amounts to pay or reimburse the City or any City fund for expenses of the City incident and properly allocable to such planning, designing, purchasing, acquiring,

constructing, improving, enlarging, extending, repairing, financing and placing in operation of a Project.

"Project Fund" means the fund by that name created and established in Section 501 of this Indenture.

"Qualified Engineer" means an independent consulting engineer or firm of independent consulting engineers not in the regular employ of the City.

"Rating Agency" means Moody's Investors Service, Standard & Poor's Ratings Services, a Division of The McGraw-Hill Companies, Inc., or Fitch, Inc., and their respective successors and assigns. If any such corporation ceases to act as a securities rating agency, the City may appoint any nationally recognized securities rating agency as a replacement.

"Rebate Fund" means the fund by that name created and established in Section 501 of this Indenture.

"Record Date" means the close of business on the 15th day of the calendar month next preceding each Interest Payment Date on the Bonds or, if such day shall not be a business day, the immediately preceding business day.

"Redemption Fund" means the fund by that name created and established in Section 501 of this Indenture.

"Requisition" means a written requisition of the City, consecutively numbered, signed by an Authorized Representative including, without limitation, the following with respect to each payment requested:

(i) the name of the person or party to whom payment is to be made and the purpose of the payment,

(ii) the amount to be paid thereunder;

(iii) that such amount has not been previously paid by the City and is justly due and owing to the person(s) named therein as a proper payment or reimbursement of a Project Cost; and

(iv) that no Event of Default exists under the Indenture and that, to the knowledge of the Authorized Representative, no event has occurred and continues which with notice or lapse of time or both would constitute an Event of Default under the Indenture.

"Reserve Requirement" means, at any particular time, an amount equal to the least of (a) 10% of the face amount of [all][each series of] Outstanding Bonds, (b) the maximum Annual Debt Service on [all][each series of] Outstanding Bonds, or (c) 1.25 times the average Annual Debt Service on [all][each series of] Outstanding Bonds. For all purposes of this Indenture, the Reserve Requirement may be satisfied by cash or by Investment Obligations.

"Revenue Fund" means the fund by that name confirmed and continued in Section 501 of this Indenture.

"Securities Depository" means The Depository Trust Company, a limited-purpose trust company organized under the laws of the State of New York, or its nominee, and it successors and assigns, or any other depository institution appointed by the City to act as depository for the Bonds in connection with the Book-Entry-Only System.

"Series 1995 Bonds" means the $2,675,000 City of Fayetteville, Arkansas Hotel and Restaurant Gross Receipts Tax Refunding Bonds, Series 1995, dated October 1, 1995, of which $700,000 in principal amount presently remains Outstanding. The Series 1995 Bonds are secured by and payable from the Tax Receipts on a prior and senior basis to the pledge of Tax Receipts securing the payment of the Bonds.

"Series 1998 Bonds" means the $6,950,000 City of Fayetteville, Arkansas Hotel and Restaurant Gross Receipts Tax Bonds, Series 1998, dated November 1, 1998, of which $6,620,000 in principal amount presently remains Outstanding. The Series 1998 Bonds are being refunded with a portion of the proceeds of the Series 2003 Bonds.

"Series 2003 Bonds" means the $_____ City of Fayetteville, Arkansas Hotel and Restaurant Gross Receipts Tax Refunding Bonds, Series 2003, dated July 1, 2003, issued under and secured by this Indenture.

"State" means the State of Arkansas.

"Supplemental Indenture" means any indenture supplemental to or amendatory of this Indenture, adopted by the City in accordance with Article X hereof.

["Surety Bond" means the surety bond issued by _____ guaranteeing certain payments into the Debt Service Reserve Fund with respect to the Series 2003 Bonds as provided therein and subject to the limitations set forth therein.]

"Tax" means the one percent (1%) tax levied by the City pursuant to Ordinance No. 2310 adopted by the City on March 1, 1977, as subsequently amended, upon the gross receipts or gross proceeds (i) derived from renting, leasing or otherwise furnishing hotel or motel accommodations for profit within the boundaries of the City and (ii) of restaurants, cafes, cafeterias, delis, drive-in restaurants, carry-out restaurants, concession stands, convenience stores, grocery store-restaurants, caterers and similar businesses within the boundaries of the City engaged in the business of selling prepared food for on-premises or off-premises consumption.

"Tax Receipts" means receipts derived by the City from the levy of the Tax.

"Tax Regulatory Agreement" means with respect to any series of Bonds issued under this Indenture, that Tax Regulatory Agreement of the City relating to maintenance of the

excludability of interest on such Bonds from gross income for federal income tax purposes, delivered in connection with the issuance of such series of Bonds.

"Trustee" and Paying Agent" means the trustee and paying agent for the time being, whether original or successor, with the same institution to always occupy both positions, and with the original Trustee and Paying Agent being Bank of Oklahoma, N.A., Tulsa, Oklahoma.

"Trust Estate" means the property described in the granting clauses of this Indenture.

Section 102. Use of Words. Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders. Unless the context shall otherwise indicate, the words "Bond," "owner," "holder," and "person" shall include the plural, as well as the singular number.

ARTICLE II
THE BONDS

Section 201. Security for Bonds. (a) The Bonds are special and limited obligations of the City payable as to principal, premium, if any, and interest solely out of the Trust Estate. The Trust Estate is hereby pledged, appropriated and assigned to the payment of the principal of, premium, if any, and interest on the Bonds, all in accordance with their terms and the provisions of this Indenture. The Bonds do not constitute an indebtedness for which the faith and credit of the State of Arkansas or the City is pledged within the meaning of any Constitutional or statutory limitation. The Bonds shall never constitute an obligation of or a charge against the general credit or general taxing powers of the City.

(b) The pledge, charge, lien, trusts and assignments made herein with respect to the Trust Estate shall be valid and binding, and shall be deemed continuously perfected from the time of issuance of the Series 2003 Bonds, and the Trust Estate shall thereupon be immediately subject to the pledge, charge, lien, trust and assignment created hereby upon receipt thereof by or for the City or by the Trustee and Paying Agent hereunder, without any physical delivery, segregation thereof or further act, and such pledge, charge, lien, trust and assignment shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the City, irrespective of whether such parties have notice thereof.

(c) The Bonds shall be equally and ratably payable and secured hereunder without priority by reason of date of adoption of this Indenture or any Supplemental Indenture authorizing their issuance or by reason of their series, number, date, date of issue, execution, authentication or sale, or otherwise.

(d) So long as any Bonds are Outstanding under the provisions of this Indenture, all Tax Receipts shall be deemed to be necessary to accomplish the purposes of the City and shall be subject to the covenants and agreements set forth in this Indenture, and no such Tax Receipts shall ever be used or deposited otherwise except as herein expressly permitted.

(e) The City covenants, as permitted by the Act, that while any of the Bonds are Outstanding, the levy and collection of the Tax shall not be reduced or discontinued, and the City will use due diligence in causing the collection of the Tax. Nothing herein shall prohibit the City from increasing the rate of the Tax from time to time, to the extent permitted by law, and no part of the revenues or receipts derived by the City from any such increase shall be deemed part of the Tax Receipts unless authorized and pledged by a Supplemental Indenture.

Section 202. Authorized Amount. There is hereby authorized the issuance of bonds of the City to be designated "Hotel and Restaurant Gross Receipts Tax Refunding Bonds, Series 2003" in the principal amount of _____ Dollars ($_____) (the "Series 2003 Bonds"). No Bonds may be issued under the provisions of this Indenture except in accordance with this Article II. The total principal amount of Bonds that may be issued hereunder is limited to the extent described in Section 212 hereof, except as provided in Section 209 and except for refunding bonds issued under the provisions of Section 212.

Section 203. Details of Bonds. (a) The Series 2003 Bonds (i) shall be designated "City of Fayetteville, Arkansas Hotel and Restaurant Gross Receipts Tax Refunding Bonds, Series 2003," (ii) shall be in the aggregate principal amount of $_____, (iii) shall be dated as of July 1, 2003, (iv) shall bear interest from such date at the rates hereinafter provided until paid, payable semiannually on April 1 and October 1 of each year, commencing October 1, 2003, (v) shall be issued in denominations of $5,000 each, or any integral multiple thereof, (vi) shall be numbered from R03-1 upwards in order of issuance according to the records of the Trustee, and (vii) shall mature, unless sooner redeemed in the manner in this Indenture set forth, on October 1 in each of the years and in the amounts set forth in the following table, which table also sets forth the interest rates for the Series 2003 Bonds:

Year (October 1)	Principal Amount	Interest Rate
2004	$	%
2005		%
2006		%
2007		%
2008		%
2009		%
2010		%
2011		%
2012		%
2013		%
2014		%
2015		%

Section 204. Form of Bonds. (a) The Series 2003 Bonds shall be initially issued as fully registered Bonds, without coupons, in the form of [twelve] typewritten bond certificates (one for each maturity) to be delivered to the Securities Depository. Each such certificate shall be initially registered in the name of the nominee of the Securities Depository, and no Beneficial

Owner will receive a certificate representing his interest in the Series 2003 Bonds, except upon the occurrence of the events described in Section 215 hereof. Beneficial Owners shall be deemed to have waived any right to receive a bond certificate except under the circumstances described in Section 215. The Series 2003 Bonds and the Trustee's certificate of authentication to be endorsed thereon shall be in substantially the form set forth in Exhibit A hereto, with appropriate variations, insertions and omissions as permitted or required by this Indenture.

Section 205. Payment. The Bonds shall be payable, with respect to principal, premium, if any, and interest in any coin or currency of the United States of America which at the time of payment is legal tender for the payment of public and private debts. The principal of and premium, if any, on the Bonds shall be payable upon surrender thereof at the principal corporate trust office of the Trustee. Payment of interest on each Bond shall be made by check or draft mailed to the registered owner of such Bond as of the applicable Record Date at his address as it appears on the registration books maintained by the Trustee. For purposes of this Indenture, interest on the Bonds shall be deemed to accrue on the basis of a 360-day year of twelve 30-day months. So long as the Securities Depository or its nominee is the sole registered owner of the Bonds, payment of interest thereon shall be made by wire transfer of immediately available funds by the Paying Agent to the Securities Depository or its nominee.

Section 206. Execution. The Bonds shall be executed on behalf of the City by the manual or facsimile signatures of its Mayor and City Clerk and shall have impressed or imprinted thereon the seal of the City. A facsimile signature shall have the same force and effect as if manually signed. In case any officer whose manual signature or a facsimile of whose signature shall appear on the Bonds shall cease to be such officer before the delivery of such Bonds, such signature or such facsimile shall nevertheless be valid and sufficient for all purposes, the same as if such official had remained in office until delivery.

Section 207. Authentication. Only such Bonds as shall have endorsed thereon a certificate of authentication substantially in the form set forth in Exhibit A attached hereto duly executed by the Trustee shall be entitled to any right or benefit under this Indenture. No Bond shall be valid and obligatory for any purpose unless and until such certificate of authentication shall have been duly executed by the Trustee, and such certificate of the Trustee upon any such Bond shall be conclusive evidence that such Bond has been authenticated and delivered under this Indenture. The Trustee's certificate of authentication on any Bond shall be deemed to have been executed if signed by an authorized officer of the Trustee, but it shall not be necessary that the same officer sign the certificate of authentication on all of the Bonds issued hereunder.

Section 208. Delivery of Bonds. The City shall execute and deliver to the Trustee and the Trustee shall authenticate the Bonds of any series and deliver said Bonds to the Securities Depository as may be directed in this Section 208, in Section 212 hereof or in any Supplemental Indenture.

(a) Prior to the delivery or original issuance by the Trustee of any authenticated Bonds of any series, there shall be delivered to the Trustee:

(1) An original executed counterpart of this Indenture or, in the case of Additional Bonds, a Supplemental Indenture by and between the City and the Trustee setting forth the details concerning such Additional Bonds;

(2) Original executed counterparts of the Continuing Disclosure Agreement and the Tax Regulatory Agreement applicable to such series of Bonds;

(3) A Certificate directing the Trustee to authenticate the Bonds and containing instructions as to the delivery of the Bonds upon payment to the Trustee, for the account of the City, of a sum specified in such Certificate;

(4) A copy, duly certified by the City Clerk, of the proceedings of the City authorizing the issuance of the Bonds;

(5) A written opinion of Bond Counsel approving the legality of the Bonds;

(6) In the case of any series of Additional Bonds, a Certificate signed by the Mayor certifying that (i) the City is not then in default in the performance of any of the covenants, conditions, agreements or provisions contained in this Indenture, and (ii) the City is current as to all required deposits at that time in all the Funds and Accounts described in Article V of this Indenture or hereafter created by Supplemental Indentures, or if the City is in default or is not so current, certifying in the case of (i) or (ii) as to that fact and that, upon the application of the proceeds of the sale of such Additional Bonds as provided in the Supplemental Indenture authorizing the issuance thereof, the City will not be in default or will be current thereafter;

(7) In the case of any series of Additional Bonds, a written opinion of Bond Counsel to the effect that the exemption from federal income tax of the interest on the Series 2003 Bonds and any Additional Bonds theretofore issued will not be adversely affected by the issuance of the Additional Bonds then being issued;

(8) A resolution of the Commission approving the issuance of the Additional Bonds; and

(9) Such further documents and certificates as may be required by the Original Purchaser of such series of Bonds.

(b) Simultaneously with the delivery of the Series 2003 Bonds, the Trustee shall apply the proceeds thereof as follows:

(1) The amount, if any, received as accrued interest on the Series 2003 Bonds shall be deposited in the Bond Fund;

(2) $_____, an amount [equal to the Reserve Requirement] [sufficient to purchase the Surety Bond], shall be deposited in the Debt Service Reserve Fund;

(3) An amount equal to $_____ shall be deposited in the Costs of Issuance Fund for payment of Costs of Issuance as directed by a Certificate of the City;

(4) An amount sufficient, together with moneys held by the Bank of Oklahoma, N.A., as trustee for the Series 1998 Bonds, in funds and accounts created by the trust indenture securing the payment of the Series 1998 Bonds, to refund the Series 1998 Bonds shall be deposited in trust with the the Bank of Oklahoma, N.A., as escrow trustee (the "1998 Escrow Trustee"), in accordance with the provisions of an Escrow Deposit Agreement to be dated as of the date of delivery of the Series 2003 Bonds (the "1998 Escrow Agreement"), by and between the City and the 1998 Escrow Trustee. The 1998 Escrow Agreement shall provide for the investment of the funds, to the extent feasible, in Government Securities which will mature and bear interest at such times and in such amounts as will, together with any uninvested moneys held by the 1998 Escrow Trustee, provide sufficient moneys to pay as due at maturity and upon redemption prior to maturity on October 1, 2003, all principal of and premium, if any, and interest on the Series 1998 Bonds. The 1998 Escrow Agreement will provide for giving notice of redemption prior to maturity of the Series 1998 Bonds, for the payment of required trustee and paying agent fees on the Series 1998 Bonds, and for release of all claims of the Series 1998 Bonds on the Trust Estate; and

(5) The balance of said proceeds shall be deposited in the Bond Fund and shall serve as a credit against the deposit required to be made to the Bond Fund by the City on or before July 15, 2003 pursuant to Section 503(b) hereof .

Section 209. Mutilated, Destroyed or Lost Bonds. In case any Bond issued hereunder shall become mutilated or be destroyed or lost, the City shall, if not then prohibited by law, cause to be executed and the Trustee may authenticate and deliver a new Bond of like series, date, number, maturity and tenor in exchange and substitution for and upon cancellation of such mutilated Bond, or in lieu of and in substitution for such Bond destroyed or lost, upon the Bondholder's paying the reasonable expenses and charges of the City and the Trustee in connection therewith, and, in the case of a Bond destroyed or lost, filing by the Bondholder with the Trustee evidence satisfactory to the Trustee that such Bonds were destroyed or lost, and of the Bondholder's ownership thereof, and furnishing the City and Trustee with indemnity satisfactory to them. The Trustee is hereby authorized to authenticate any such new Bond. In the event any such Bonds shall have matured, instead of issuing a new Bond, the City may pay the same without the surrender thereof. Upon the issuance of a new Bond under this Section 209, the City may require the payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in relation thereto and any other expenses (including the fees and expenses of the Trustee) connected therewith.

Section 210. Registration and Transfer of Bonds. The City hereby constitutes and appoints the Trustee as Bond Registrar of the City, and as Bond Registrar the Trustee shall keep books for the registration and for the transfer of the Bonds as provided in this Indenture at the principal corporate trust office of the Trustee. The person in whose name any Bond shall be registered shall be deemed and regarded as the absolute owner thereof for all purposes and payment of or on account of the principal of and interest on any such Bond shall be made only to or upon the order of the registered owner thereof, or the owner's legal representative, and neither the City, the Trustee nor the Bond Registrar shall be affected by any notice to the contrary, but such registration may be changed as herein provided. All such payments shall be valid and

effectual to satisfy and discharge the liability upon such Bond to the extent of the sum or sums so paid.

Bonds may be transferred on the books of registration kept by the Trustee by the registered owner in person or by the owner's duly authorized attorney, upon surrender thereof, together with a written instrument of transfer duly executed by the registered owner or the owner's duly authorized attorney. Upon surrender for transfer of any Bond at the principal corporate office of the Trustee, the City shall execute and the Trustee shall authenticate and deliver in the name of the transferee or transferees a new Bond or Bonds of the same series and in the same aggregate principal amount and of any authorized denomination or denominations.

Bonds may be exchanged at the principal corporate trust office of the Trustee for an equal aggregate principal amount of Bonds of any other authorized denomination or denominations of the same series with corresponding maturities. The City shall execute and the Trustee shall authenticate and deliver Bonds which the Bondholder making the exchange is entitled to receive, bearing numbers not contemporaneously then Outstanding. The execution by the City of any Bond of any denomination shall constitute full and due authorization of such denomination and the Trustee shall thereby be authorized to authenticate and deliver such Bond.

Such transfers of registration or exchanges of Bonds shall be without charge to the Owners of such Bonds, but any taxes or other governmental charges required to be paid with respect to the same shall be paid by the Owner of the Bond requesting such transfer or exchange as a condition precedent to the exercise of such privilege.

The Trustee shall not be required to transfer or exchange any Bond during the period from and including a Record Date to the next succeeding Interest Payment Date of such Bond nor to transfer or exchange any Bond after the mailing of notice calling such Bond for redemption has been made, and prior to such redemption.

If the Securities Depository or its nominee is the sole registered owner of the Bonds, transfers of ownership and exchanges shall be effected on the records of the Securities Depository and its Participants pursuant to rules and procedures established by the Securities Depository and its Participants. In such case, the Trustee shall deal with the Securities Depository as representative of the Beneficial Owners of the Bonds for purposes of exercising the rights of Bondholders hereunder, and the rights of the Beneficial Owners of such Bonds held by the Securities Depository or its nominee shall be limited to those established by law and agreements between such Beneficial Owners and the Securities Depository and its Participants. Requests, consents and directions from, and votes of, the Securities Depository or its nominee as representative shall not be deemed inconsistent if they are made with respect to different Participants or Beneficial Owners.

Section 211. Cancellation. All Bonds surrendered for payment, redemption, transfer or exchange, if surrendered to the Trustee, shall be promptly cancelled by it, and, if surrendered to any person other than the Trustee, shall be delivered to the Trustee and, if not already cancelled, shall be promptly cancelled by it. The City may at any time deliver to the Trustee for cancellation any Bonds previously authenticated and delivered hereunder, which the City may

have acquired in any manner whatsoever, and all Bonds so delivered shall be promptly cancelled by the Trustee. All cancelled Bonds held by the Trustee shall be disposed of as directed by the City. Whenever in this Indenture provision is made for the cancellation by the Trustee and the delivery to the City of any Bonds, the Trustee may, upon the written request of the City, in lieu of such cancellation and delivery, destroy such Bonds in the presence of any officer of the City (but only if the City shall so require), and deliver a certificate of such destruction to the City.

Section 212. Additional Bonds. The City may issue from time to time one or more series of Additional Bonds for the purpose of (i) financing Project Costs in connection with the acquisition, construction and/or equipping of a Project, (ii) refunding the Series 2003 Bonds or any series of Additional Bonds, in whole or in part, or (iii) any combination thereof. Additional Bonds shall be secured equally and ratably with the Series 2003 Bonds and any other series of Additional Bonds theretofore issued and then Outstanding, except insofar as any terms or conditions of redemption or purchase established under this Indenture may afford additional benefit or security for the Bonds of any particular series and except for the security afforded by any municipal bond insurance obtained with respect to a particular series of Bonds. Before any Additional Bonds are authenticated, there shall be delivered to the Trustee the items required for the issuance of Bonds by Section 208 hereof, plus a Certificate of the Finance & Internal Services Director of the City (in the form attached as Exhibit B hereto) certifying that, based upon necessary investigation, the Tax Receipts deposited into the Revenue Fund during the most recent twelve (12) months were not less than (i) 125% of the maximum Annual Debt Service requirement on all then Outstanding Bonds and Series 1995 Bonds, plus the Additional Bonds then proposed to be issued, and (ii) the amount, if any, needed to make required deposits to the Debt Service Reserve Fund. Notwithstanding anything herein to the contrary, no Additional Bonds shall be issued unless there is no default at the time of issuance under this Indenture.

Section 213. Superior Obligations Prohibited. Except to the extent permitted in Section 212 hereof for the issuance of Additional Bonds, from and after the issuance of any of the Bonds and for so long as any of the Bonds are Outstanding, the City shall not create or permit the creation of any indebtedness, or issue any bonds, notes, warrants, certificates or other obligations or evidences of indebtedness payable in any manner from the Tax Receipts or otherwise from the Trust Estate which (i) will in any way be superior to or rank on a parity with the Bonds, or (ii) will in any way be secured by a lien and charge on the Tax Receipts or on the moneys deposited in or to be deposited in the Revenue Fund, prior to or equal with the lien, pledge and charge created herein for the security of the Bonds, or (iii) will be payable prior to or equal with the payments to be made from the Tax Receipts or the Revenue Fund into the Bond Fund or Debt Service Reserve Fund, or from said Bond Fund or Debt Service Reserve Fund for the payment of the Bonds. To that end, the City hereby specifically covenants not to issue any additional bonds under the provisions of the trust indenture securing the Series 1995 Bonds. Nothing in Section 213 shall be construed as prohibiting or restricting the issuance of bonds payable from Tax Receipts so long as use of the Tax Receipts in favor of bonds issued pursuant to this Section 213 shall be made expressly subject and subordinate to the pledge and use of Tax Receipts to pay principal of and premium, if any, and interest on the Bonds and to make all required deposits into all funds held by the Trustee pursuant to the Indenture.

Section 214. Temporary Bonds. Until Bonds in definitive form are ready for delivery, the City may execute, and upon the request of the City, the Trustee shall authenticate and deliver, subject to the provisions, limitations and conditions set forth herein, one or more Bonds in temporary form, whether printed, typewritten, lithographed or otherwise produced, substantially in the form of the definitive Bonds, with appropriate omissions, variations and insertions, and in authorized denominations. Until exchanged for Bonds in definitive form, such Bond in temporary form shall be entitled to the lien and benefit of this Indenture. Upon the presentation and surrender of any Bond or Bonds in temporary form, the City shall, without unreasonable delay, prepare, execute and deliver to the Trustee and the Trustee shall authenticate and deliver, in exchange therefor, a Bond or Bonds in definitive form. Such exchange shall be made by the Trustee without making any charge therefor to the Owner of such Bond in temporary form.

Section 215. Book-Entry Bonds; Securities Depository. The Bonds shall initially be registered to Cede & Co., the nominee for The Depository Trust Company, New York, New York (the "Securities Depository"), and no Beneficial Owner will receive certificates representing their respective interests in the Bonds, except in the event the Trustee issues replacement bonds as provided in this Section 215. It is anticipated that during the term of the Bonds, the Securities Depository will make book-entry transfers among its Participants and receive and transmit payment of principal of, premium, if any, and interest on, the Bonds to the Participants until and unless the Trustee authenticates and delivers replacement bonds to the Beneficial Owners as described in the following paragraph.

If the City or the Trustee determines (A) that the Securities Depository is unable to properly discharge its responsibilities, or (B) that the Securities Depository is no longer qualified to act as a securities depository and registered clearing agency under the Securities and Exchange Act of 1934, as amended, or (C) that the continuation of a Book-Entry System to the exclusion of any Bonds being issued to any Bondholder other than Cede & Co. is no longer in the best interests of the Beneficial Owners of the Bonds, or (2) if the Trustee receives written notice from Participants representing interests in not less than 50% of the Bonds Outstanding, as shown on the records of the Securities Depository (and certified to such effect by the Securities Depository), that the continuation of a Book-Entry System to the exclusion of any Bonds being issued to any Bondholder other than Cede & Co. is no longer in the best interests of the Beneficial Owners of the Bonds, then the Trustee shall notify the Bondholders of such determination or such notice and of the availability of certificates to Bondholders requesting the same, and the Trustee shall register in the name of and authenticate and deliver replacement bonds to the Beneficial Owners or their nominees in principal amounts representing the interest of each; provided, that in the case of a determination under (A) or (B) of this paragraph, the City or the Trustee may select a successor securities depository in accordance with the following paragraph to effect book-entry transfers. In such event, all references to the Securities Depository herein shall relate to the period of time when the Securities Depository has possession of at least one Bond. Upon the issuance of replacement bonds, all references herein to obligations imposed upon or to be performed by the Securities Depository shall be deemed to be imposed upon and performed by the Trustee, to the extent applicable with respect to such replacement bonds. If the Securities Depository resigns and the City, the Trustee or Bondholders

are unable to locate a qualified successor of the Securities Depository in accordance with the following paragraph, then the Trustee shall authenticate and cause delivery of replacement bonds to Bondholders, as provided herein. The Trustee may rely conclusively on information from the Securities Depository and its Participants as to the names and addresses of the Beneficial Owners of the Bonds. The cost of printing, registration, authentication, and delivery of replacement bonds shall be paid for by the City.

In the event the Securities Depository resigns, is unable to properly discharge its responsibilities, or is no longer qualified to act as a securities depository and registered clearing agency under the Securities and Exchange Act of 1934, as amended, the City may appoint a successor Securities Depository provided the Trustee receives written evidence satisfactory to the Trustee with respect to the ability of the successor Securities Depository to discharge its responsibilities. Any such successor Securities Depository shall be a securities depository which is a registered clearing agency under the Securities and Exchange Act of 1934, as amended, or other applicable statute or regulation that operates a securities depository upon reasonable and customary terms. The Trustee upon its receipt of a Bond or Bonds for cancellation shall cause the delivery of Bonds to the successor Securities Depository in appropriate denominations and form as provided herein.

ARTICLE III
REDEMPTION OF BONDS BEFORE MATURITY

Section 301. Redemption of Bonds. The Bonds shall be subject to redemption prior to maturity as follows:

(a) The Series 2003 Bonds are subject to redemption at the election of the City, on and after October 1, 2008, in whole or in part (in inverse order of maturities and by lot within a maturity) at any time, at a redemption price equal to the principal amount being redeemed plus accrued interest to the date of redemption.

(b) The applicable series of Bonds shall be redeemed prior to maturity, in whole or in part, on any Interest Payment Date, in inverse order of maturity and by lot in such manner as the Trustee shall determine within a maturity, at a redemption price equal to 100% of the principal amount being redeemed, plus accrued interest to the date of redemption, from Project Fund moneys in excess of the amount needed to complete the applicable Project or portion thereof being financed with the proceeds of such series of Bonds, which moneys shall be transferred to the Redemption Fund pursuant to Section 502 hereof.

(c) Additional Bonds may also be made subject to optional, extraordinary and mandatory sinking fund redemption, in whole or in part, in such manner, at such times and at such prices as may be provided in the Supplemental Indenture providing for their issuance.

Section 302. Notice. Notice of the call for any redemption, identifying the Bonds or portions thereof being called and the date on which they shall be presented for payment, shall be mailed by the Trustee by first class mail (or, so long as the Securities Depository or its nominee is the sole registered owner of the Bonds, by any other means acceptable to the Securities

Depository, including facsimile) to the registered owner of each such Bond addressed to such registered owner at his registered address and placed in the mails not less than thirty (30) nor more than sixty (60) days prior to the date fixed for redemption; provided, however, that failure to give such notice by mailing, or any defect therein, shall not affect the validity of any proceeding for the redemption of any Bond with respect to which no such failure or defect has occurred. Any notice mailed as provided in this Section 302 shall be conclusively presumed to have been duly given, whether or not the registered owner receives the notice.

Section 303. Selection of Bonds to be Redeemed. If less than all of the Bonds of like series, maturity, interest rate and otherwise identical payment terms shall be called for redemption, the particular Bonds or portions of Bonds to be redeemed shall be selected by lot by the Trustee in such manner as the Trustee in its discretion may deem fair and appropriate; provided, however, that the portion of any Bond of a denomination of larger than the minimum denomination may be redeemed in the principal amount of such minimum denomination or a multiple thereof, and that for purposes of selection and redemption, any such Bond of a denomination larger than the minimum denomination shall be considered to be that number of separate Bonds of such minimum denomination which is obtained by dividing the principal amount of such Bond by such minimum denomination. So long as the Securities Depository or its nominee is the sole registered owner of a series of Bonds, the procedures established by the Securities Depository shall control with respect to the selection of the particular Bonds of such series to be redeemed.

Section 304. Surrender of Bonds Upon Redemption. Notice having been given in the manner and under the conditions hereinabove provided, and moneys for payment of the redemption price being held by the Trustee as provided in this Indenture (i) the Bonds or portions of Bonds so called for redemption shall, on the date fixed for redemption designated in such notice, become due and payable at the redemption price provided for redemption of such Bonds, and interest on such Bonds or portions of Bonds so called for redemption shall cease to accrue, (ii) upon surrender of the Bonds or portions of Bonds so called for redemption in accordance with such notice, such Bonds or portions of Bonds shall be paid at the applicable redemption price, (iii) such Bonds or portions of Bonds shall cease to be entitled to any lien, benefit or security under this Indenture, and (iv) the owners of said Bonds or portions of Bonds shall have no rights in respect thereof except to receive payment of the redemption price thereof.

Section 305. Redemption in Part. Any Bond which is to be redeemed only in part shall be surrendered to the Trustee (with, if the City or the Trustee so requires, due endorsement by, or a written instrument of transfer in form satisfactory to the City and the Trustee duly executed by, the owner thereof or his attorney duly authorized in writing), and the appropriate officials of the City shall execute and the Trustee shall authenticate and deliver to the owner of such Bond, without service charge, a new Bond or Bonds of the same series, of any authorized denomination or denominations, having the same maturity and interest rate as requested by such owner, in aggregate principal amount equal to and in exchange for the unredeemed portion of the principal of the Bond so surrendered.

ARTICLE IV
GENERAL COVENANTS AND REPRESENTATIONS

Section 401. Payment of Principal, Premium and Interest. The City covenants that it will promptly pay or cause to be paid the principal of and premium, if any, and interest on every Bond issued under this Indenture at the place, on the dates and in the manner provided herein and in the Bonds according to the true intent and meaning thereof. The principal, premium, if any, and interest (except interest paid from the proceeds from the sale of the Bonds and accrued interest) are payable solely from the Trust Estate which is hereby specifically pledged to the payment thereof in the manner and to the extent herein specified, and nothing in the Bonds or this Indenture should be considered as assigning or pledging any funds or assets of the City other than the Trust Estate. Anything in this Indenture to the contrary notwithstanding, it is understood that whenever the City makes any covenants involving financial commitments it pledges no funds or assets other than the Trust Estate in the manner and to the extent herein specified, but nothing herein shall be construed as prohibiting the City from using any other funds or assets. The City covenants that the Tax will not be repealed, and the rate of the Tax will not be reduced, for so long as there are any Outstanding Bonds. It is further covenanted that all necessary action will be taken, from time to time, to collect the Tax in the full amount due and to apply Tax Receipts in the manner provided in this Indenture.

Section 402. Performance of Covenants. The City covenants that it will faithfully perform at all times any and all covenants, undertakings, stipulations and provisions contained in this Indenture, in any and every Bond executed, authenticated and delivered hereunder, and in all ordinances pertaining hereto. The City covenants that it is duly authorized under the Constitution and laws of the State of Arkansas, including particularly and without limitation, the Act, to issue the Bonds authorized hereby and to execute this Indenture and to make the pledge of the Tax Receipts and to make the covenants in the manner and to the extent herein set forth, that all action on its part for the issuance of the Bonds and the execution and delivery of this Indenture has been duly and effectively taken, and that the Bonds in the hands of the Holders and owners thereof are and will be valid and enforceable obligations of the City according to the import thereof.

Section 403. Instruments of Further Assurance. At the request of the Trustee, the City shall, so far as it may be authorized by law, pass, make, do, execute, acknowledge and deliver, all and every such further resolutions, ordinances, acts, deeds, conveyances, assignments, transfers and assurances as may be necessary or desirable for the better assuring, conveying, granting, pledging, assigning and confirming of all and singular the Tax Receipts and all other moneys hereby pledged or assigned, or intended so to be, or which the City may become bound to pledge or assign.

Section 404. Recordation and Filing. To the extent necessary, the City covenants that it will cause this Indenture, such security agreements, financing statements, and all supplements thereto and other instruments as may be required from time to time to be kept, to be recorded and filed in such manner and in such places as may be required by law in order to fully preserve and protect the security of the owners of the Bonds and the rights of Trustee hereunder, and to perfect the security interest created by this Indenture.

Section 405. Inspection of Books. The City shall keep proper books of record and account (separate from all other records and accounts) in which complete and correct entries

shall be made of its transactions relating to the Projects and the Funds and Accounts established by this Indenture.

Section 406. Tax Covenants. The City covenants that it will not use or permit the use of any Bond proceeds or any other funds of the City, directly or indirectly, in any manner, and will not take or permit to be taken any other action or actions which would adversely effect the exclusion of interest on any Bond from gross income for federal income tax purposes. Without limiting the generality of the foregoing, the City further covenants that no part of the proceeds of the Bonds shall at any time be used, directly or indirectly, to acquire securities or obligations the acquisition of which would cause any of the Bonds to be an "arbitrage bond" as defined in Sections 148(a) and (b) of the Code. The City agrees that so long as any of the Bonds remain Outstanding, it will comply with the provisions of each applicable Tax Regulatory Agreement.

Section 407. Trustee's and Paying Agent's Fees and Expenses. Subject to the provisions of Section 902 hereof, the City hereby agrees and covenants to make payments for the fees, expenses and charges of the Trustee and Paying Agent, if any, as authorized and provided by this Indenture. The City is to make payments on statements rendered by the Trustee and Paying Agent either (i) directly to the Trustee and Paying Agent or (ii) pursuant to Section 503(b) hereof.

Section 408. Construction of Projects; Certification of Completion Date. The City hereby covenants to use its best efforts to acquire, construct and equip each Project being financed with proceeds of the Bonds with all reasonable dispatch and to use its best efforts to cause the acquisition, construction and equipping of such Project to be completed as soon as may be practicable, but in any case within a period not to exceed three years after the issuance of the applicable series of Bonds, delays caused by *force majeure* only excepted, but if for any reason such acquisition, construction and equipping is not completed within said period, there shall be no diminution or postponement of payments required hereunder to be made by the City. Promptly after each such Completion Date, the City shall submit to the Trustee the certificate of a Qualified Engineer which shall specify the Completion Date and shall state that acquisition, construction and equipping of the Project being financed with a particular series of Bond proceeds has been completed and the Project Costs have been paid, except for any Project Costs which have been incurred but are not then due and payable, or the liability for the payment of which is being contested or disputed by the City, and for the payment of which the Trustee is directed to retain specified amounts of moneys in the Project Fund. Notwithstanding the foregoing, such certificate may state that it is given without prejudice to any rights against third parties which exist at the date thereof or which may subsequently come into being.

Section 409. Encumbrances. The City covenants that it will not create or suffer to be created any lien or charge upon the Trust Estate, except in accordance with the provisions of this Indenture.

Section 410. Continuing Disclosure. The City hereby covenants and agrees that it will comply with and carry out all of the provisions of each Continuing Disclosure Agreement. Notwithstanding any other provision of this Indenture to the contrary, failure of the City or the Trustee to comply with the provisions of a Continuing Disclosure Agreement shall not be

considered an Event of Default hereunder; however, the Trustee may (and at the request of the Original Purchaser of a series of Bonds or the owners of at least 25% in aggregate Outstanding principal amount of such series of Bonds, shall) or any Beneficial Owner may take such actions as may be necessary and appropriate, including seeking mandate or specific performance by court order, to cause the City or the Trustee, as the case may be, to comply with its obligations under this Section 410.

Section 411. Authority of Commission. The City hereby recognizes that the Commission is the agency and instrumentality of the City designated by the Act and ordinances of the City to expend the Tax Receipts. Such authority and responsibility of the Commission is hereby confirmed and continued.

ARTICLE V
REVENUES AND FUNDS

Section 501. Creation of Funds and Accounts. (a) There is hereby confirmed and continued the Revenue Fund established in the trust indenture securing the Series 1995 Bonds. The Revenue Fund shall be maintained by the City as a segregated fund. There are hereby created and established with the Trustee the following Funds and Accounts:

(i) Project Fund;

(ii) Bond Fund, and an Interest Account and a Principal Account therein;

(iii) Debt Service Reserve Fund;

(iv) Cost of Issuance Fund;

(v) Redemption Fund; and

(vi) Rebate Fund.

(b) Except for the Revenue Fund, all Funds and Accounts shall be held by the Trustee, which shall hold and maintain said Funds and Accounts in trust, for the use and benefit of the Bondholders and the City, but subject to the permitted applications expressed herein.

Section 502. Project Fund. (a) The Trustee shall maintain the Project Fund to the credit of which there shall be deposited the proceeds of Additional Bonds as directed in a Supplemental Indenture.

(b) Moneys credited to the Project Fund shall be expended only as set forth in this Section 502.

(c) Amounts in the Project Fund shall be expended and applied for the payment of Project Costs. Disbursements shall be made from the Project Fund on the basis of consecutively numbered Requisitions in the form attached hereto as Exhibit C signed by an Authorized Representative. Requisitions may be submitted to the Trustee by certified mail, first class mail

or facsimile transmission. If the Trustee deems that a Requisition submitted by the City is sufficient pursuant to this Section 502, the amount requested thereunder shall be disbursed in payment of the Project Costs set forth therein, or in reimbursement of such Project Costs, within two (2) business days of the date of receipt of such Requisition by the Trustee. Each Requisition shall specify:

(i) the name of the person or party to whom payment is to be made and the purpose of the payment;

(ii) the amount to be paid thereunder;

(iii) that such amount has not been previously paid by the City and is justly due and owing to the person(s) named therein as a proper payment or reimbursement of a Project Cost; and

(iv) that no Event of Default exists under the Indenture and that, to the knowledge of the Authorized Representative, no event has occurred and continues which with notice or lapse of time or both would constitute an Event of Default under the Indenture.

(d) The Trustee shall keep full and complete records concerning and reflecting all disbursements from the Project Fund and shall file an accounting of said disbursements if and when requested by the City. The Trustee shall only make payments from the Project Fund pursuant to and in accordance with Requisitions. In making payments from the Project Fund, the Trustee may rely on any Requisitions delivered to it pursuant to this Section 502, and the Trustee shall be relieved of all liability relating to payments made in accordance with such Requisitions and any supporting certificate or certificates requested by the Trustee without physical inspection of the Project. Within ninety (90) days following completion of the Project or portion thereof being financed with a particular series of Bonds, the City shall deliver to the Trustee its Certificate stating that the Project or applicable portion thereof is complete and the Trustee shall transfer the remaining moneys in the Project Fund relating to such series of Bonds (save and except moneys needed to satisfy unpaid Project Costs) to the Redemption Fund for application to the retirement of Bonds by redemption or purchase, as provided by Section 301(b) and Section 506 hereof.

(e) Upon the occurrence and continuance of an Event of Default or the occurrence and continuance of an event which with notice or lapse of time or both would constitute an Event of Default, amounts on deposit in the Project Fund shall not be disbursed but shall instead be applied to the payment of Debt Service or the redemption price of the Bonds.

Section 503. Revenue Fund. (a) There shall be deposited to the credit of the Revenue Fund, as and when received, all Tax Receipts. For the purposes of financial reporting by the City with respect to the Tax, "receipts" and "revenues" shall have the same meaning.

(b) On or before the fifteenth day of each month, commencing July 15, 2003, and immediately following any required transfer of Tax Receipts to the bond fund and reserve fund

established with respect to the Series 1995 Bonds, the City shall transfer to the Trustee from the Revenue Fund, in the following order, the amounts set forth below:

FIRST: For deposit to the Interest Account of the Bond Fund, an amount equal to one-sixth (1/6) of the interest on the Outstanding Bonds due on the next Interest Payment Date (except that with respect to deposits required with respect to a series of Bonds prior to the first Interest Payment Date for such series of Bonds, the required monthly transfers shall be equal to a fraction, the numerator of which shall be 1 and the denominator of which shall be the number of transfers to be made prior to such Interest Payment Date);

SECOND: For deposit to the Principal Account of the Bond Fund, an amount equal to one-twelfth (1/12) of the next scheduled principal maturity of Outstanding Bonds (including mandatory sinking fund redemptions) (except that with respect to deposits required with respect to a series of Bonds prior to the first Principal Payment Date for such series of Bonds, the required monthly transfers shall be equal to a fraction, the numerator of which shall be 1 and the denominator of which shall be the number of transfers to be made prior to such Principal Payment Date);

THIRD: For deposit to the Debt Service Reserve Fund, an amount sufficient to cure any deficiency in the Debt Service Reserve Fund;

FOURTH: For deposit to the Rebate Fund, an amount sufficient to satisfy the City's obligations under Section 507 hereof; and

FIFTH: For payment to the Trustee and Paying Agent, the amount, if any, necessary to pay or reimburse the Trustee and Paying Agent for fees and expenses related to the Bonds.

(c) Required deposits into the Interest Account and Principal Account of the Bond Fund and the Debt Service Reserve Fund shall be reduced by investment earnings, if any, in said Funds and Accounts and, with respect to required deposits to the Interest Account of the Bond Fund only, by any accrued interest deposited to the Interest Account of the Bond Fund upon the initial sale of a series of Bonds. In the event there shall be insufficient moneys in the Revenue Fund in a particular month to make the required transfers described above, then any deficiencies shall be added to the required deposits during the next month.

(d) Any moneys remaining in the Revenue Fund following the required transfers set forth above may be used for any lawful purpose as determined by the Commission.

Section 504. Bond Fund. (a) There shall be deposited to the credit of the appropriate Account of the Bond Fund all moneys required to be transferred thereto pursuant to Sections 208, 503, 505, 506 and 508 of this Indenture and all other moneys received for said Fund.

(b) Moneys credited to the Bond Fund shall be expended only as set forth in this Section 504.

(c) (i) On each Interest Payment Date for any of the Bonds Outstanding, the Trustee shall pay out of moneys credited to the Interest Account of the Bond Fund the amounts required for the payment of interest on the Bonds due on such date, and on each redemption date, the amounts required for the payment of accrued interest on Bonds then to be redeemed or purchased unless the payment of such accrued interest shall be otherwise provided for, and such amounts shall be applied to such payments.

(ii) On each principal payment or redemption date for any of the Bonds Outstanding, the Trustee shall pay out of moneys credited to the Principal Account of the Bond Fund the amounts required for the payment of principal and premium, if any, due on the Bonds on such date and such amounts shall be applied to such payments.

(iii) If there shall be insufficient moneys in the Bond Fund to pay in full interest, principal or premium, if any, due on the Bonds on any interest or principal payment or redemption date, the Trustee shall, three days prior to such date, notify the City of such deficiency, and if by one day prior to such date such deficiency has not been cured, transfer an amount equal to the deficiency into the appropriate Account of the Bond Fund from the Funds indicated in the following order:

FIRST: the Redemption Fund; and

SECOND: the Debt Service Reserve Fund (for payment of principal and interest on any Interest or Principal Payment Date only).

(d) All payments made pursuant to this Section 504 shall be made in immediately available funds.

Section 505. Cost of Issuance Fund. There shall be deposited to the credit of the Cost of Issuance Fund all moneys received for said Fund pursuant to Section 208 hereof. The Trustee shall pay those Costs of Issuance as directed by the City pursuant to a Certificate delivered on a Closing Date. After all Costs of Issuance have been paid (and in any event not later than September 1, 2003 with respect to the Series 2003 Bonds), any remaining moneys in the Cost of Issuance Fund shall be transferred to the Interest Account of the Bond Fund. The Cost of Issuance Fund is not pledged to the payment of the Bonds.

Section 506. Redemption Fund. (a) There shall be deposited to the credit of the Redemption Fund all moneys required to be transferred thereto to effect an optional redemption of the Bonds pursuant to Section 301(a) hereof and all moneys transferred thereto pursuant to Section 502 of this Indenture.

(b) Moneys credited to the Redemption Fund shall be expended only as set forth in this Section 506.

(c) Moneys in the Redemption Fund shall be transferred to the Principal Account of the Bond Fund at such times as may be necessary to effectuate, on the first available date, redemptions of Bonds required by Section 301(a) and (b) of this Indenture.

(d) The amounts accumulated in the Redemption Fund, if so directed by the City by means of a Certificate delivered to the Trustee, shall be applied by the Trustee to the purchase of Bonds of the maturities which would otherwise be redeemed pursuant to Section 301(a) and (b) and this Section 506 but for the provisions of this subsection (d), at prices directed by the City not exceeding the applicable redemption prices of the Bonds which would be redeemed but for the operation of this sentence. Interest accrued on the Bonds so purchased shall be paid from moneys credited to the Interest Account of the Bond Fund.

Section 507. Rebate Fund. (a) The Trustee shall establish and maintain, separate and apart from any other Funds and Accounts established and maintained hereunder, a Fund to be designated as the Rebate Fund, which Fund is not pledged to the payment of any Bonds. Subject to the transfer provisions provided in subsection (c) below, all moneys at any time deposited in the Rebate Fund shall be held by the Trustee in trust, to the extent required to satisfy the Rebate Amount (as defined in each Tax Regulatory Agreement), for payment to the United States of America, and neither the City nor the Owner of any Bond shall have any rights in or claim to such money. All amounts deposited into or on deposit in the Rebate Fund shall be governed by this Section 507, by Section 406, and by each Tax Regulatory Agreement (which are incorporated herein by reference).

(b) As provided in Section 503(b) hereof, there shall be deposited in the Rebate Fund the amount of all income or gain on moneys deposited in any of the Funds and Accounts established by this Indenture which is required to be rebated to the United States and is designated for deposit therein, as calculated by the City to be owing to the United States pursuant to the Tax Regulatory Agreement, which shall be delivered by the City concurrently with the issuance of a series of Bonds.

(c) The Trustee, upon receipt of written instructions from the Mayor or Finance & Internal Services Director of the City, shall pay to the United States out of amounts in the Rebate Fund such amounts as are required pursuant to each Tax Regulatory Agreement.

(d) Any moneys remaining in the Rebate Fund after payment to the United States, within sixty (60) days after the date on which the last Bond is redeemed, of one hundred percent (100%) of the rebate amount as described in Section 148(f)(2) of the Code, shall be transferred to the Revenue Fund.

(e) The Trustee, as instructed by Certificate of the City, shall invest all amounts held in the Rebate Fund in Investment Obligations, subject to the restrictions set forth in the applicable Tax Regulatory Agreement. Money shall not be transferred from the Rebate Fund except as provided in subsection (c).

(f) Notwithstanding any other provision of this Indenture, the obligation to remit the Rebate Amount to the United States and to comply with all other requirements of this

Section 507, Section 406 and each Tax Regulatory Agreement shall survive the defeasance or payment in full of the Bonds.

Section 508. Debt Service Reserve Fund. As provided in Section 208(b)(2) hereof, upon the issuance of each series of Bonds, there shall be deposited into the Debt Service Reserve Fund, from proceeds of the Bonds, an amount sufficient to cause the amounts on deposit therein to be equal to the Reserve Requirement. The Debt Service Reserve Fund shall be maintained in an amount equal to the Reserve Requirement. The Debt Service Reserve Fund shall be used solely to pay the principal of and interest on Outstanding Bonds for which there are insufficient funds available in the Bond Fund to make such payments, as the same become due at maturity (including mandatory sinking fund redemption). If the Debt Service Reserve Fund, by virtue of any such payment, is reduced below the Reserve Requirement, it shall be reimbursed in the amount of any such deficiency as provided in Section 503. Notwithstanding the above provisions of this Section 508, the amount on deposit in the Debt Service Reserve Fund may be used, together with other available funds, to provide for the payment at maturity or to redeem prior to maturity all, but not less than all, of the Outstanding Bonds. If an excess shall exist in the Debt Service Reserve Fund over and above the Reserve Requirement, such excess shall be transferred to the Interest Account of the Bond Fund.

Section 509. Cessation of Fund Deposits. When the moneys in the Bond Fund, the Debt Service Reserve Fund and the Redemption Fund shall be and remain sufficient to pay in full the principal and interest on all Bonds then Outstanding in accordance with Article VII of this Indenture, together with the required fees and expenses to be paid or reimbursed to the Trustee and Paying Agent, the City shall have no further obligation to make payments into said Funds.

Section 510. Separate Accounts Authorized. A Supplemental Indenture authorizing the issuance of Additional Bonds may provide for the creation of separate Accounts within the Bond Fund, Debt Service Reserve Fund, Redemption Fund, Project Fund, Costs of Issuance Fund and Rebate Fund for such series of Bonds and such other Accounts as the City may direct; provided, that the creation of such separate Accounts shall be solely for the ease of administration and shall in no event affect the equal and ratable security of the Bonds of each series.

If any Supplemental Indenture authorizing the issuance of Additional Bonds provides for the establishment of separate Accounts for a series of Bonds, then such Supplemental Indenture shall require that the Tax Receipts received by the City shall be deposited pursuant to written direction of the City into each of the Accounts within the Bond Fund and Debt Service Reserve Fund for each series of Bonds on the basis of the installments of principal, premium, if any, and interest due on each series of Bonds and the amounts required to be deposited in the Accounts within the Bond Fund and the Debt Service Reserve Fund during the applicable period, to the end that the Bonds of each series shall be equally and ratably secured by the Tax Receipts.

Any Supplemental Indenture authorizing the issuance of Additional Bonds shall provide that any proceeds of such series of Bonds and investment earnings thereon remaining after some

specified date, or after the construction of all facilities to be financed with the proceeds of such series of Bonds, shall be applied to the redemption of such series of Bonds.

ARTICLE VI
INVESTMENTS

Section 601. Investment of Moneys. At the direction of the City or absent such direction, the Trustee shall invest moneys in Funds or Accounts held by the Trustee in Investment Obligations with maturity or redemption dates consistent with the times at which said moneys will be required for the purposes provided in this Indenture; provided, however, the stated maturity dates of Investment Obligations of Debt Service Reserve Fund moneys shall not exceed five years from the date of investment therein. Moneys in separate Funds or Accounts may be commingled for the purpose of investment.

Section 602. Investment Earnings. Subject to the provisions of the Tax Regulatory Agreement and Article V hereof, Investment Obligations purchased with moneys held in or attributable to any Fund or Account held by the Trustee under the provisions of this Indenture shall be deemed at all times to be a part of such Fund or Account and the income or interest earned, profits realized or losses suffered by a Fund or Account due to the investment thereof shall be retained in, credited or charged, as the case may be, to such Fund or Account unless otherwise provided pursuant to this Indenture.

Section 603. Valuation of Funds. Investments in any Fund or Account shall be evaluated monthly by the Trustee. The Trustee shall report the determined value of each Fund and Account to the City. For the purpose of determining the amount in any Fund or Account, the Trustee shall value all Investment Obligations credited to such Fund or Account at the price at which such Investment Obligations are redeemable by the owner thereof at its option if so redeemable, or, if not so redeemable, at the lesser of (i) the cost of such Investment Obligations minus the amortization of any premium or plus the amortization of any discount thereon and (ii) the market value of such Investment Obligations, provided that Investment Obligations credited to the Debt Service Reserve Fund, if not so redeemable, shall be valued at the cost thereof minus the amortization of any premium or plus the amortization of any discount thereon.

The Trustee shall sell or present for redemption any Investment Obligations as necessary in order to provide money for the purpose of making any payment required hereunder, and the Trustee shall not be liable for any loss resulting from any such sale.

Section 604. Responsibility of Trustee. The Trustee shall not be responsible or liable for any loss suffered in connection with any investment of moneys made by it at the direction of the City.

ARTICLE VII
DISCHARGE OF LIEN

Section 701. Discharge of Lien. If the City shall pay or cause to be paid to the owners of the Bonds the principal, premium, if any, and interest to become due thereon at the times and

in the manner stipulated therein, and if the City shall keep, perform and observe all and singular the covenants and promises in the Bonds and in this Indenture expressed as to be kept, performed and observed by it on its part, then these presents and the estate and rights hereby granted shall cease, determine and be void, and thereupon the Trustee shall cancel and discharge the lien of this Indenture, and execute and deliver to the City such instruments in writing as shall be requisite to satisfy the lien hereof, and reconvey to the City the estate hereby conveyed, and assign and deliver to the City any property at the time subject to the lien of this Indenture which may then be in its possession, except moneys or Government Securities held by it for the payment of the principal of and premium, if any, and interest on the Bonds.

Section 702. Bonds Deemed Paid. Any Bond shall be deemed to be paid within the meaning of this Article VII when payment of the principal of and premium, if any, and interest on such Bond (whether at maturity or upon redemption as provided in this Indenture, or otherwise), either (i) shall have been made or caused to be made in accordance with the terms thereof, or (ii) shall have been provided for by irrevocably depositing with the Trustee, in trust and irrevocably set aside exclusively for such payment, (1) moneys sufficient to make such payment or (2) Government Securities (provided that such deposit will not affect the tax-exempt status of the interest on any of the Bonds or cause any of the Bonds to be classified as "arbitrage bonds" within the meaning of Section 148(a) of the Code, as reflected in an opinion of Bond Counsel delivered to the Trustee), maturing as to principal and interest in such amount and at such times as will provide sufficient moneys to make such payment, and all necessary and proper fees, compensation and expenses of the Trustee and any Paying Agent pertaining to the Bonds with respect to which such deposit is made shall have been paid or the payment thereof provided for to the satisfaction of the Trustee and any said Paying Agent.

Section 703. Non-Presentment of Bonds. In the event any Bonds shall not be presented for payment when the principal thereof becomes due, either at maturity or otherwise, or at the date fixed for redemption thereof, if there shall have been deposited with the Trustee for that purpose, or left in trust if previously so deposited, funds sufficient to pay the principal thereof, and premium, if any, together with all interest unpaid and due thereon, to the due date thereof, for the benefit of the Holder thereof, all liability of the City to the Holder thereof for the payment of the principal thereof, premium if any, and interest thereon, shall forthwith cease, determine and be completely discharged, and thereupon it shall be the duty of the Trustee to hold such fund or funds, without liability for interest thereon, for the benefit of the Holder of such Bonds, who shall thereafter be restricted exclusively to such fund or funds, for any claim of whatever nature on his part under this Indenture or on, or with respect to, the Bonds.

ARTICLE VIII
DEFAULT PROVISIONS AND REMEDIES OF TRUSTEE AND BONDHOLDERS

Section 801. Events of Default. Each of the following events shall constitute and is referred to in this Indenture as an "Event of Default":

(a) Default in the due and punctual payment of any interest on any Bond;

(b) Default in the due and punctual payment of the principal of or premium, if any, on any Bond, whether at the stated maturity thereof, or upon proceedings for redemption thereof, or upon the maturity thereof by declaration;

(c) Default in the payment of any other amount required to be paid under this Indenture or the performance or observance of any other of the covenants, agreements or conditions contained in this Indenture, or in the Bonds issued hereunder, and continuance thereof for a period of sixty (60) days after written notice specifying such failure and requesting that it be remedied shall have been given to the City by the Trustee, which may give such notice in its discretion and shall give such notice at the written request of Bondholders of not less than 51% in aggregate principal amount of the Bonds then Outstanding, unless the Trustee, or the Trustee and Holders of an aggregate principal amount of Bonds not less than the aggregate principal amount of Bonds the Holders of which requested such notice, as the case may be, shall agree in writing to an extension of such period prior to its expiration; provided, however, if the failure stated in the notice cannot be corrected within the applicable period, the Trustee will not unreasonably withhold its consent to an extension of such time if corrective action is instituted by the City within such period and is being diligently pursued;

(d) The filing of a petition in bankruptcy by or against the City under the United States Bankruptcy Code or the commencement of a proceeding by or against the City under any other law concerning insolvency, reorganization or bankruptcy; and

(e) If the State has limited or altered the rights of the City pursuant to the Act, as in force on the date of this Indenture, to fulfill the terms of any agreements made with the Trustee or the Bondholders or in any way impaired the rights and remedies of the Trustee or the Bondholders while any Bonds are Outstanding.

The term "default" as used in clauses (a), (b) and (c) above shall mean default by the City in the performance or observance of any of the covenants, agreements or conditions on its part contained in this Indenture or in the Bonds Outstanding hereunder, exclusive of any period of grace required to constitute a default an "Event of Default" as hereinabove provided.

Section 802. Acceleration. Upon the occurrence of an Event of Default, the Trustee may, and upon the written request of the Holders of not less than 51% in aggregate principal amount of Bonds Outstanding hereunder shall, by notice in writing delivered to the City, declare the principal of all Bonds then Outstanding, together with the interest accrued thereon, immediately due and payable, and such principal and interest shall thereupon become and be immediately due and payable.

Section 803. Other Remedies; Rights of Bondholders. Upon the occurrence of an Event of Default, the Trustee may, as an alternative, pursue any available remedy by suit at law or in equity, including, without limitation, mandamus to enforce the payment of the principal of and premium, if any, and interest on the Bonds then Outstanding hereunder.

If an Event of Default shall have occurred, and if it shall have been requested so to do by the Holders of not less than 51% in aggregate principal amount of Bonds Outstanding hereunder and if it shall have been indemnified as provided in Section 901(l) hereof, the Trustee shall be obligated to exercise such one or more of the rights and powers conferred upon it by this Section 803 as the Trustee, being advised by counsel, shall deem most expedient in the interests of the Bondholders.

No remedy by the terms of this Indenture conferred upon or reserved to the Trustee (or to the Bondholders) is intended to be exclusive of any other remedy, but each and every such remedy shall be cumulative and shall be in addition to any other remedy given hereunder or now or hereafter existing at law or in equity or by statute.

No delay or omission to exercise any right or power accruing upon any default or Event of Default shall impair any such right or power or shall be construed to be a waiver of any such default or Event of Default or acquiescence therein; and every such right and power may be exercised from time to time and as often as may be deemed expedient.

No waiver of any default or Event of Default hereunder, whether by the Trustee or by the Bondholders, shall extend to or shall affect any subsequent default or Event of Default or shall impair any rights or remedies consequent thereon.

Section 804. Right of Bondholders to Direct Proceedings. Anything in this Indenture to the contrary notwithstanding, the Holders of not less than 51% in aggregate principal amount of Bonds Outstanding hereunder shall have the right, at any time, by an instrument or instruments in writing executed and delivered to the Trustee, to direct the method and place of conducting all proceedings to be taken in connection with the enforcement of the terms and conditions of this Indenture, or for the appointment of a receiver or any other proceeding hereunder; provided that such direction shall not be otherwise than in accordance with the provisions of law and of this Indenture.

Section 805. Appointment of Receiver. Upon the occurrence of an Event of Default, and upon the filing of a suit or other commencement of judicial proceedings to enforce the rights of the Trustee and of the Bondholders under this Indenture, the Trustee shall be entitled to the appointment of a receiver or receivers of the Trust Estate and of the tolls, rents, revenues, issues, earnings, income, products and profits thereof, including, without limitation, the Tax Receipts (subject to the prior right of the trustee for the Series 1995 Bonds), pending such proceedings with such powers as the court making such appointment shall confer.

Section 806. Waiver. In case of an Event of Default on its part, as aforesaid, to the extent that such rights may then lawfully be waived, neither the City nor anyone claiming through the City or under the City shall or will set up, claim or seek to take advantage of any appraisement, valuation, stay, extension or redemption laws now or thereafter in force, in order to prevent or hinder the enforcement of this Indenture, but the City, for itself and all who may claim through or under it, hereby waives, to the extent that it lawfully may do so, the benefit of all such laws and all right of appraisement and redemption to which it may be entitled under the laws of the State.

Section 807. Application of Moneys. Available moneys remaining after discharge of costs, charges and liens prior to this Indenture shall be applied by the Trustee as follows:

(a) Unless the principal of all the Bonds shall have become or shall have been declared due and payable, all such moneys shall be applied:

First: To the payment to the Persons entitled thereto of all installments of interest then due, in the order of the maturity of the installments of such interest, and, if the amount available shall not be sufficient to pay in full any particular installment, then to the payment ratably, according to the amounts due on such installment, to the Persons entitled thereto, without any discrimination or privilege;

Second: To the payment to the Persons entitled thereto of the unpaid principal of any of the Bonds which shall have become due (other than Bonds called for redemption for the payment of which moneys are held pursuant to the provisions of this Indenture), in the order of their due dates, with interest on such Bonds from the respective dates upon which they become due, and, if the amount available shall not be sufficient to pay in full Bonds due on any particular date, together with such interest, then to the payment ratably, according to the amount of principal due on such date, to the Persons entitled thereto without any discrimination or privilege of any Bond over any other Bond and without preference or priority of principal over interest or of interest over principal; and

Third: To the payment of the interest on and the principal of the Bonds, and to the redemption of Bonds, all in accordance with the provisions of Article V of this Indenture.

(b) If the principal of all the Bonds shall have become due or shall have been declared due and payable, all such moneys shall be applied first to the payment of the interest then due and unpaid upon the Bonds, and then to the payment of the principal then due and unpaid upon the Bonds, in each case without preference or priority of any Bond over any other Bond, ratably, according to the amounts due respectively for principal and interest, to the Persons entitled thereto.

(c) If the principal of all the Bonds shall have been declared due and payable, and if such declaration shall thereafter have been rescinded and annulled under the provisions of this Article VIII then, subject to the provisions of paragraph (b) of this Section 807, in the event that the principal of all the Bonds shall later become due or be declared due and payable, the moneys shall be applied in accordance with the provisions of paragraph (a) of this Section 807.

Whenever moneys are to be applied by the Trustee pursuant to the provisions of this Section 807, such moneys shall be applied by it at such times, and from time to time, as it shall determine, having due regard to the amount of such moneys available for application and the likelihood of additional moneys becoming available for such application in the future.

Whenever the Trustee shall apply such funds, it shall fix the date (which shall be an Interest Payment Date unless it shall deem another date more suitable) upon which such application is to be made and upon such date interest on the amounts of principal to be paid on such dates shall cease to accrue. The Trustee shall give such notice as it may deem appropriate of the deposit with it of any such moneys and of the fixing of any such date and shall not be required to make payment to the Holder of any Bond until such Bond shall be presented to the Trustee for appropriate endorsement or for cancellation if fully paid.

Section 808. Remedies Vested in Trustee. All rights of action (including the right to file proof of claim) under this Indenture or under any of the Bonds may be enforced by the Trustee without the possession of any of the Bonds or the production thereof in any trial or other proceeding relating thereto, and any such suit or proceeding instituted by the Trustee shall be brought in its name as Trustee, without the necessity of joining as plaintiffs or defendants any Bondholders hereby secured, and any recovery of judgment shall be for the equal benefit of the Holders of all Outstanding Bonds.

Section 809. Rights and Remedies of Bondholders. No Bondholder shall have any right to institute any suit, action or proceeding in equity or at law for the enforcement of this Indenture or for the execution of any trust hereof or for the appointment of a receiver or any other remedy hereunder, unless a default has occurred of which the Trustee has been notified as provided in subsection (g) of Section 901, or of which by said subsection it is deemed to have notice, nor unless such default shall have become an Event of Default and the Holders of not less than 51% in aggregate principal amount of Bonds Outstanding hereunder shall have made written request to the Trustee and shall have offered it reasonable opportunity either to proceed to exercise the powers hereinbefore granted or to institute such action, suit or proceeding in its own name, nor unless also they have offered to the Trustee indemnity as provided in subsection (l) of Section 901, nor unless the Trustee shall thereafter fail or refuse to exercise the powers hereinbefore granted, or to institute such action, suit or proceeding in its own name; and such notification, request and offer of indemnity are hereby declared in every such case, at the option of the Trustee, to be conditions precedent to the execution of the powers and trusts of this Indenture, and to any action or cause of action for the enforcement of this Indenture or for the appointment of a receiver or for any other remedy hereunder; it being understood and intended that no one or more Holders of the Bonds shall have any right in any manner whatsoever to affect, disturb or prejudice the lien of this Indenture by action of the Holder or Holders or to enforce any right hereunder except in the manner herein provided, and that all proceedings at law or in equity shall be instituted, held and maintained in the manner herein provided for the equal benefit of the Holders of all Bonds Outstanding hereunder. Nothing in this Indenture contained shall, however, affect or impair the right of any Bondholders to enforce the payment of the principal of and premium, if any, and interest on any Bonds at and after the maturity thereof, or the obligation of the City to pay the principal of and premium, if any, and interest on each of the Bonds issued hereunder to the respective Holders thereof at the time and place in said Bonds expressed.

Section 810. Termination of Proceedings. In case the Trustee shall have proceeded to enforce any right under this Indenture by the appointment of a receiver or otherwise, and such

proceedings shall have been discontinued or abandoned for any reason, or shall have been determined adversely to the Trustee, then and in every such case the City and the Trustee shall be restored to their former positions and rights hereunder with respect to the property herein conveyed, and all rights, remedies and powers of the Trustee shall continue as if no such proceedings had been taken, except to the extent the Trustee is legally bound by such adverse determination.

Section 811. Waivers of Events of Default. The Trustee may, and upon the written request of the Holders of not less than 51% in principal amount of all Bonds Outstanding hereunder shall, waive any Event of Default hereunder and its consequences and rescind any declaration of maturity of principal; provided, however, there shall not be waived any Event of Default described in clause (a) or (b) of the first paragraph of Section 801 hereof, unless prior to such waiver or rescission all arrears of principal (due otherwise than by declaration) and interest, and all expenses of the Trustee and Paying Agent, shall have been paid or provided for. In case of any such waiver or rescission the City, Trustee and the Bondholders shall be restored to their former positions and rights hereunder respectively, but no such waiver or rescission shall extend to any subsequent or other default, or impair any right subsequent thereon.

ARTICLE IX
TRUSTEE AND PAYING AGENT

Section 901. Acceptance of Trusts. The Trustee hereby accepts the trusts imposed upon it by this Indenture and agrees to perform said trusts, but only upon and subject to the following expressed terms and conditions:

(a) The Trustee may execute any of the trusts or powers hereof and perform any duties required of it by or through attorneys, agents, receivers or employees, and shall be entitled to advice of counsel concerning all matters of trusts hereof and its duties hereunder, and may in all cases pay reasonable compensation to all such attorneys, agents, receivers and employees as may reasonably be employed in connection with the trusts hereof. Reimbursement of such compensation paid by the Trustee is subject to the provisions of Section 902 hereof. The Trustee may act upon the opinion or advice of any attorney, surveyor, engineer or accountant selected by it in the exercise of reasonable care, or, if selected or retained by the City prior to the occurrence of a default of which the Trustee has been notified as provided in subsection (g) of this Section 901, or of which by said subsection the Trustee is deemed to have notice, approved by the Trustee in the exercise of such care. The Trustee shall not be responsible for any loss or damage resulting from an action or nonaction in accordance with any such opinion or advice.

(b) The Trustee shall not be responsible for any recital herein, or in the Bonds (except in respect to the certificate of authentication of the Trustee endorsed on such Bonds), or for the validity of the execution by the City of this Indenture or of any Supplemental Indentures or instruments of further assurance, or for the sufficiency of the security for the Bonds issued hereunder or intended to be secured hereby, or for the value of the title of the property herein conveyed or otherwise as to the maintenance of the security hereof; except that in the event the Trustee enters into possession of a part or all

of the property herein conveyed pursuant to any provision of this Indenture, it shall use due diligence in preserving such property; and the Trustee shall not be bound to ascertain or inquire as to the performance or observance of any covenants, conditions and agreements aforesaid as to the condition of the property herein conveyed.

(c) The Trustee may become the owner of Bonds secured hereby with the same rights which it would have if not Trustee.

(d) The Trustee shall be protected in acting upon any notice, request, consent, certificate, order, affidavit, letter, telegram or other paper or document believed by it, in the exercise of reasonable care, to be genuine and correct and to have been signed or sent by the proper person or persons. Any action taken by the Trustee pursuant to this Indenture upon the request or authority or consent of the owner of any Bond secured hereby, shall be conclusive and binding upon all future owners of the same Bond and upon Bonds issued in exchange therefor or in place thereof.

(e) As to the existence or nonexistence of any fact or as to the sufficiency or validity of any instrument, paper or proceeding, the Trustee shall be entitled to rely upon a Certificate of the City signed by its Authorized Representative and attested by the City Clerk as sufficient evidence of the facts therein contained and, prior to the occurrence of a default of which it has been notified as provided in subsection (g) of this Section 901, or of which by that subsection it is deemed to have notice, shall also be at liberty to accept a similar certificate to the effect that any particular dealing, transaction, or action is necessary or expedient, but may at its discretion, at the reasonable expense of the City, in every case secure such further evidence as it may think necessary or advisable but shall in no case be bound to secure the same. The Trustee may accept a certificate of the City Clerk of the City under its seal to the effect that a resolution or ordinance in the form therein set forth has been adopted by the City as conclusive evidence that such resolution or ordinance has been duly adopted, and is in full force and effect.

(f) The permissive right of the Trustee to do things enumerated in this Indenture shall not be construed as a duty of the Trustee, and the Trustee shall be answerable only for its own gross negligence or willful misconduct.

(g) The Trustee shall not be required to take notice or be deemed to have notice of any default hereunder (except for defaults under clause (a) or (b) of the first paragraph of Section 801 hereof as to which the Trustee shall be deemed to have notice) unless the Trustee shall be specifically notified in writing of such default by the City or by the Holders of at least 10% in aggregate principal amount of Bonds Outstanding hereunder, and all notices or other instruments required by this Indenture to be delivered to the Trustee must, in order to be effective, be delivered to the principal corporate trust office of the Trustee, and in the absence of such notice so delivered, the Trustee may conclusively assume there is no such default except as aforesaid.

(h) [Reserved].

(i) At any and all reasonable times the Trustee, and its duly authorized agents, attorneys, experts, engineers, accountants and representatives, shall have the right fully to inspect any and all of the property herein conveyed, including all books, papers and records of the City pertaining to the Tax Receipts and the Bonds, and to take such memoranda from and in regard thereto as may be desired.

(j) The Trustee shall not be required to give any bond or surety in respect of the execution of the said trusts and powers or otherwise in respect of the premises.

(k) Notwithstanding anything elsewhere in this Indenture contained, the Trustee shall have the right, but shall not be required, to demand, in respect of the authentication of any Bonds, the withdrawal of any cash, the release of any property, or any action whatsoever within the purview of this Indenture, any showings, certificates, opinions, appraisals or other information, or corporate action or evidence thereof, in addition to that by the terms hereof required as a condition of such action by the Trustee, deemed desirable for the purpose of establishing the right of the City to the authentication of any Bonds, the withdrawal of any cash, the release of any property, or the taking of any other action by the Trustee.

(l) Before taking such action hereunder, the Trustee may require that it be furnished an indemnity bond satisfactory to it for the reimbursement to it of all expenses to which it may be put and to protect it against all liability, except liability which is adjudicated to have resulted from the gross negligence or willful misconduct of the Trustee, by reason of any action so taken by the Trustee.

Section 902. Fees, Charges and Expenses of Trustee and Paying Agent. (a) Subject to subsection (b) of this Section 902, the City shall, from moneys lawfully available therefor, pay to the Trustee and Paying Agent reasonable compensation for all services performed hereunder and also all reasonable expenses, charges and other disbursements and those of their attorneys, agents and employees incurred in and about the administration and execution of the trusts hereby created and the performance of the powers and duties hereunder and, to the extent permitted by law and from moneys lawfully available therefor, shall indemnify and save the Trustee harmless against any liabilities which it may incur in the exercise and performance of its powers and duties hereunder. With respect to the Series 2003 Bonds, the Trustee's initial authentication fee shall be $2,500 and the annual administration fee of the Trustee shall be up to, but shall not exceed, $4,500. If the City shall fail to make any payment required by this subsection (a), the Trustee may make such payment from any moneys in its possession under the provisions of this Indenture and shall be entitled to a preference therefor over any of the Bonds Outstanding hereunder. The City shall not be required to indemnify the Trustee against any liabilities which the Trustee may incur as a result of negligent or wrongful acts or omissions of the Trustee.

(b) The City shall pay to the Trustee compensation for its services as described in Section 902(a), provided that such compensation, together with all expenses, charges and other disbursements of the Trustee and its attorneys, agents and employees and all reimbursements to the Trustee for all costs and other disbursements as described in Section 901(a) hereof shall not exceed $9,500 annually (not including the initial authentication fee) without the prior written

approval of the City, which approval shall not be unreasonably withheld. If the Trustee wishes to consult with or retain counsel for any purpose hereunder whose anticipated fees, together with all other compensation, disbursements and reimbursements of the Trustee and its attorneys, agents and employees to be paid by the City hereunder, shall exceed $10,000 annually, then such counsel shall have to be acceptable to the City and such fees shall have to be approved by the City as described above.

Section 903. Additional Duties of Trustee. (a) In addition to the other duties of the Trustee described in this Indenture, it shall be the duty of the Trustee, on or before the tenth day of each month after the month in which the Series 2003 Bonds are delivered, to file with the City a statement setting forth in respect of the preceding calendar month:

(i) the amount withdrawn or transferred by it and the amount deposited with it on account of each Fund and Account held by it under the provisions of this Indenture;

(ii) the amount on deposit with it at the end of such month to the credit of each such Fund and Account;

(iii) a brief description of all obligations held by it as an investment of moneys in each such Fund and Account;

(iv) the amount applied to the purchase or redemption of Bonds under the provisions of this Indenture and a description of the Bonds or portions of Bonds so purchased or redeemed; and

(v) any other information that the City may reasonably request, including, but not limited to, submittal of monthly statements of activity relating to the Bonds. Such information shall also be provided at the direction of the City to one additional designated entity.

All records and files pertaining to each such Fund and Account in the custody of the Trustee hereunder shall be open at all reasonable times to the inspection of the City and its agents and representatives, and the City may make copies thereof.

(b) The Trustee additionally shall be responsible for the preparation and timely distribution of any and all forms and reports required by law to all Bondholders, the State and the Internal Revenue Service in connection with the payment to the Bondholders of interest on the Bonds.

Section 904. Notice to Bondholders of Default. If a default occurs of which the Trustee is pursuant to the provisions of Section 901(g) deemed to have or is given notice, the Trustee shall promptly make demand upon the City and give notice to each owner of Bonds then Outstanding.

Section 905. Intervention by Trustee. In any judicial proceeding to which the City is a party and which in the opinion of the Trustee and its counsel has a substantial bearing on the interests of Holders of Bonds issued hereunder, the Trustee may intervene on behalf of Bondholders and shall do so if requested in writing by the Holders of at least 51% of the

aggregate principal amount of Bonds Outstanding hereunder. The rights and obligations of the Trustee under this Section 905 are subject to the approval of the court having jurisdiction in the premises.

Section 906. Merger or Consolidation of Trustee. Any bank or trust company to which the Trustee may be merged, or with which it may be consolidated, or to which it may sell or transfer its trust business and assets as a whole or substantially as a whole, or any bank or trust company resulting from any such sale, merger, consolidation or transfer to which it is a party, ipso facto, shall be and become successor trustee hereunder and vested with all of the title to the whole property or Trust Estate and all the trusts, powers, discretions, immunities, privileges and all other matters as was its predecessor, without the execution or filing of any instrument or any further act, deed, or conveyance on the part of any of the parties hereto, anything herein to the contrary notwithstanding; provided, however, that such successor trustee shall have capital and surplus of at least $40 million.

Section 907. Resignation by Trustee. The Trustee and any successor trustee may at any time resign from the trusts hereby created by giving written notice to the City and the Bondholders, and such resignation shall take effect upon the appointment of a successor trustee by the Bondholders or by the City. Such notice may be served personally or sent by registered mail (to the City) or first class mail (to the Bondholders).

Section 908. Removal of Trustee. The Trustee may be removed at any time by an instrument or concurrent instruments in writing delivered to the Trustee and to the City, and signed by the Holders of not less than 51% in aggregate principal amount of Bonds Outstanding hereunder.

Section 909. Appointment of Successor Trustee. In case the Trustee hereunder shall resign or be removed, or be dissolved, or shall be in course of dissolution or liquidation, or otherwise become incapable of acting hereunder, or in case it shall be taken under the control of any public officer or officers, or of a receiver appointed by the court, a successor may be appointed by the Holders of not less than 51% in aggregate principal amount of Bonds Outstanding hereunder, by an instrument or concurrent instruments in writing signed by such Holders, or by their attorneys in fact, duly authorized; provided, nevertheless, that in case of such vacancy the City by an instrument executed and signed by its Mayor and attested by its City Clerk under its seal, shall appoint a temporary trustee to fill such vacancy until a successor trustee shall be appointed by the Bondholders in the manner above provided. Any such temporary trustee appointed by the City shall immediately and without further act be superseded by the trustee appointed by such Bondholders. Every such temporary trustee and every such successor trustee shall be a trust company or bank in good standing, having capital and surplus of not less than $40 million.

Section 910. Concerning Any Successor Trustee. Every successor or temporary trustee appointed hereunder shall execute, acknowledge and deliver to its predecessor and also to the City an instrument in writing accepting such appointment hereunder, and thereupon such successor or temporary trustee, without any further act or conveyance, shall become fully vested with all the estates, properties, rights, powers, trusts, duties and obligations of its predecessor;

but such predecessor shall, nevertheless, on the written request of the City or of its successor trustee, execute and deliver an instrument transferring to such successor all the estate, properties, rights, powers and trusts of such predecessor hereunder; and every predecessor trustee shall deliver all securities, moneys and any other property held by it as trustee hereunder to its successor. Should any instrument in writing from the City be required by any successor trustee for more fully and certainly vesting in such successor the estates, rights, powers and duties hereby vested or intended to be vested in the predecessor trustee, any and all such instruments in writing shall, on request, be executed, acknowledged, and delivered by the City.

Section 911. Reliance Upon Instruments. The resolutions, opinions, certificates and other instruments provided for in this Indenture may be accepted and relied upon by the Trustee as conclusive evidence of the facts and conclusions stated therein and shall be full warrant, protection and authority to the Trustee for its actions taken hereunder.

Section 912. Appointment of Co-Trustee. The City and the Trustee shall have power to appoint, and upon the request of the Trustee the City shall for such purpose join with the Trustee in the execution of all instruments necessary or proper to appoint, another corporation or one or more Persons approved by the Trustee, either to act as co-trustee or co-trustees jointly with the Trustee of all or any of the property subject to the lien hereof, with such powers as may be provided in the instrument of appointment and to vest in such corporation or Person or Persons as such co-trustee any property, title, right or power deemed necessary or desirable. In the event that the City shall not have joined in such appointment within fifteen (15) days after the receipt by it of a request so to do, the Trustee alone shall have the power to make such appointment. Should any deed, conveyance or instrument in writing from the City be required by the co-trustee so appointed for more fully and certainly vesting in and confirming to such co-trustee such properties, rights, powers, trusts, duties and obligations, any and all such deeds, conveyances and instruments in writing shall, on request, be executed, acknowledged and delivered by the City. Every such co-trustee shall, to the extent permitted by law, be appointed subject to the following provisions and conditions, namely:

(a) The Bonds shall be authenticated and delivered, and all powers, duties, obligations and rights conferred upon the Trustee in respect of the custody of all money and securities pledged or deposited hereunder, shall be exercised solely by the Trustee; and

(b) The Trustee, at any time by an instrument in writing, may remove any such separate Trustee or co-trustee.

Every instrument, other than this Indenture, appointing any such co-trustee shall refer to this Indenture and the conditions of this Article IX expressed, and upon the acceptance in writing by such co-trustee, the co-trustee shall be vested with the estate or property specified in such instrument, jointly with the Trustee (except insofar as local law makes it necessary for any separate trustee to act alone), subject to all the trusts, conditions and provisions of this Indenture. Any such co-trustee may at any time, by an instrument in writing, constitute the Trustee as the co-trustee's agent or attorney-in-fact with full power and authority, to the extent authorized by law, to do all acts and things and exercise all discretion authorized or permitted by the co-trustee,

for and on behalf of the co-trustee and in the co-trustee's name. In case any co-trustee shall die, become incapable of acting, resign or be removed, all the estate, properties, rights, powers, trusts, duties and obligations of said co-trustee shall vest in and be exercised by the Trustee until the appointment of a new trustee or a successor to such co-trustee.

Section 913. Designation and Succession of Paying Agent. The Trustee and any successor Trustee shall also be the Paying Agent for the Bonds. The Paying Agent shall enjoy the same protective provisions in the performance of its duties hereunder as are specified in Section 901 hereof with respect to the Trustee insofar as such provisions may be applicable.

ARTICLE X
SUPPLEMENTAL INDENTURES

Section 1001. Supplemental Indentures Not Requiring Consent of Bondholders. The City and the Trustee may, from time to time and at any time, without the consent of or notice to the Bondholders, enter into Supplemental Indentures as follows:

(a) to cure any formal defect, omission, inconsistency or ambiguity in this Indenture;

(b) to grant to or confer or impose upon the Trustee for the benefit of the Bondholders any additional rights, remedies, powers, authority, security, liabilities or duties which may lawfully be granted, conferred or imposed and which are not contrary to or inconsistent with this Indenture as theretofore in effect, provided that no such additional liabilities or duties shall be imposed upon the Trustee without its consent;

(c) to add to the covenants and agreements of, and limitations and restrictions upon, the City in this Indenture other covenants, agreements, limitations and restrictions to be observed by the City which are not contrary to or inconsistent with this Indenture as theretofore in effect;

(d) to confirm, as further assurance, any pledge under, and the subjection to any claim, lien or pledge created or to be created by, this Indenture, of the Trust Estate or of any other moneys, securities or funds;

(e) to comply with the requirements of the Trust Indenture Act of 1939, as from time to time amended;

(f) to authorize the issuance and sale of one or more series of Additional Bonds;

(g) to make such additions, deletions or modifications as may be necessary to assure compliance with Section 148(f) of the Code relating to required rebate to the United States or otherwise as may be necessary to assure exemption from federal income taxation of interest on the Bonds; or

(h) to modify, alter, amend or supplement this Indenture in any other respect which is not materially adverse to the Bondholders and which does not involve a change described in clause (a), (b), (c), (d), (e) or (f) of Section 1002 hereof and which, in the judgment of the Trustee, is not to the prejudice of the Trustee.

Section 1002. Supplemental Indentures Requiring Consent of Bondholders. Subject to the terms and provisions contained in this Section 1002, and not otherwise, the Holders of not less than 2/3 in aggregate principal amount of the Bonds then Outstanding shall have the right, from time to time, anything contained in this Indenture to the contrary notwithstanding, to consent to and approve the execution by the City and the Trustee of such indenture or indentures supplemental hereto as shall be deemed necessary and desirable by the City for the purpose of modifying, altering, amending, adding to, or rescinding, in any particular, any of the terms or provisions contained in this Indenture or in any Supplemental Indenture; provided, however, that nothing herein contained shall permit or be construed as permitting (a) an extension of the maturity (or mandatory redemption date) of the principal of or the interest on any Bond issued hereunder, or (b) a reduction in the principal amount of or redemption premium or rate of interest on any Bond issued hereunder, or (c) the creation of any lien on the Trust Estate or any part thereof, except as hereinbefore expressly permitted, or (d) a privilege or priority of any Bond or Bonds over any other Bond or Bonds, or (e) a reduction in the aggregate principal amount of the Bonds required for consent to such Supplemental Indenture, or (f) the deprivation of the Holder of any Bond then Outstanding of the lien hereby created on the Trust Estate. Nothing herein contained, however, shall be construed as making necessary the approval of Bondholders of the execution of any Supplemental Indenture as provided in Section 1001.

If, at any time the City shall request the Trustee to enter into any Supplemental Indenture for any of the purposes of this Section, the Trustee shall, at the expense of the City, cause notice of the proposed execution of such Supplemental Indenture to be mailed by first class mail to each registered owner of the Bonds. Such notice shall briefly set forth the nature of the proposed Supplemental Indenture and shall state that copies thereof are on file at the principal office of the Trustee for inspection by Bondholders. The Trustee shall not, however, be subject to any liability to any Bondholder by reason of its failure to mail such notice, and any such failure shall not affect the validity of such Supplemental Indenture when consented to and approved as provided in this Section 1002. If the Holders of not less than 2/3 in aggregate principal amount of the Bonds Outstanding at the time of the execution of any such Supplemental Indenture shall have consented to and approved the execution thereof as herein provided, no Holder of any Bond shall have any right to object to any of the terms and provisions contained therein, or the operation thereof, or in any manner to question the propriety of the execution thereof, or to enjoin or restrain the Trustee or the City from executing the same or from taking any action pursuant to the provisions thereof.

Section 1003. Effect of Supplemental Indentures. Upon the execution of any Supplemental Indenture entered into pursuant to Section 1001 or 1002 hereof, this Indenture shall be deemed to be modified and amended in accordance therewith.

ARTICLE XI
MISCELLANEOUS

Section 1101. Consents, etc. of Bondholders. Any request, direction, objection or other instrument required by this Indenture to be signed and executed by the Bondholders may be in any number of concurrent writings of similar tenor and may be signed or executed by such Bondholders in person or by agent appointed in writing. Proof of the execution of any such request, direction, objection or other instrument or of the writing appointing any such agent and of the ownership of Bonds, if made in the following manner, shall be sufficient for any of the purposes of this Indenture, and shall be conclusive in favor of the Trustee with regard to any action taken by it under such request or other instrument, namely:

(a) The fact and date of the execution by any Person of any such writing may be proved by the certificate of any officer in any jurisdiction who by law has power to take acknowledgments within such jurisdiction that the Person signing such writing acknowledged before such officer the execution thereof, or by an affidavit of any witness to such execution.

(b) The fact of ownership of Bonds and the amount or amounts, numbers, and other identification of such Bonds, and the date of holding the same shall be proved by the registration books of the City maintained by the Trustee, as Bond registrar.

Section 1102. Notices. Except as otherwise provided in this Indenture, all notices, certificates or other communications shall be sufficiently given and shall be deemed given when mailed by registered or certified mail, postage prepaid, to the City or the Trustee. Notices, certificates or other communications shall be sent to the following addresses:

City: City of Fayetteville
City Administration Building
113 West Mountain
Fayetteville, Arkansas 72701
Attention: Mayor

Trustee: Bank of Oklahoma, N.A.
P. O. Box 2300
Tulsa, Oklahoma 74192
Attention: Cynthia Wilkinson

Either of the foregoing may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent.

Section 1103. Limitation of Rights. With the exception of rights herein expressly conferred, nothing expressed or mentioned in or to be implied from this Indenture, or the Bonds issued hereunder, is intended or shall be construed to give to any person or company other than the parties hereto, and the Holders of the Bonds secured by this Indenture any legal or equitable rights, remedy, or claim under or in respect to this Indenture or any covenants, conditions, and

provisions hereof being intended to be and being for the sole exclusive benefit of the parties hereto and the Holders of the Bonds hereby secured as herein provided.

Section 1104. Severability. If any provisions of this Indenture shall be held or deemed to be or shall, in fact, be inoperative or unenforceable as applied in any particular case in any jurisdiction or jurisdictions or in all jurisdictions or in all cases because it conflicts with any provisions or any constitution or statute or rule of public policy, or for any other reason, such circumstances shall not have the effect of rendering the provision in question inoperative or unenforceable in any other case or circumstance, or of rendering any other provision or provisions herein contained invalid, inoperative or unenforceable to any extent whatever.

The invalidity of any one or more phrases, sentences, clauses or paragraphs in this Indenture contained shall not affect the remaining portions of this Indenture or any part thereof.

Section 1105. Applicable Provisions of Law. This Indenture shall be considered to have been executed in the State of Arkansas and it is the intention of the parties that the substantive law of the State of Arkansas govern as to all questions of interpretation, validity and effect.

Section 1106. Counterparts. This Indenture 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.

Section 1107. Successors and Assigns. All the covenants, stipulations, provisions, agreements, rights, remedies and claims of the parties hereto in this Indenture contained shall bind and inure to the benefit of their successors and assigns.

Section 1108. Captions. The captions or headings in this Indenture are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Indenture.

Section 1109. Photocopies and Reproductions. A photocopy or other reproduction of this Indenture may be filed as a financing statement pursuant to the Uniform Commercial Code, although the signatures of the City and the Trustee in such reproduction are not original manual signatures.

Section 1110. Bonds Owned by City. In determining whether Bondholders of the requisite aggregate principal amount of the Bonds have concurred in any direction, consent or waiver under this Indenture, Bonds which are owned by the City shall be disregarded and deemed not to be Outstanding for the purpose of any such determination, except that, for the purpose of determining whether the Trustee shall be protected in relying on any such direction, consent or waiver, only Bonds which the Trustee knows are so owned shall be so disregarded. Bonds so owned which have been pledged in good faith may be regarded as Outstanding if the pledgee establishes to the satisfaction of the Trustee the pledgee's right so to act with respect to such Bonds and that the pledgee is not the City. In case of a dispute as to such right, any decision by the Trustee taken upon the advice of counsel shall be full protection to the Trustee.

IN WITNESS WHEREOF, the City has caused these presents to be signed in its name and behalf by its Mayor and its corporate seal to be hereunto affixed and attested by its City Clerk, and, to evidence its acceptance of the trust hereby created, the Trustee has caused these presents to be signed in its behalf by its duly authorized officers and its corporate seal to be hereto affixed.

CITY OF FAYETTEVILLE, ARKANSAS

By:_____
Mayor

ATTEST:

_____
City Clerk

(S E A L)

BANK OF OKLAHOMA, N.A.,
as Trustee

By:_____
Title:

ATTEST:

By:_____
Title:

(S E A L)

[SIGNATURE PAGE TO TRUST INDENTURE]

CONSENT AND AGREEMENT TO TRUST INDENIURE

The Advertising and Promotion Commission of the City of Fayetteville, Arkansas hereby consents to the execution and delivery of the foregoing Trust Indenture.

ADVERTISING AND PROMOTION COMMISSION OF THE CITY OF FAYETTEVILLE, ARKANSAS

By:_____
Title: Chairman

ATTEST:

_____
City Clerk

[CONSENT PAGE TO TRUST INDENTURE]

EXHIBIT A TO TRUST INDENTURE

Form of Series 2003 Bond

Unless this certificate is presented by an authorized representative of The Depository Trust Company, a New York corporation ("DTC"), to the City or its agent for registration of transfer, exchange or payment, and any certificate issued is registered in the name of Cede & Co. or in such other name as is requested by the authorized representative of DTC (and any payment is made to Cede & Co. or to such other entity as is requested by an authorized representative of DTC), any transfer, pledge or other use hereof for value or otherwise by or to any person is wrongful inasmuch as the registered owner hereof, Cede & Co., has an interest herein.

REGISTERED
No. R03-____

REGISTERED
$_____

UNITED STATES OF AMERICA
STATE OF ARKANSAS
CITY OF FAYETTEVILLE, ARKANSAS
HOTEL AND RESTAURANT GROSS RECEIPTS TAX REFUNDING BOND
SERIES 2003

Interest Rate: ____%

Maturity Date: October 1, 20__

Date of Bond: July 1, 2003

CUSIP: _____

Registered Owner: CEDE & CO.

Principal Amount: _____ DOLLARS

KNOW ALL MEN BY THESE PRESENTS:

That the City of Fayetteville, Arkansas, a municipality and political subdivision organized and existing by virtue of the laws of the State of Arkansas (the "City"), for value received, promises to pay to the Registered Owner shown above, or registered assigns, on the Maturity Date shown above, but solely from the source and in the manner hereinafter set forth, the Principal Amount shown above, and in like manner to pay interest on said amount from the date hereof until payment of such Principal Amount has been made or duly provided for, at the Interest Rate per annum shown above, such interest to be payable semiannually on April 1 and October 1 of each year, commencing on the April 1 or October 1 next succeeding the date of this bond shown above, except as the provisions hereinafter set forth with respect to redemption of this bond prior to maturity may become applicable hereto. The principal of and premium, if any, on this bond are payable in lawful money of the United States of America upon the presentation and surrender hereof at the principal corporate trust office of Bank of Oklahoma, N.A., Tulsa, Oklahoma, or its successor or successors, as trustee (the "Trustee"). So long as Cede & Co. or another nominee of DTC is the registered owner of this bond, payment of interest hereon shall be made by wire transfer of immediately available funds by the Trustee to the Registered Owner as of the fifteenth day of the calendar month preceding the calendar month in which such interest

payment date shall fall (the "Record Date"). At any time thereafter, payment of interest hereon shall be made by check or draft of the Trustee to the Registered Owner as of the applicable Record Date, at the owner's address as it appears on the bond registration books of the City kept by the Trustee.

This bond, designated "Hotel and Restaurant Gross Receipts Tax Refunding Bond, Series 2003", is one of a series of bonds aggregating _____ Dollars ($_____) in principal amount (the "Series 2003 Bonds"). The Series 2003 Bonds are being issued for the purpose of refunding the City's Hotel and Restaurant Gross Receipts Tax Bonds, Series 1998 (the "Series 1998 Bonds"), funding a debt service reserve, and paying the costs of issuance of the Series 2003 Bonds.

The Series 2003 Bonds are issued under and are secured by and entitled to the protection of a Trust Indenture dated as of July 1, 2003 (the "Indenture"), by and between the City and the Trustee, which Indenture is available for inspection at the principal corporate trust office of the Trustee. Reference is hereby made to the Indenture and to all indentures supplemental thereto for the provisions, among others, with respect to the nature and extent of the security, the rights, duties and obligations of the City, the Trustee and the owners of the Bonds, and the terms upon which the Bonds are issued and secured.

The Series 2003 Bonds are issued pursuant to and in full compliance with the Constitution and laws of the State of Arkansas, including particularly, the Advertising and Promotion Commission Act, codified as Arkansas Code Annotated (1997 Repl.) §§26-75-601 *et seq.* (as from time to time amended, the "Act"), and Ordinance No. _____ of the City adopted _____, 2003, which ordinance authorized the execution and delivery of the Indenture.

In order to secure the repayment of the Series 2003 Bonds, the City has, in accordance with the Act, pledged all receipts from a one percent (1%) tax (the "Tax") levied by the City pursuant to Ordinance No. 2310 adopted by the City on March 1, 1977, as subsequently amended, upon the gross receipts or gross proceeds (i) derived from renting, leasing or otherwise furnishing hotel or motel accommodations for profit within the boundaries of the City and (ii) of restaurants, cafes, cafeterias, delis, drive-in restaurants, carry-out restaurants, concession stands, convenience stores, grocery store-restaurants, caterers and similar businesses within the boundaries of the City engaged in the business of selling prepared food for on-premises or off-premises consumption.

The pledge of the receipts of the Tax (the "Tax Receipts") is subject to the prior and senior pledge of such Tax Receipts securing payment of the City's Hotel and Restaurant Gross Receipts Tax Refunding Bonds, Series 1995, dated October 1, 1995, of which $700,000 in principal amount presently remains outstanding.

The Indenture provides that the City may hereafter issue Additional Bonds under certain terms and conditions contained in the Indenture and, if issued or incurred, such Additional Bonds will rank on a parity of security with the Series 2003 Bonds and be equally and ratably secured by and entitled to the protection of the Indenture.

The Series 2003 Bonds are not general obligations of the City, but are special obligations secured by an irrevocable pledge of and lien on the Tax Receipts, as more particularly described in the Indenture. In no event shall the Series 2003 Bonds constitute an indebtedness of the City within the meaning of any constitutional or statutory limitation.

The holder of this Series 2003 Bond shall have no right to enforce the provisions of the Indenture or to institute action to enforce the covenants therein, or to take any action with respect to any event of default under the Indenture, or to institute, appear in or defend any suit or other proceeding with respect thereto, except as provided in the Indenture. In certain events, on the conditions, in the manner and with the effect set forth in the Indenture, the principal of all the Series 2003 Bonds and Additional Bonds, if any, issued under the Indenture and then outstanding may be declared and may become due and payable before the stated maturity thereof, together with accrued interest thereon. Modifications or alterations of the Indenture, or of any indenture supplemental thereto, may be made only to the extent and in the circumstances permitted by the Indenture.

The Series 2003 Bonds are subject to redemption at the election of the City, on and after October 1, 2008, in whole or in part (in inverse order of maturities and by lot within a maturity) at any time, at a redemption price equal to the principal amount being redeemed plus accrued interest to the date of redemption.

Notwithstanding the foregoing, so long as DTC or its nominee is the sole registered owner of the Series 2003 Bonds, the particular Series 2003 Bonds or portions thereof to be redeemed in part within a maturity shall be selected by lot by DTC in such manner as DTC shall determine. In selecting Series 2003 Bonds for redemption prior to maturity, in the case any outstanding Series 2003 Bond is in a denomination greater than $5,000, each $5,000 of face value of such Series 2003 Bond shall be treated as a separate Series 2003 Bond of the denomination of $5,000.

In the event any of the Series 2003 Bonds or portions thereof (which shall be $5,000 or any integral multiple thereof) are called for redemption, notice thereof shall be given by the Trustee by first class mail to the registered owner of each such Series 2003 Bond addressed to such registered owner at his registered address and placed in the mails not less than thirty (30) nor more than sixty (60) days prior to the date fixed for redemption; provided, however, that failure to give such notice by mailing, or any defect therein, shall not affect the validity of the proceedings for the redemption of any Series 2003 Bond with respect to which no such failure or defect has occurred. Each notice shall identify the Series 2003 Bonds or portions thereof being called, and the date on which they shall be presented for payment. After the date specified in such call notice, the Series 2003 Bond or Bonds so called for redemption will cease to bear interest provided funds sufficient for their redemption have been deposited with the Trustee, and, except for the purpose of payment, shall no longer be protected by the Indenture and shall not be deemed to be outstanding under the provisions of the Indenture.

This Series 2003 Bond may be transferred on the books of registration kept by the Trustee by the registered owner or by his duly authorized attorney upon surrender hereof, together with a written instrument of transfer duly executed by the registered owner or his duly authorized attorney.

The Series 2003 Bonds are issuable as registered bonds without coupons in denominations of $5,000 and any integral multiple thereof. Subject to the limitations and upon payment of the charges provided in the Indenture, Series 2003 Bonds may be exchanged for a like aggregate principal amount of Series 2003 Bonds of other authorized denominations.

No recourse shall be had for the payment of the principal of or premium, if any, or interest on any of the Series 2003 Bonds or for any claim based thereon or upon any obligation, covenant or agreement contained in the Series 2003 Bonds or the Indenture against any past, present or future alderman, officer or employee of the City, or any successor, as such, either directly or through the City or any successor of the City, under any rule of law or equity, statute or constitution or by the enforcement of any assessment or penalty or otherwise, and all such liability of any such alderman, officer or employee as such is hereby expressly waived and released as a condition of and consideration for the issuance of any of the Series 2003 Bonds.

This Series 2003 Bond is issued with the intent that the laws of the State of Arkansas will govern its construction.

[The Series 2003 Bonds have been designated by the City as "qualified tax-exempt obligations" within the meaning of Section 265(b)(3) of the Internal Revenue Code of 1986, as amended.]

IT IS HEREBY CERTIFIED, RECITED AND DECLARED that all acts, conditions and things required to exist, happen and be performed precedent to and in the issuance of the Series 2003 Bonds do exist, have happened and have been performed in due time, form and manner as required by law; that the indebtedness represented by the Series 2003 Bonds, together with all obligations of the City, does not exceed any constitutional or statutory limitation; and that the revenues pledged to the payment of the principal of and premium, if any, and interest on the Series 2003 Bonds as the same become due and payable will be sufficient in amount for that purpose.

This Series 2003 Bond shall not be valid or become obligatory for any purpose or be entitled to any security or benefit under the Indenture until the Certificate of Authentication hereon shall have been signed by the Trustee.

IN WITNESS WHEREOF, the City of Fayetteville, Arkansas has caused this Series 2003 Bond to be executed by its Mayor and City Clerk, thereunto duly authorized (by their manual or facsimile signatures), and its corporate seal to be affixed or imprinted hereon, all as of the date hereof shown above.

CITY OF FAYETTEVILLE, ARKANSAS

By:_____
Mayor

ATTEST:

By:_____
City Clerk

(S E A L)

(Form of Trustee's Certificate)

TRUSTEE'S CERTIFICATE OF AUTHENTICATION

This bond is one of the Series 2003 Bonds of the issue described in and issued under the provisions of the within mentioned Indenture.

Attached hereto is the complete text of the opinion of Kutak Rock LLP, a signed original of which is on file with the undersigned, delivered and dated the date of the original delivery of and payment for the Series 2003 Bonds.

BANK OF OKLAHOMA, N.A.,
as Trustee

By:_____
Authorized Signature

(Form of Assignment)

ASSIGNMENT

FOR VALUE RECEIVED, _____, hereby sells, assigns, and transfers unto _____ , the within Bond and all rights thereunder, and hereby irrevocably constitutes and appoints _____ as attorney to transfer the within Bond on the books kept for registration thereof with full power of substitution in the premises.

DATE: _____, 20__.

_____
Transferor

GUARANTEED BY:

_____

NOTICE: Signature(s) must be guaranteed by an institution satisfactory to the Trustee or other transfer agent.

EXHIBIT B TO TRUST INDENTURE

COVERAGE CERTIFICATE

City of Fayetteville, Arkansas
Series 2003 Hotel and Restaurant Gross
Receipts Tax Refunding Bonds

Date:_____

TO: Bank of Oklahoma, N.A., as Trustee

This certificate is provided pursuant to the provisions of Section 212 of the Trust Indenture dated as of July 1, 2003 (the "Indenture"), by and between the City of Fayetteville, Arkansas (the "City") and you, as trustee, in connection with the proposed issuance of Additional Bonds. In connection with such issuance, the undersigned certifies as follows:

(a) Tax Receipts deposited into Revenue Fund for preceding twelve (12) months: $_____

(b) Maximum Annual Debt Service on all Outstanding Bonds and Series 1995 Bonds, plus the proposed Additional Bonds: $_____

(c) (a) divided by (b) = _____% (which is greater than 125%)

The undersigned hereby certifies that he is authorized to deliver this Certificate on behalf of the City.

No Event of Default exists under the Indenture and, to the knowledge of the undersigned, no event has occurred and continues which with notice or lapse of time or both would constitute an Event of Default under the Indenture. All capitalized terms not otherwise defined herein shall have the meanings set forth in the Indenture.

CITY OF FAYETTEVILLE, ARKANSAS

By:_____
Finance & Internal Services Director

EXHIBIT C TO TRUST INDENTURE

FORM OF REQUISITION

City of Fayetteville, Arkansas
Series _____ Hotel and Restaurant
Gross Receipts Tax Bonds

Date:_____
Requisition No.:_____

TO: Bank of Oklahoma, N.A., as Trustee

Pursuant to the provisions of Section 502 of the Trust Indenture dated as of July 1, 2003 (the "Indenture"), by and between the City of Fayetteville, Arkansas (the "City") and you, as trustee, you are authorized to make the following described payment directly to the Payee named below from the Project Fund:

Name and Address of Payee: _____

_____

_____

Amount of Payment: $_____

General Classification of
the Expenditures: _____

_____

The undersigned hereby certifies that he is authorized to deliver this Requisition on behalf of the City.

The amount requested hereunder has not been the basis for any previous Requisition by the City and is justly due and owing to the person(s) named herein as a proper payment or reimbursement of a Project Cost.

No Event of Default exists under the Indenture and, to the knowledge of the undersigned, no event has occurred and continues which with notice or lapse of time or both would constitute an Event of Default under the Indenture.

CITY OF FAYETTEVILLE, ARKANSAS

By:_____
Authorized Representative

CITY OF FAYETTEVILLE, ARKANSAS
Hotel Restaurant Gross Receipts Tax Refunding Bonds
Series 2003

SCHEDULE OF EVENTS

April 25, 2003

April 2003						
			2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30			

May 2003						
				1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	31

June 2003						
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30					

July 2003						
		1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30	31		

2003 Date	Event	Responsible Parties
April 1	Discuss proposed financing with City Council	City / Stephens
April 9	Organizational Meeting	All Parties
April 16	Prepare and distribute first draft of financing documents	Kutak Rock
April 24	Comments due on financing documents	All Parties
April 28	Blacklined financing documents distributed	Kutak Rock
April 29	Comments due on blacklined financing documents	All Parties
April 30	Submit Financing Documents to Insurers	Stephens
~~May 8~~ MAY 24	Publish Bond Ordinance	City/ Kutak Rock
May 16	Obtain Insurance Commitment	Stephens
May 20	Bond Ordinance approved by City Council	City / Kutak Rock / Stephens
May 23	Final Preliminary Official Statement to the printer	Kutak Rock / Stephens
May 27	Distribute POS to Investors	Stephens
June 2	Pre-pricing meeting with the City	Stephens
June 3	Offer bonds	Stephens

June 5	Commit to underwrite	Stephens
June 5	City Executes BPA	City / Stephens
June 5	Redemption Notice Distributed	Kutak Rock / Trustee
June 6	Final draft of the Official Statement distributed	Kutak Rock
June 9	Comments due on Official Statement	All Parties
June 11	Print final Official Statements	Kutak Rock / Stephens
July 10	Closing of issue	All Parties

FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

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

LEGAL DEPARTMENT

DEPARTMENTAL CORRESPONDENCE

TO: **Dan Coody**, Mayor

THRU: **Sondra Smith**, City Clerk

FROM: **Kit Williams**, City Attorney

DATE: **May 21, 2003**

RE: **Passed Ordinances and Resolutions from City Council meeting of May 20, 2003**

The following Ordinances and Resolutions were passed at the last City Council meeting and are ready for the mayor's signature.

Enclosed are:

1. **Arkansas Forestry Commission Grant:** Resolution authorizing Fayetteville Parks and Recreation Division to apply for an Urban Forestry Assistance Grant in amount of $20,000.00 through Arkansas Forestry Commission;

2. **Citizens' Survey:** Resolution approving proposal from Survey research Center at U of A in amount of $23,639.64 with not-to-exceed cost of $25,000.00 for development and implementation of citizen survey;

3. **Fayetteville Public Library as City Library:** Resolution establishing Fayetteville Public Library as independent municipal library; and ending interlocal agreement for joint city/county library system with Washington County;

4. **Fayetteville Public Facilities Board:** Resolution ratifying resolution of Fayetteville Public Facilities Board approving multi-family housing revenue bonds (Grandview Apartments Project), Series 2003 in aggregate principal amount of not-to-exceed $4,070,000;

5. **Mobile Vision:** Resolution awarding bid #03-34 to Mobile-Vision, Inc. in amount of $66,884.00 for purchase of 17 in-car video systems, and upgrade of 144X zoom camera;

6. **Carter Burgess Architects/Engineers, Inc.:** Resolution approving contract w/Carter Burgess Architects/Engineers, Inc. in amount of $42,536.00 for design and engineering services associated w/Lake Fayetteville Spillway Pedestrian Bridge Project and approving 10% project contingency;

7. **VAC 03-7.00 (Bencor):** Ordinance approving VAC 03-7.00 to vacate and abandon drainage easement on property at northeast corner of Sixth St. and South School Avenue as depicted on attached map and legal description;

8. **VAC 03-8.00 (Wallace):** Ordinance approving VAC 03-8.00 to vacate and abandon drainage easement on property at Lot 98 of Covington Park as depicted on attached map and legal description;

9. **OMI Contract:** Resolution approving amendment #9 to OMI Contract providing for net increase in Fiscal 2003 of $36,209.00 to purchase equipment and perform services implementing modified sludge disposal plan for last 6 months of 2003;

10. **OMI Hamestring Lift Station:** Resolution approving out-of-scope amendment with Operations Management International, Inc. in amount of $250,000.00 to upgrade sewer lift station;

11. **HMR Bonds (Series 2003):** Ordinance authorizing issuance and sale of not-to-exceed $6,620,000.00 of Hotel and Restaurant Gross Receipts Tax Refunding Bonds, Series 2003, by City of Fayetteville for purpose of refunding City's Outstanding Hotel and Restaurant Gross Receipts Tax Bonds, Series 1998; authorizing execution and delivery of Bond Purchase Agreement providing for sale of Series 2003 Bonds; authorizing execution and delivery of Escrow Deposit Agreement providing for redemption of Series 1998 Bonds; authorizing execution and delivery of continuing disclosure agreement; and prescribing other matters relating thereto.

TENTATIVE AGENDA
FOR
CITY COUNCIL MEETING
MAY 20, 2003

A meeting of the Fayetteville City Council will be held on May 20, 2003 at 6:00 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 May 6, 2003 meeting minutes and approval of the January 7, 2003 meeting minutes.

2. **Arkansas Forestry Commission Grant:** A resolution authorizing the Fayetteville Parks and Recreation Division to apply for an Urban Forestry Assistance Grant in the amount of $20,000.00 through the Arkansas Forestry Commission.

3. **Citizen's Survey:** A resolution approving a proposal from the Survey Research Center (SCR) at the University of Arkansas in the amount of $23,639.64 with a not-to-exceed cost of $25,000.00 for the development and implementation of a Citizen Survey.

4. **Fayetteville Public Library as City Library:** A resolution establishing the Fayetteville Public Library as an independent Municipal Library; and ending the Interlocal Agreement for a joint City/County Library system with Washington County, Arkansas.

B. OLD BUSINESS:

What was done at last Meeting?

1. **RZN 03-14.00 (Williams):** An ordinance rezoning that property described in rezoning petition RZN 03-14.00 as submitted by James Williams for property located at the northeast corner of Mt. Comfort Road and Shiloh Drive, Fayetteville, Arkansas from R-2, Medium Density Residential and A-1, Agricultural to C-1, Neighborhood Commercial.

2. **WHM Land Investments, Inc. Condemnation:** A resolution authorizing the City Attorney to seek condemnation and possession of certain lands owned by WHM Land Investment, Inc. to secure the necessary land on which to construct the West Fayetteville Fire Station.

What was done at last meeting

what was done at the last meeting

3. **Unified Development Code:** An ordinance repealing Title XV, Unified Development Ordinance (originally adopted by Ordinance 4100 on June 16, 1998) of the Code of Fayetteville and adopting and enacting an amended Title XV Unified Development Code.

C. NEW BUSINESS:

Consent 1. **Fayetteville Public Facilities Board:** A resolution ratifying the resolution of the Fayetteville Public Facilities Board authorizing the issuance of Fayetteville Public Facilities Board Multifamily Housing Revenue Bonds (Grandview Apartments Project), Series 2003 in a principal amount not to exceed $3,700,000.

Consent 2. **Mobile Vision:** A resolution awarding Bid #03-34 to Mobile Vision, Inc. in the amount of 66,884.00 for the purchase of 17 in-car video systems, and the upgrade of the 144X zoom camera.

3. **C-PZD 03-2.00 (Lowe's Home Center):** An ordinance establishing a Commercial Planned Zoning District titled C-PZD 03-2.00 located at the southwest corner of Finger Road and Highway 62; amending the official zoning map of the City of Fayetteville; and according to the Associated Development Project as approved by the Planning Commission.

4. **VAC 03-7.00 (Bencor):** An ordinance approving VAC 03-7.00 to vacate and abandon a drainage easement located on property at the northeast corner of Sixth Street and South School Avenue as depicted on the attached map and legal description.

5. **VAC 03-8.00 (Wallace):** An ordinance approving VAC 03-8.00 to vacate and abandon a drainage easement located on property at the Lot 98 of Covington Park as depicted on the attached map and legal description.

6. **OMI Contract:** A resolution approving amendment No. 9 to the OMI contract providing for a net increase in fiscal 2003 of $36,209.00 to purchase equipment and perform services implementing a modified sludge disposal plan for the last 6 months of 2003. **No budget adjustment is requested.**

7. **OMI Hamestring Lift Station:** A resolution to approve an out-of-scope amendment with Operations Management International, Inc. in the amount of $250,000.00 to upgrade the Hamestring Sewer Lift Station. **No budget adjustment is requested.**

Consent 8. **Carter Burgess Architects/Engineers, Inc.:** A resolution approving a contract with Carter Burgess Architects/Engineers, Inc. in the amount of $42,536.00 for design and engineering services associated with the Lake Fayetteville spillway pedestrian bridge project; and approving a ten percent project contingency.

9. **Hotel & Restaurant Bonds (Series 2003):** An ordinance authorizing the issuance and sale of not to exceed $6,620,000 of Hotel and Restaurant Gross Receipts Tax Refunding Bonds, Series, 2003, by the City of Fayetteville, Arkansas for the purpose of refunding the City's outstanding hotel and restaurant gross receipts tax bonds, Series 1998; authorizing the execution and delivery of a trust indenture pursuant to which the Series 2003 Bonds will be issued and secured; authorizing the execution and delivery of an official statement pursuant to which the Series 2003 bonds will be offered; authorizing the execution and delivery of a bond purchase agreement providing for the sale of the Series 2003 Bonds; authorizing the execution and delivery of an escrow deposit agreement providing for the redemption of the Series 1998 bonds; authorizing the execution and delivery of a continuing disclosure agreement; and prescribing other matters relating thereto.

D. INFORMATIONAL:

1. **Council Tour: May 19, 2003** - Wallace, Boys & Girls Club.

2. **Item # 9 Hotel & Restaurant Bonds (Series 2003):**
   Additional Information:
   The Preliminary Official Statement, Trust Indenture, Bond Purchase Agreement, Escrow Deposit Agreement, and Continuing Disclosure Agreement documents that are related to this Agenda Item are available for review in the City Clerk's Office.

TENTATIVE AGENDA
FOR
CITY COUNCIL MEETING
MAY 20, 2003

A meeting of the Fayetteville City Council will be held on May 20, 2003 at 6:00 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 May 6, 2003 meeting minutes and approval of the January 7, 2003 meeting minutes.

2. **Arkansas Recreational Trails (TEA-21 Grant):** A resolution authorizing the Fayetteville Parks and Recreation Division to apply for a TEA-21 Grant from the Arkansas Highway & Transportation Department for Arkansas Recreational Trails Funds to continue development of trails at Lake Fayetteville North Shore Park.

Pulled Gary Dumas

3. **Arkansas Forestry Commission Grant:** A resolution authorizing the Fayetteville Parks and Recreation Division to apply for an Urban Forestry Assistance Grant in the amount of $20,000.00 through the Arkansas Forestry Commission.

Added back NB

4. **Mobile Vision:** A resolution awarding Bid # 03-34 to Mobile Vision In-Car Video Systems to purchase 17 units of.

Added back NB

5. **Fayetteville Public Facilities Board:** A resolution ratifying the resolution of the Fayetteville Public Facilities Board authorizing the issuance of Fayetteville Public Facilities Board Multifamily Housing Revenue Bonds (Grandview Apartments Project), Series 2003 in a principal amount not to exceed $3,700,000.

Hugh pulled

6. **Fayetteville Boys and Girls Club Transportation:** A resolution authorizing the expenditure of an amount not to exceed $36,000.00 for the purchase of transportation services from Ozark Regional Transit to enable the Fayetteville Boys and Girls Club to operate a summer youth program.

Hugh pulled

7. **HayGroup Biennial Salary Survey:** A resolution approving HayGroup to conduct the biennial salary survey and perform other consulting services.

8. **Citizen's Survey:** A resolution approving a proposal from the Survey Research Center (SCR) at the University of Arkansas in the amount of $23,639.64 with a not-to-exceed cost of $25,000.00 for the development and implementation of a Citizen Survey.

9. **Fayetteville Public Library as City Library:** A resolution establishing the Fayetteville Public Library as an independent Municipal Library; and ending the Interlocal Agreement for a joint City/County Library system with Washington County, Arkansas.

B. OLD BUSINESS:

1. **RZN 03-14.00 (Williams):** An ordinance rezoning that property described in rezoning petition RZN 03-14.00 as submitted by James Williams for property located at the northeast corner of Mt. Comfort Road and Shiloh Drive, Fayetteville, Arkansas from R-2, Medium Density Residential and A-1, Agricultural to C-1, Neighborhood Commercial.

2. **WHM Land Investments, Inc. Condemnation:** A resolution authorizing the City Attorney to seek condemnation and possession of certain lands owned by WHM Land Investment, Inc. to secure the necessary land on which to construct the West Fayetteville Fire Station.

3. **Unified Development Code:** An ordinance repealing Title XV, Unified Development Ordinance (originally adopted by Ordinance 4100 on June 16, 1998) of the Code of Fayetteville and adopting and enacting an amended Title XV Unified Development Code.

C. NEW BUSINESS:

Hugh Remove

1. **Raze and Removal 226 N. School Avenue:** A resolution ordering the razing and removal of a dilapidated and unsafe structure owned by Timothy C. and Christine Klinger located at 226 N. School Avenue in the City of Fayetteville, Arkansas.

Hugh Remove

2. **Raze and Removal 323 N. West Ave.:** A resolution ordering the razing and removal of a dilapidated and unsafe structure owned by the Bank of Fayetteville, N.A. located at 323 N. West Avenue in the City of Fayetteville, Arkansas.

3. **C-PZD 03-2.00 (Lowe's Home Center):**

4. **VAC 03-7.00 (Bencore):**

5. **VAC 03-8.00 (Wallace):**

6. **OMI Contract:** A resolution to approve Amendment No. 9 to the contract with Operations Management International (OMI). This will extend the contract term by 5-years to an expiration date of December 31, 2008. **No budget adjustment is requested.**

7. **OMI Hamestring Lift Station:** A resolution to approve an out-of-scope amendment with Operations Management International, Inc. in the amount of $250,000.00 to upgrade the Hamestring Sewer Lift Station. **No budget adjustment is requested.**

8. **Carter Burgess Architects/Engineers, Inc.**: A resolution approving a contract with Carter Burgess Architects/Engineers, Inc. in the amount of $42,536.00 for design and engineering services associated with the Lake Fayetteville spillway pedestrian bridge project; and approving a ten percent project contingency.

Hugh Pulled

9. **Tech Logic Corporation:** An ordinance waiving requirement for competitive bidding of an automated conveyor, check-in sorting system for library materials and approving a contract with Tech Logic Corporation in the amount of?????????? for a conveyor, check-in and sorting system to be installed in the new library at 409 W. Mountain.

10. **Hotel & Restaurant Bonds (Series 2003):** An ordinance authorizing the issuance and sale of not to exceed $6,620,000 of Hotel and Restaurant Gross Receipts Tax Refunding Bonds, Series, 2003, by the City of Fayetteville, Arkansas for the purpose of refunding the City's outstanding hotel and restaurant gross receipts tax bonds, Series 1998; authorizing the execution and delivery of a trust indenture pursuant to which the Series 2003 Bonds will be issued and secured; authorizing the execution and delivery of an official statement pursuant to which the Series 2003 bonds will be offered; authorizing the execution and delivery of a bond purchase agreement providing for the sale of the Series 2003 Bonds; authorizing the execution and delivery of an escrow deposit agreement providing for the redemption of the Series 1998 bonds; authorizing the execution and delivery of a continuing disclosure agreement; and prescribing other matters relating thereto.

D. INFORMATIONAL:

1. **Council Tour: May 19, 2003**

From: Dawn Warrick
To: Smith, Sondra
Date: 5/5/03 5:39PM
Subject: thompson bill of assurance

Sondra,

We do not need to keep the amendment to the bill of assurance on the upcoming city council agenda. His variance request was approved by the board of adjustment this afternoon.

Thanks,
Dawn

Dawn T. Warrick, AICP
Zoning & Development Administrator
Current Planning Division
City of Fayetteville
113 West Mountain Street
Fayetteville, AR 72701

(479) 575-8267 phone
(479) 575-8202 fax
planning@ci.fayetteville.ar.us

CC: Conklin, Tim; Earnest, Hugh

From: "Richard P. Osborne" <RPO@RPOLaw.com>
To: "Fayetteville City Clerk" <cityclerk_@ci.fayetteville.ar.us>
Date: Fri, Apr 18, 2003 4:14 PM
Subject: Brock Thompson Bills of Assurance

Ms. Sondra Smith
Fayetteville City Clerk

By E-Mail

Re: Bills of Assurance
Garland Avenue at Hendrix Street

Dear Sondra:

I represent Thompson Fayetteville Properties, LLC (Brock Thompson, Manager), successor to M.B.B. Investment Corp. (Brock Thompson, President), one or both of which submitted a couple of Bills of Assurance in connection with the development at the northwest corner of Garland Avenue and Hendrix Street. One commitment in the Bills of Assurance provides that not more than three triplexes will be situated on the land.

We request a place on the agenda for the next City Council meeting for approval of an amendment to the Bills of Assurance. We are not requesting an increase in the density. Two of the triplexes are virtually completed. The third is not yet started. The third was to incorporate the existing residence as one of the units. We request approval to not incorporate the residence, but to leave it as a "free-standing" structure (to be remodeled in accordance with the Bills of Assurance), with permission to put a duplex behind it, resulting in the same number of units, but preserving two large trees that would need to be destroyed in order to attach the "duplex" to the existing residence to create a "triplex." The sole purpose of this request is to preserve the two large trees. We understand that there are other potential problems, and will address those if this request is approved.

Rick

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

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

CC: "Dawn T. Warrick" <dwarrick@ci.fayetteville.ar.us>, "Fayetteville City Attorney" <kwilliams@ci.fayetteville.ar.us>, "Brock Thompson" <brockandniki@mail.com>

DRAFT TENTATIVE AGENDA
FOR
CITY COUNCIL MEETING
MAY 20, 2003

A meeting of the Fayetteville City Council will be held on May 20, 2003 at 6:00 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 May 6, 2003 meeting minutes and approval of the January 7, 2003 meeting minutes.

2. **Arkansas Recreational Trails (TEA-21 Grant):** A resolution a authorizing the City of Fayetteville to apply for grant funds from the Arkansas State Highway & Transportation Department for Arkansas Recreational Trails funds utilizing federal funding from TEA-21.

3. **Arkansas Forestry Commission Grant:** A resolution authorizing the City of Fayetteville to apply for grant funds from the Urban and Community Forestry Assistance Program through the Arkansas Forestry Commission.

4. **Mobile Vision:** A resolution awarding Bid # 03-34 to Mobile Vision In-Car Video Systems to purchase 17 units of .

5. **[illegible] Laptop Computers:** A resolution awarding Bid # 03-35 to???????? for the purchase of laptop computers.

2 items

6. **Fayetteville Public Facilities Board:** A resolution ratifying the resolution of the Fayetteville Public Facilities Board authorizing the issuance of Fayetteville Public Facilities Board Multifamily Housing Revenue Bonds (Grandview Apartments Project), Series 2003 in a principal amount not to exceed $3,700,000.

7. **Fayetteville Boys and Girls Club Transportation:** A resolution authorizing the expenditure of an amount not to exceed $36,000.00 for the purchase of transportation services from Ozark Regional Transit to enable the Fayetteville Boys and Girls Club to operate a summer youth program.

B. OLD BUSINESS:

C. NEW BUSINESS:

Returned 5/5/03 Gave to Hugh for Mayor's Signature

1. **Raze and Removal 262 North School:** A Public Hearing to order the Raze and Removal of the dilapidated structure located at 262 North School Avenue, Fayetteville, AR 72702.

2. **Raze and Removal 323 N West Ave.:** A Public Hearing to order the Raze and Removal of the dilapidated structure located at 323 N West Avenue, Fayetteville, AR 72702.

Remove Check with 5/6/03 Jan Conklin

3. ~~**Thompson Fayetteville Properties, LLC:** A resolution to approve an amendment to the Bill of Assurances in connection with the development at the northwest corner of Garland Avenue and Hendrix Street.~~

4. **OMI Contract:** A resolution to approve Amendment No. 9 to the contract with Operations Management International (OMI). This will extend the contract term by 5-years to an expiration date of December 31, 2008. No Budget Adjustment is Requested

Change Spelling

5. **OMI ~~Hamstring~~ (e) Lift Station:** A resolution approving an out-of-scope contract amendment with Operations Management International (OMI), for the upgrading of the ~~Hamstring~~ (e) Lift Station. NO Budget Adjustment IS Requested.

6. **Carter Burgess Architects/Engineers, Inc.:** A resolution approving a contract between the City of Fayetteville and Carter Burgess Architects/Engineers, Inc. for design and engineering services for a pedestrian bridge across Lake Fayetteville spillway in the amount of $42,536 plus a ten percent project contingency of $4,254.

Consent

7. **HayGroup Biennial Salary Survey:** A resolution approving HayGroup to conduct the biennial salary survey and perform other consulting services.

Contract Consent

8. ~~**Computer Aided Dispatch Redundancy Software:** A resolution to approve a contract with New World Systems for Computer Aided Dispatch Redundancy Software.~~

Consent

9. **Citizen's Survey:** A resolution to approve a proposal from the Survey Research Center (SCR) at the University of Arkansas for the development and implementation of a Citizen's Survey.

Consent.

10. **Fayetteville Public Library as City Library:** A resolution establishing the Fayetteville Public Library as an independent City library and ending the interlocal agreement (Resolution 10-01, February 6, 2001) with Washington County for a joint county/city library.

11. **Tech Logic Corporation:** An ordinance waiving requirement for competitive bidding of an automated conveyor, check-in sorting system for library materials and approving a contract with Tech Logic Corporation in the amount of??????????? for a conveyor, check-in and sorting system to be installed in the new library at 409 W. Mountain.

12. Hotel & Restaurant Bonds (Series 2003): An ordinance authorizing the issuance and sale of not to exceed $6,620,000 of Hotel and Restaurant Gross Receipts Tax Refunding Bonds, Series, 2003.

D. INFORMATIONAL:

1. **Council Tour: May 19, 2003**

NORTHWEST ARKANSAS EDITION

Arkansas Democrat Gazette

AFFIDAVIT OF PUBLICATION

I, Diane Williams, do solemnly swear that I am Legal Clerk of the Arkansas Democrat-Gazette newspaper, printed and published in Lowell, Arkansas, and that from my own personal knowledge and reference to the files of said publication, the advertisement of:

Final Agenda
5-19-03

was inserted in the regular editions on .

** Publication Charge: $ 229.19

Subscribed and sworn to before me this

19 day of May, 2003.

Tammy Allen
Notary Public

My Commission Expires:

Official Seal
TAMMY ALLEN
Notary Public-Arkansas
WASHINGTON COUNTY
My Commission Expires 11-05-2011

** Please do not pay from Affidavit.
An invoice will be sent.

RECEIVED
JUN 23 2003
CITY OF FAYETTEVILLE
CITY CLERK'S OFFICE

FINAL AGENDA
FOR
CITY COUNCIL MEETING
MAY 20, 2003

City of Fayetteville

A meeting of the Fayetteville City Council will be held on May 20, 2003 at 6:00 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 May 6, 2003 meeting minutes and approval of the January 7, 2003 meeting minutes.
2. Arkansas Forestry Commission Grant: A resolution authorizing the Fayetteville Parks and Recreation Division to apply for an Urban Forestry Assistance Grant in the amount of $20,000.00 through the Arkansas Forestry Commission.
3. Citizen's Survey: A resolution approving a proposal from the Survey Research Center (SCR) at the University of Arkansas in the amount of $23,639.64 with a not-to-exceed cost of $25,000.00 for the development and implementation of a Citizen Survey.
4. Fayetteville Public Library as City Library: A resolution establishing the Fayetteville Public Library as an independent Municipal Library; and ending the Interlocal Agreement for a joint City/County Library system with Washington County, Arkansas.
5. Fayetteville Public Facilities Board: A resolution ratifying the resolution of the Fayetteville Public Facilities Board authorizing the issuance of Fayetteville Public Facilities Board Multifamily Housing Revenue Bonds (Grandview Apartments Project), Series 2003 in a principal amount not to exceed $3,700,000.
6. Mobile Vision: A resolution awarding Bid #03-34 to Mobile Vision, Inc. in the amount of 66,884.00 for the purchase of 17 in-car video systems, and the upgrade of the 144X zoom camera.
7. Carter Burgess Architects/Engineers, Inc.: A resolution approving a contract with Carter Burgess Architects/Engineers, Inc. in the amount of $42,536.00 for design and engineering services associated with the Lake Fayetteville spillway pedestrian bridge project; and approving a ten percent project contingency.

B. OLD BUSINESS:

1. RZN 03-14.00 (Williams): An ordinance rezoning that property described in rezoning petition RZN 03-14.00 as submitted by James Williams for property located at the northeast corner of Mt. Comfort Road and Shiloh Drive, Fayetteville, Arkansas from R-2, Medium Density Residential and A-1, Agricultural to C-1, Neighborhood Commercial. This ordinance was left on the first reading at the May 6, 2003 City Council meeting.
2. WHM Land Investments, Inc. Condemnation: A resolution authorizing the City Attorney to seek condemnation and possession of certain lands owned by WHM Land Investment, Inc. to secure the necessary land on which to construct the West Fayetteville Fire Station. This resolution was tabled at the May 6, 2003 City Council meeting.
3. Unified Development Code: An ordinance repealing Title XV, Unified Development Ordinance (originally adopted by Ordinance 4100 on June 16, 1998) of the Code of Fayetteville and adopting and enacting an amended Title XV Unified Development Code. This ordinance was left on the first reading at the May 6, 2003 City Council meeting.

C. NEW BUSINESS:

1. C-PZD 03-2.00 (Lowe's Home Center): An ordinance establishing a Commercial Planned Zoning District titled C-PZD 03-2.00 located at the southwest corner of Finger Road and Highway 62; amending the official zoning map of the City of Fayetteville, and according to the Associated Development Project as approved by the Planning Commission.
2. VAC 03-7.00 (Bencor): An ordinance aporoving VAC 03-7.00 to vacate and abancon a drainage easement located on property at the northeast corner of Sixth Street and South School Avenue as depicted on the attached map and legal description.
3. VAC 03-8.00 (Wallace): An ordinance approving VAC 03-8.00 to vacate and abandon a drainage easement located on property at the Lot 88 of Covington Park as depicted on the attached map and legal description.
4. OMI Contract: A resolution approving amendment No. 9 to the OMI contract providing for a net increase in fiscal 2003 of $36,209.00 to purchase equipment and perform services implementing a modified sludge disposal plan for the last 6 months of 2003. No budget adjustment is requested.
5. OMI Hamestring Lift Station: A resolution to approve an out-of-scope amendment with Operations Management International, Inc. in the amount of $250,000.00 to upgrade the Hamestring Sewer Lift Station. No budget adjustment is requested.
6. Hotel & Restaurant Bonds (Series 2003): An ordinance authorizing the issuance and sale of not to exceed $6,620,000 of Hotel and Restaurant Gross Receipts Tax Refunding Bonds, Series 2003, by the City of Fayetteville, Arkansas for the purpose of refunding the City's outstanding hotel and restaurant gross receipts tax bonds, Series 1998; authorizing the execution and delivery of a trust indenture pursuant to which the Series 2003 Bonds will be issued and secured; authorizing the execution and delivery of an official statement pursuant to which the Series 2003 bonds will be offered; authorizing the execution and delivery of a bond purchase agreement providing for the sale of the Series 2003 Bonds; authorizing the execution and delivery of an escrow deposit agreement providing for the redemption of the Series 1998 bonds; authorizing the execution and delivery of a continuing disclosure agreement; and prescribing other matters relating thereto.

D. INFORMATIONAL:

1. Council Tour: May 19, 2003
2. Item # 3 Old Business: Unified Development Code.
Three copies of the proposed Unified Development Code, Title XV of the Code of Fayetteville are filed in the office of the City Clerk and are available for the public to inspect and view.
3. Item # 6 New Business: Hotel & Restaurant Bonds (Series 2003).
The Preliminary Official Statement, Trust Indenture, Bond Purchase Agreement, Escrow Deposit Agreement, and Continuing Disclosure Agreement documents that are related to this Agenda Item are available for review in the City Clerk's Office.