

Aldermen

Mayor Dan Coody
City Attorney Kit Williams
City Clerk Sondra Smith



Ward 1 Position 1 – Adella Gray
Ward 1 Position 2 – Brenda Thiel
Ward 2 Position 1 – Kyle B. Cook
Ward 2 Position 2 – Nancy Allen
Ward 3 Position 1 – Robert K. Rhoads
Ward 3 Position 2 – Robert Ferrell
Ward 4 Position 1 – Shirley Lucas
Ward 4 Position 2 – Lioneld Jordan

**Final Agenda
City of Fayetteville Arkansas
City Council Meeting
May 1, 2007**

A meeting of the Fayetteville City Council will be held on May 1, 2007 at 6:00 PM in Room 219 of the City Administration Building located at 113 West Mountain Street, Fayetteville, Arkansas.

**Call to Order
Roll Call
Pledge of Allegiance**

A. CONSENT:

- 1. Approval of the March 20, 2007 and April 3, 2007 City Council meeting minutes.**

APPROVED.

- 2. Bid #07-30 Heckathorn Construction Co:** A resolution approving a construction contract with Heckathorn Construction Co., Inc. in the amount of \$1,290,520.00 for construction of Fire Station #3; and approving a project contingency in the amount of \$170,000.00.

PASSED AND SHALL BE RECORDED AS RESOLUTION NO. 74-07.

- 3. Don Spann Architects:** A resolution approving Change Order #1 to the contract with Don Spann Architects in the amount of \$70,000.00 for Fire Station #3 Architecture Services.

PASSED AND SHALL BE RECORDED AS RESOLUTION NO. 75-07.

- 4. 2007 Department of Homeland Security Assistance to Firefighters Grant:** A resolution authorizing the Fayetteville Fire Department to apply for a 2007 Department of Homeland Security Assistance to Firefighters Grant in the amount of \$330,770.00 to purchase a Live Fire Mobile Training Unit.

PASSED AND SHALL BE RECORDED AS RESOLUTION NO. 76-07.

5. **TM3, LLC:** A resolution authorizing the Mayor to execute a contract with TM3, LLC to haul and dispose of solid waste within the city limits of Fayetteville.

PASSED AND SHALL BE RECORDED AS RESOLUTION NO. 77-07.

6. **TWM Waste Management:** A resolution authorizing the Mayor to execute a contract with TWM Waste Management to haul and dispose of solid waste within the city limits of Fayetteville.

PASSED AND SHALL BE RECORDED AS RESOLUTION NO. 78-07.

7. **McClelland Consulting Engineers, Inc:** A resolution awarding an engineering contract to McClelland Consulting Engineers, Inc. in the amount of \$71,302.00 to perform a drainage study within the Upper Scull Creek Watershed between College Avenue and Mission Boulevard.

PASSED AND SHALL BE RECORDED AS RESOLUTION NO. 79-07.

8. **Tomlinson Asphalt Company, Inc:** A resolution awarding a contract to Tomlinson Asphalt Company, Inc. in the amount of \$187,760.00 for traffic calming construction in the Wilson Park and Washington/Willow Neighborhoods as part of the Transportation Improvement Bond Program; and approving a project contingency in the amount of \$18,776.00.

PASSED AND SHALL BE RECORDED AS RESOLUTION NO. 80-07.

9. **2007 Citizen Survey:** A resolution authorizing the Mayor to negotiate and execute a contract with the Survey Research Center (SRC) at the University of Arkansas in an amount not-to-exceed of \$25,000.00 to design and conduct the 2007 Citizen Survey; and approving a budget adjustment in the amount of \$25,000.00.

THIS ITEM WAS REMOVED FROM CONSENT AND MOVED TO NEW BUSINESS NO. 1.

10. **Bid #07-32 Scott Construction Equipment Trench Roller Purchase:** A resolution rescinding Resolution 68-07; awarding a portion of bid #07-32 to Scott Construction Equipment for the purchase of one (1) Trench Roller in the amount of \$30,202.18 and to Hertz Equipment for the purchase of one (1) Trailer to haul the trench roller in the amount of \$3,835.96, both for use by the Water & Sewer Division; and approving a budget adjustment in the amount of \$34,400.00.

PASSED AND SHALL BE RECORDED AS RESOLUTION NO. 81-07.

B. UNFINISHED BUSINESS:

1. **Fayetteville E911 House Numbering:** A resolution to change the names of several streets or roads within Fayetteville because of duplicate or confusing street names within annexed areas. *This resolution was tabled at the April 17, 2007 City Council meeting to the May 1, 2007 City Council meeting.*

PASSED AND SHALL BE RECORDED AS RESOLUTION NO. 82-07.

2. **RZN 07-2504 (Sloan/Cobblestone):** An ordinance rezoning that property described in rezoning petition RZN 07-2504, for approximately 17.22 acres, located south of Salem Road and east of Crystal Springs Subdivision in the interior of the Cobblestone Subdivision from RSF-4, Residential Single-Family, 4 units per acre, to RSF-8, Residential Single-Family, 8 units per acre. *This ordinance was left on the Second Reading at the April 17, 2007 City Council meeting.*

PASSED AND SHALL BE RECORDED AS ORDINANCE NO. 5010.

3. **Roll Off Service, Inc:** A resolution denying renewal of the contract with Roll Off Service, Inc. to haul and dispose of solid waste within the city limits of Fayetteville. *This resolution was tabled at the April 17, 2007 City Council meeting to the May 1, 2007 City Council meeting.*

PASSED AND SHALL BE RECORDED AS RESOLUTION NO. 83-07.

4. **The Links at Fayetteville Appeal:** An ordinance establishing a Residential Planned Zoning District titled R-PZD 07-2452, The Links at Fayetteville, located at the northeast corner of Wedington and Ruppel Road; containing approximately 152.23 acres; amending the official zoning map of the city of Fayetteville; and adopting the Associated Master Development Plan. *This ordinance was left on the Second Reading at the April 17, 2007 City Council meeting.*

THIS ITEM WAS TABLED TO THE MAY 15, 2007 CITY COUNCIL MEETING.

C. NEW BUSINESS:

1. **2007 Citizen Survey:** A resolution authorizing the Mayor to negotiate and execute a contract with the Survey Research Center (SRC) at the University of Arkansas in an amount not-to-exceed of \$25,000.00 to design and conduct the 2007 Citizen Survey; and approving a budget adjustment in the amount of \$25,000.00.

PASSED AND SHALL BE RECORDED AS RESOLUTION NO. 84-07.

2. **Fayetteville Municipal Property Owners' Improvement District No. 18 - Woodbury:** An ordinance to establish and lay off Fayetteville Municipal Property Owners' Improvement District No. 18 – Woodbury.

PASSED AND SHALL BE RECORDED AS ORDINANCE NO. 5011.

3. **Fayetteville Municipal Property Owners' Improvement District No. 20 – Quarry Trace Commons Subdivision:** An ordinance to establish and lay off Fayetteville Municipal Property Owners' Improvement District No. 20 – Quarry Trace Commons Subdivision Infrastructure Project.

PASSED AND SHALL BE RECORDED AS ORDINANCE NO. 5012.

4. **VAC 07-2522 (Johnson):** An ordinance approving VAC 07-2522 submitted by Bates and Associates for property located at the west side of Gregg Avenue, between 6th and Prairie Streets, vacating a 20' wide portion of un-constructed right-of-way, a total of 0.20 acres.

PASSED AND SHALL BE RECORDED AS ORDINANCE NO. 5013.

5. **ADM 07-2565 (North Point):** An ordinance approving ADM 07-2565, for property located at Lot 5 Block 1 of the North Point Subdivision, repealing and replacing Ordinance No. 4932 to allow for a lesser easement vacation than previously approved as indicated on the attached map and legal description.

PASSED AND SHALL BE RECORDED AS ORDINANCE NO. 5014.

6. **Walker Park Cell Tower:** A resolution to approve a twenty-five year lease with Callahan Tower Joint Venture for a small lot in Walker Park for a monopine cell tower at an annual rent of between \$12,000.00 and \$54,000.00, plus a \$20,000.00 contribution to the Walker Park Mural Project.

THIS ITEM WAS TABLED TO THE JUNE 5, 2007 CITY COUNCIL MEETING.

D. INFORMATIONAL:

City Council Tour: None

Meeting adjourned at 9:45 p.m.

Adjourn 9:45 PM

Subject: Roll					
Motion To:					
Motion By:					
Seconded:					
Alderman Rhoads arrived at 6:05 PM	Gray	✓			
	Thiel	✓			
	Cook	✓			
	Allen	✓			
	Rhoads	✓			
	Ferrell	✓			
	Lucas	✓			
	Jordan	✓			
	Mayor Coody	Absent			

Subject: Consent					
Motion To:		Approve			
Motion By:		Gray			
Seconded:		Lucas			
Minutes approved Item # 9 was removed from Consent and placed under New Business (2007 Citizen Survey)	Gray	✓			
	Thiel	✓			
	Cook	✓			
	Allen	✓			
	Rhoads	✓			
	Ferrell	✓			
	Lucas	✓			
	Jordan	✓			
	Mayor Coody				

passed Res 74-07

81-07

8-0

City Council Meeting May 1, 2007

Subject: Jayetteville E 911 House Numbering					
Motion To:		Amend Harmond to 85th Avenue			
Motion By:		Lucas			
Seconded:		Thiel			
B.I. Unfinished Amendment passed	Gray	✓			
	Thiel	✓			
	Cook	✓			
	Allen	✓			
	Rhoads	✓			
	Ferrell	✓			
	Lucas	✓			
	Jordan	✓			
	Mayor Coody				

8-0

Subject: Jayetteville E 911 House Numbering					
Motion To:		5/21/07 effective date and budget adjustment of \$8,000			
Motion By:		Lucas			
Seconded:		Thiel			
B.I. Unfinished Amendment passed	Gray	✓			
	Thiel	✓			
	Cook	✓			
	Allen	✓			
	Rhoads	✓			
	Ferrell	✓			
	Lucas	✓			
	Jordan	✓			
	Mayor Coody				

8-0

City Council Meeting May 1, 2007

Subject: <i>Jayetteville E911 House Numbering</i>					
Motion To:		<i>Approve</i>			
Motion By:		<i>Ferrell</i>			
Seconded:		<i>Lucas</i>			
<i>B.1.</i> <i>Unfinished</i> <i>passed</i> <i>82-07</i>	Gray	<i>✓</i>			
	Thiel	<i>✓</i>			
	Cook	<i>✓</i>			
	Allen	<i>✓</i>			
	Rhoads	<i>✓</i>			
	Ferrell	<i>✓</i>			
	Lucas	<i>✓</i>			
	Jordan	<i>✓</i>			
	Mayor Coody				

Subject: <i>RZN 07-2504 (Sloan/Cobblestone)</i>					
Motion To:		<i>3rd read</i>	<i>Pass</i>		
Motion By:		<i>Lucas</i>			
Seconded:		<i>Ferrell</i>			
<i>B.2.</i> <i>Unfinished</i> <i>passed</i> <i>5010</i>	Gray	<i>✓</i>	<i>✓</i>		
	Thiel	<i>✓</i>	<i>✓</i>		
	Cook	<i>✓</i>	<i>✓</i>		
	Allen	<i>✓</i>	<i>✓</i>		
	Rhoads	<i>✓</i>	<i>✓</i>		
	Ferrell	<i>✓</i>	<i>✓</i>		
	Lucas	<i>✓</i>	<i>✓</i>		
	Jordan	<i>✓</i>	<i>✓</i>		
	Mayor Coody				

8-0

8-0

Subject: Roll Off Services, Inc.					
Motion To:		Amend Contract to State 3 months.		Approve	
Motion By:		Rhoads		Ferrell	
Seconded:		Ferrell		Rhoads	
B.3. Unfinished <u>Passed</u> 8307	Gray	✓		✓	
	Thiel	✓		N	
	Cook	✓		N	
	Allen	✓		N	
	Rhoads	✓		✓	
	Ferrell	✓		✓	
	Lucas	✓		✓	
	Jordan	✓		✓	
	Mayor Coody				

8-0

5-3

Subject: The Links at Jayetteville Appeal					
Motion To:		3rd read	Table for 2 weeks		Tape 3
Motion By:		Ferrell	Rhoads		Mr. Lindsey
Seconded:		Allen	Gray		
B.4. Unfinished <u>Table to</u> 5/15/07	Gray	✓	✓		
	Thiel	✓	✓		
	Cook	✓	✓		
	Allen	✓	✓		
	Rhoads	✓	✓		
	Ferrell	✓	✓		
	Lucas	✓	✓		
	Jordan	✓	✓		
	Mayor Coody				

8-0

8-0

City Council Meeting May 1, 2007

Subject: 2007 Citizen Survey					
Motion To:		Approve			
Motion By:		Rhoads			
Seconded:		Cook			
This item was moved from Consent to New Business passed 84-07	Gray	✓			
	Thiel	✓			
	Cook	✓			
	Allen	✓			
	Rhoads	✓			
	Ferrell	N			
	Lucas	N			
	Jordan	✓			
	Mayor Coody				

6-2

Subject: Jayetteville Municipal Property Owners' ID #18					
Motion To:		2nd read	3rd	Pass	Woodbury
Motion By:		Cook	Cook		
Seconded:		Ferrell	Ferrell		
C.I. New Business passed 5011	Gray	✓	✓	✓	
	Thiel	✓	✓	✓	
	Cook	✓	✓	✓	
	Allen	✓	✓	✓	
	Rhoads	✓	✓	✓	
	Ferrell	✓	✓	✓	
	Lucas	✓	✓	✓	
	Jordan	✓	✓	✓	
	Mayor Coody				

8-0

8-0

8-0

Subject: Jayetteville Municipal Property Owners' ID #20					
Motion To:		2nd read	3rd read	Pass	Quarry Trace
Motion By:		Ferrell	Ferrell		Commons
Seconded:		Cook	Cook		Subdivision
C.2. New Business passed 5012	Gray	✓	✓	✓	
	Thiel	✓	✓	✓	
	Cook	✓	✓	✓	
	Allen	✓	✓	✓	
	Rhoads	✓	✓	✓	
	Ferrell	✓	✓	✓	
	Lucas	✓	✓	✓	
	Jordan	✓	✓	✓	
	Mayor Coody				
		8-0	8-0	8-0	

Subject: VAC 07-2522 Johnson					
Motion To:		2nd read	3rd read	Pass	
Motion By:		Cook	Cook		
Seconded:		Thiel	Allen		
C.3. New Business passed 5013	Gray	✓	✓	✓	
	Thiel	✓	✓	✓	
	Cook	✓	✓	✓	
	Allen	✓	✓	✓	
	Rhoads	✓	✓	✓	
	Ferrell	✓	✓	✓	
	Lucas	✓	✓	✓	
	Jordan	✓	✓	✓	
	Mayor Coody				
		8-0	8-0	8-0	

Subject: ADM 07-2565 (North Point)					
Motion To:		2nd read	3rd read	Pass	
Motion By:		Cook	Cook		
Seconded:		Ferrell	Ferrell		
C.4. New Business <u>Passed</u> 5/14	Gray	✓	✓	✓	
	Thiel	✓	✓	✓	
	Cook	✓	✓	✓	
	Allen	✓	✓	✓	
	Rhoads	✓	✓	✓	
	Ferrell	✓	✓	✓	
	Lucas	✓	✓	✓	
	Jordan	✓	✓	✓	
	Mayor Coody				
		8-0	8-0	8-0	

Subject: Walker Park Cell Tower					
Motion To:		Table to 6-05-06			
Motion By:		Allen			
Seconded:		Thiel			
C.5. New Business Tabled to June 5, 2007	Gray	✓			
	Thiel	✓			
	Cook	✓			
	Allen	✓			
	Rhoads	✓			
	Ferrell	✓			
	Lucas	✓			
	Jordan	✓			
	Mayor Coody				
		8-0			

Aldermen

Mayor Dan Coody

City Attorney Kit Williams

City Clerk Sondra Smith



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City Council Meeting
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Call to Order

Roll Call

Pledge of Allegiance

A. CONSENT:

- 1. Approval of the March 20, 2007 and April 3, 2007 City Council meeting minutes.**
- 2. Bid #07-30 Heckathorn Construction Co:** A resolution approving a construction contract with Heckathorn Construction Co., Inc. in the amount of \$1,290,520.00 for construction of Fire Station #3; and approving a project contingency in the amount of \$170,000.00.
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B. UNFINISHED BUSINESS:

1. **Fayetteville E911 House Numbering:** A resolution to change the names of several streets or roads within Fayetteville because of duplicate or confusing street names within annexed areas. *This resolution was tabled at the April 17, 2007 City Council meeting to the May 1, 2007 City Council meeting.*
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C. NEW BUSINESS:

- 1. Fayetteville Municipal Property Owners' Improvement District No. 18 - Woodbury:**
An ordinance to establish and lay off Fayetteville Municipal Property Owners' Improvement District No. 18 – Woodbury.
- 2. Fayetteville Municipal Property Owners' Improvement District No. 20 – Quarry Trace Commons Subdivision:** An ordinance to establish and lay off Fayetteville Municipal Property Owners' Improvement District No. 20 – Quarry Trace Commons Subdivision Infrastructure Project.
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D. INFORMATIONAL:

City Council Tour: None

A.8. 2007 Citizen Survey
Handed out at Agenda Session 4/24/07



123 Hotz Hall • Fayetteville, Arkansas 72701-1201 • 479.575.4222 • 479.575.2474 (FAX) • src@uark.edu

Survey Research Center

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

April 23, 2007

Paul Becker, Finance and Internal Services Director
Susan Thomas, Public Information and Policy Advisor, Project Director
Kevin Springer, Budget Manager

This is a proposal to survey the citizens of Fayetteville, Arkansas for the City of Fayetteville.

Research Design

Telephone survey

The Survey Research Center (SRC) would conduct a telephone survey of citizens of Fayetteville, Arkansas for the numbers of completed interviews needed to assure a desired estimated sampling error. If the budget allows, additional Fayetteville households would be screened in order to augment the number of surveys completed by African American and Hispanic/Latino households. Estimates in Table 1 are offered for interviews approximately 17 minutes in length. A pre-survey letter would be sent to all sample members for whom an address is available in advance of the telephone survey. In addition, the data would be analyzed with at least one bivariate analysis so as to indicate with more confidence phenomena of interest. Data will be compared with previous years' results to identify trends in citizen interest in various issues as well.

Questionnaire Design & Field Testing

The SRC would work with officials of the City of Fayetteville to revise a questionnaire that addresses the City's objectives for the survey. The 2007 questionnaire would draw on the instrument that the City of Fayetteville used to survey its citizens in 2001, 2003 and 2005. With City officials, the SRC would develop very few additional and/or alternative questions to solicit opinions on issues germane to the current objectives. The 2003 survey took 17.3 minutes on average to administer and the 2005 survey took 23.6 minutes, on average. For the 2007 survey, questions would be limited to those which could feasibly be included in a 17-minute survey.

SRC staff would critique 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 University of Arkansas' (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 would be surveyed.

Proposal of a Project to Survey the Citizens of Fayetteville
for the City of Fayetteville
Survey Research Center, University of Arkansas
April 23, 2007

New and alternative questions would be critiqued by SRC staff. Experienced interviewers would administer it to each other and critique it. The SRC would subsequently 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 calling, 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 letters would be printed on City of Fayetteville letterhead and mailed in City envelopes.

Please note that the letters would be sent to approximately one-fourth of the sample members. In the 2003 survey, 68 percent of the respondents asked about the letter were cognizant of having received it, although only about 50 percent of the sample members were mailed letters. The remaining sample would be called only.

The effectiveness of the research design depends partially on personalizing the mailings. Therefore, the SRC would print the envelopes, rather than using labels, and affix stamps rather than using a machine stamp. Furthermore it is expected that electronic signatures of the mayor and city council members would be printed on the letters, if they agree to this strategy.

It is the SRC's preference that the City, in conjunction with the SRC, prepare a press release or set of press releases so as to inform the sizable fraction of residents who would not receive pre-interview letters of the survey and its purposes.

Sample

The SRC would complete surveys of at least 379 citizens of Fayetteville. The estimated sampling error associated with this number of surveys is ± 5 percent if a simple random sample is drawn. A random sample of telephone numbers generated for the City of Fayetteville would be purchased. The longer the survey, the more sample needed.

In order to garner the desired number of completed interviews, each telephone number would be called as many as six times. The SRC follows methods that are demonstrated to improve response rates. Subject to the client's preferences, the SRC guarantees to carefully follow the agreed-upon research design. As optimistic as the SRC are about response rates, however, they cannot be guaranteed. Only adults (people age 18 or older) would be interviewed. To enable the results to be generalized to individuals rather than households, these estimates include costs of randomly selecting respondents within the household. Bilingual interviewers would interview Hispanic/Latino respondents, if needed. All interviewers are trained to forward Spanish-speaking respondents to the bilingual interviewers.

Oversampling Minority Ethnicity Populations

While the budget estimates do not include costs of oversampling, this technique could be used if it is found that the project is underbudget. Therefore, the following information is primarily meant to be informative in case, funds were to become available. According to the 2000 Census of

Proposal of a Project to Survey the Citizens of Fayetteville
for the City of Fayetteville
Survey Research Center, University of Arkansas
April 23, 2007

*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, proportionately more households from these two groups would be surveyed. To obtain an estimated sampling error of ± 20 percent, approximately 46 people need to be surveyed. This would provide 23 African American and 23 Latino/Hispanic completed responses. Without the additional screening, it is estimated that about 11 African American and 12 Hispanic/Latino residents would complete the survey. In order to obtain surveys from the additional 11 Hispanic/Latino and 12 African American households the SRC would screen households at numerous additional telephone numbers.

If oversampling were used, these numbers would be screened only. Any household members who identify themselves as African American or Hispanic/Latino would be interviewed until the desired number of completed interview is obtained. Please note, however, these estimates guarantee only that the SRC would call all of these numbers at least six times, if appropriate. The SRC cannot guarantee that 23 surveys would be completed by African American and 23 by Hispanic/Latino Fayetteville residents however diligent the effort.

If used at all, oversampling to complete additional surveys with African American and Hispanic/Latino households would only be performed within the limits of the budgeted calling hours.

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.

Time Line

A tentative time line is shown in Table 2. Because the survey is being revised rather than drafted anew, the initial time period could be shortened significantly. The time line is drafted so as to account for a review via a democratic process, however. Data collection is scheduled to begin in late August to follow the opening of the University of Arkansas and return to school of students of the Fayetteville Public Schools. The later calling period is much more efficient because it is easier to reach respondents. Furthermore, students and their families are much more likely to be heard

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&q_r_name=DEC_2000_SF1_U_DP1&_lang=en.

Proposal of a Project to Survey the Citizens of Fayetteville
for the City of Fayetteville
Survey Research Center, University of Arkansas
April 23, 2007

from because they have returned to the community from vacations and other activities.

Table 1 Proposed Time Line for the 2007 Fayetteville Citizen's Survey

	Telephone Survey	
	Telephone survey, with initial letter	
	Weeks	Dates in 2007
Revise questionnaire	5	February 21 – May 31
Submit questionnaire and letter for IRB review	2	June 1 - June 21
Program telephone interviewing system and test	3	June 10 - June 22
Conduct field tests and review responses	1.5	June 25 - June 27
Request Council Members' and Mayor's signatures	2	June 21 - July 5
Address, print and sign letters and mail	1	July 9 - July 10
Conduct interviews	3	August 26 – September 10
Clean and analyze data and write report	5	September 11 – October 15
Revisions and final report	2	October 16 – November 12

Deliverables

Communication about progress would be made to the project director 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 electronically in Excel. A short Technical Report and graphic presentation would be written and presented to City officials as desired. In addition, a slightly more in-depth report indicating changes over time would also be written. These would include revisions of charts or figures and up to six or so bivariate analyses. Please note that the latter pertains to tables rather than variables.

Proposal of a Project to Survey the Citizens of Fayetteville
for the City of Fayetteville
Survey Research Center, University of Arkansas
April 23, 2007

Table 2 Proposed Project Budget

BUDGET - University of Arkansas					
Proposed to (Sponsor):	City of Fayetteville				
Proposed Project Dates:	February 1, 2007 - Dec 31, 2007				
UA Lead Investigator:	Dr. Molly Longstreth (Survey Research Center)				
	Type	% Effort	PERSON-MONTHS		
			Other		
SALARIES & WAGES					
Project Director - Longstreth					\$1,579
Assist Director					\$0
Research Assistant 1 @					\$210
Research Assistant 2 @					\$691
Research Assistant 3 @					\$3,217
Hourly Employees - estimated cost					\$7,337
Total S&W					

FRINGE BENEFITS

Longstreth (non-classified personnel)
Research Assistants (classified personnel)
Hourly Employees

Institutional Rate:

25.3%		\$411
25.3%		\$1,071
7.0%		\$572

Total FB

\$2,054

Total Salaries - Benefits

\$15,088

OTHER DIRECT COSTS

Toll charges and Line Charges
Sample
Supplies
Postage
Printing

\$245
\$1,355
\$20
\$730
\$318

Subtotal Other Direct Costs

\$2,169

TOTAL DIRECT COSTS*

\$17,757

Subtotal Modified Total Direct Costs (MTDC)

\$17,757

F & A COST (MTDC subtotal x RATE):

0.0% 0.0%

\$6,215

TOTAL PROJECT COST

\$23,972

*Note: Any slight calculation discrepancy is due to spreadsheet rounding.

**City of Fayetteville
Staff Review Form
City Council Agenda Items
Contracts**

1-May-07

City Council Meeting Date

David Bragg

Submitted By

Fleet Operations

Division

Operations

Department

Action Required:

A resolution (correcting resolution 68-07) awarding bid #07-32 to Scott Construction Equipment of Springdale in the amount of \$30,202.18 for the purchase of one trench roller and to Hertz Equipment in the amount of \$3,835.96 (plus tax) for the purchase of a trailer to haul the trench roller, and a budget adjustment to move funds to the Fleet expense account. Both items are for use by Water & Sewer Division.

\$34,400.00

Cost of this request

\$

224,109.00

Category/Project Budget

Construction Equipment

Program Category / Project Name

9700.1920.5802.00

Account Number

\$

18,664.00

Funds Used to Date

Vehicles and Equipment

Program / Project Category Name

02077.1

Project Number

\$

205,445.00

Remaining Balance

Shop Fund

Fund Name

Budgeted Item

☒

Budget Adjustment Attached

☒


Department Director

4-24-07
Date

Previous Ordinance or Resolution #

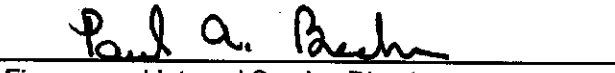
68-07

Original Contract Date:

Original Contract Number:


City Attorney

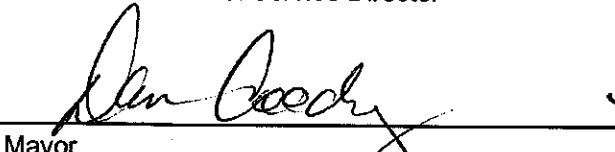
4/25/07
Date


Finance and Internal Service Director

7-25-07
Date

Received in City Clerk's Office

ENTERED


Mayor

4/25/07
Date

Received in Mayor's Office

ENTERED

Comments:



Interdepartmental Correspondence

To: Mayor/City Council

Thru: Gary Dumas, Director of Operations

From: David Bragg, Fleet Operations Superintendent

Date: April 24, 2007

Subject: Purchase of one Trench Roller and Trailer

RECOMMENDATION: That City Council approve a resolution (correcting resolution 68-07) for the purchase of one trench roller from Scott Construction Equipment and a trailer from Hertz Equipment for use by Water & Sewer Division.

BACKGROUND: Bid #07-32 was opened on March 16, 2007 for one trench roller and trailer for assignment to the Water and Sewer Division. Five bid responses were received. A detailed tabulation sheet is attached. When this item was originally presented to Council on April 17th, the memo correctly stated that United Rentals had withdrawn their bid, however, the Agenda Request and the resultant resolution 68-07 (attached) mistakenly listed United Rentals as the vendor for the roller. This Agenda Request is to correct that error and award the roller bid to Scott Construction Equipment. The trailer bid was correctly awarded to Hertz.

ITEM 1 - ROLLER:

The lowest bid from United Rentals was withdrawn by the bidder because a specified extra set of drums was omitted from the pricing.

The lowest remaining bid from Scott Construction Equipment of Springdale meets all specifications. I recommend acceptance of the roller bid from Scott Construction Equipment in the amount of \$30,202.18 plus tax.

ITEM 2 - TRAILER:

The lowest bid from Hertz Equipment of Springdale meets all specifications.

I recommend acceptance of the trailer bid from Hertz Equipment in the amount of \$3,835.96 plus tax.

These units are expansion equipment approved in the 2007 budget. Funds are budgeted and available in Water and Sewer accounts 5610-5400 and 5400-4000-5210-00. A budget adjustment will be requested to transfer the necessary funds to Fleet 2007 CIP budget, Project 02077, Construction Equipment.

This purchase was approved by the Equipment Committee at the meeting on March 27, 2007.

RESOLUTION NO. _____

A RESOLUTION RESCINDING RESOLUTION #68-07; AWARDING A PORTION OF BID #07-32 TO SCOTT CONSTRUCTION EQUIPMENT FOR THE PURCHASE OF ONE (1) TRENCH ROLLER IN THE AMOUNT OF \$30,202.18 AND TO HERTZ EQUIPMENT FOR THE PURCHASE OF ONE (1) TRAILER TO HAUL THE TRENCH ROLLER IN THE AMOUNT OF \$3,835.96, BOTH FOR USE BY THE WATER & SEWER DIVISION; AND APPROVING A BUDGET ADJUSTMENT IN THE AMOUNT OF \$34,400.00.

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

Section 1. That Resolution #68-07, dated April 17, 2007, is hereby rescinded.

Section 2. That the City Council of the City of Fayetteville, Arkansas hereby awards a portion of Bid #07-32 to Scott Construction Equipment for the purchase of one (1) Trench Roller in the amount of \$30,202.18 for use by the Water & Sewer Division.

Section 3. That the City Council of the City of Fayetteville, Arkansas hereby awards a portion of Bid #07-32 to Hertz Equipment for the purchase of one (1) trailer to haul the Trench Roller in the amount of \$3,835.96 for use by the Water & Sewer Division.

Section 4. That the City Council of the City of Fayetteville, Arkansas hereby approves a Budget Adjustment in the amount of \$34,400.00.

PASSED and APPROVED this 1st day of May, 2007.

APPROVED:

ATTEST:

By: _____

DAN COODY, Mayor

By: _____

SONDRA E. SMITH, City Clerk/Treasurer

RESOLUTION NO. 68-07

A RESOLUTION AWARDED A PORTION OF BID #07-32 TO UNITED RENTAL OF FAYETTEVILLE FOR THE PURCHASE OF ONE (1) TRENCH ROLLER IN THE AMOUNT OF \$30,202.18 AND TO HERTZ EQUIPMENT FOR THE PURCHASE OF ONE (1) TRAILER TO HAUL THE TRENCH ROLLER IN THE AMOUNT OF \$3,835.96, BOTH FOR USE BY THE WATER & SEWER DIVISION; AND APPROVING A BUDGET ADJUSTMENT IN THE AMOUNT OF \$34,400.00.

should be
Scott
Construction

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 a portion of Bid #07-32 to United Rental of Fayetteville for the purchase of one (1) Trench Roller in the amount of \$30,202.18 for use by the Water & Sewer Division.

Section 2. That the City Council of the City of Fayetteville, Arkansas hereby awards a portion of Bid #07-32 to Hertz Equipment for the purchase of one (1) trailer to haul the Trench Roller in the amount of \$3,835.96 for use by the Water & Sewer Division.

Section 3. That the City Council of the City of Fayetteville, Arkansas hereby approves a budget adjustment in the amount of \$34,400.00.

PASSED and APPROVED this 17th day of April, 2007.

APPROVED:

ATTEST:

By:

DAN COODY, Mayor

By:

SONDRA SMITH, City Clerk/Treasurer



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

A. 10
Bid #07-32 Scott Construction
Equipment Trench Roller Purchase
Adjustment Number Page 5 of 10

Budget Year 2007	Department: Operations Division: Fleet Operations Program: Capital Expenditures	Date Requested 3/27/2007	Adjustment Number
--------------------------------	--	--	-------------------

Project or Item Added/Increased: Increase the Construction Equipment project #02077 by \$34,400 to provide the total amount needed to purchase a trench roller with trailer as an expansion for Water & Sewer Division. Fleet is recognizing revenue due to a transfer from Water & Sewer.	Project or Item Deleted/Reduced: Funds are budgeted and available in Water & Sewer accounts 5400.5610.5801.00.
--	--

Justification of this Increase: This expansion was approved in the budget process. Funds were not put into Fleet's expense account, but were put into Water & Sewer Fixed Asset account.	Justification of this Decrease: There are sufficient funds available for this purchase and to meet City policy and objectives.
--	--

Increase Expense Budget (Decrease Revenue Budget)							
Account Name		Account Number				Amount	Project Number
Vehicles and equipment		9700	1920	5802	00	34,400	02077 1
Transfer to Shop		5400	5610	7602	70	34,400	07011 1

Decrease Expense Budget (Increase Revenue Budget)							
Account Name		Account Number				Amount	Project Number
Fixed assets		5400	5610	5801	00	34,400	07011 1
Trans from Water & Sewer		9700	0970	6602	40	34,400	02077 1

Approval Signatures <i>Barbara Olson</i> Requested By 4-24-7 Date Budget Manager 4-24-07 Date _____ Department Director _____ Date _____ Finance & Internal Services Director _____ Date _____ Mayor _____ Date	Budget Office Use Only Type: A B C <u>D</u> E Posted to General Ledger _____ Initial Date Posted to Project Accounting _____ Initial Date Entered in Category Log _____ Initial Date
--	--

Equipment Committee Correspondence

TO: City of Fayetteville, Equipment Committee
Bobby Ferrell, Chairman Adella Gray
Kyle Cook Lioneld Jordan

FROM: David Bragg, Fleet Operations Supt

DATE: March 21, 2007

SUBJECT: Award of Bid 07-32

Bid #07-32 was opened on March 16, 2007 for one trench roller and trailer for assignment to the Water and Sewer Division. Five bid responses were received. A detailed tabulation sheet is attached.

ITEM 1 - ROLLER:

The lowest bid from United Rentals was withdrawn by the bidder because a specified extra set of drums was omitted from the pricing.

The lowest remaining bid from Scott Construction Equipment of Springdale meets all specifications.

I recommend acceptance of the roller bid from Scott Construction Equipment in the amount of \$30,202.18 plus tax.

ITEM 2 - TRAILER:

The lowest bid from Hertz Equipment of Springdale meets all specifications.

I recommend acceptance of the trailer bid from Hertz Equipment in the amount of \$3,835.96 plus tax.

These units are expansion equipment approved in the 2007 budget.

Funds are budgeted and available in Water and Sewer accounts 5610-5400 and 5400-4000-5210-00. A budget adjustment will be requested to transfer the necessary funds to Fleet 2007 CIP budget, Project 02077, Construction Equipment.

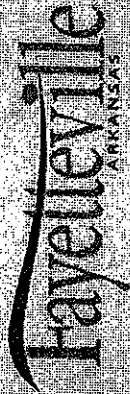
Cc:
Gary Dumas

APPROVED

[Signature]

3/27/2007

BID: 07-32
3/16/2007
2:00 PM
CITY OF FAYETTEVILLE



Bid 07-32, Trench Roller with Trailer

BIDDER	Manufacturer	Model	Total Base Bid
1 Hertz Equipment Rental Corp			
	Roller Trailer	Wacker Felling	
		RT 82-SC	\$33,297.53
		FT-3T	\$3,835.96
		Total	\$37,133.49
2 Hugg & Hall Equip			
	Roller Trailer	Wacker RT Felling	
		RT 82-SC	\$34,578.35
		FT-3T	\$3,912.00
		Total	\$38,490.35
3 Scott Construction Equip			
	Roller Trailer	Wacker Belshe	
		1-RT 82-SC	\$30,202.18
		WB-1SHP (Tilt)	\$4,300.00
		Total	\$34,502.18
4 United Rentals			
	Roller Trailer	Wacker Belshe	
		RT 82-SC	\$29,646.79
		WB-1	\$3,860.00
		Total	\$33,506.79
5 Williams Tractor Inc			
	Roller Trailer	Stone Towmaster	
		Bulldog	\$26,888.00
		T-3T	\$4,750.00
		Total	\$31,638.00

*NOTICE: Bid award is contingent upon vendor meeting minimum specifications and format authorization by City officials.

CERTIFIED: P Vice A. Foren 3/16/07
P. VICE PURCH MGR WITNESS DATE

City Of Fayetteville

(Not a Purchase Order)

Vendor #		3482		Vendor Name:		SCOTT CONSTRUCTION EQUIPMENT		Requisition No.		Date:	
Address:				Fob Point:				P.O Number		Expected Delivery Date:	
City:				State:				Mail Yes: No: XX			
Requester		MARGARET HATTABAUGH		Requester's Employee #		2256		Division Head Approval		Quotes Attached	
Item Description		Quantity		Unit of Issue		Unit Cost		Extended Cost		Account Numbers	
1	2007 WACKER RT82-SC TRENCH	1	EA	\$30,202.18	\$30,202.18	9700.1920.5802.00	02077.1				
2	ROLLER PER SPECS ON BID		EA		\$0.00						
3	#07-32, TO BE UNIT #814		EA		\$0.00						
4	FIXED ASSET #700814		EA		\$0.00						
5			EA		\$0.00						
6			EA		\$0.00						
7			EA		\$0.00						
8			EA		\$0.00						
9			EA		\$0.00						
10			EA		\$0.00						
Shipping/Handling			Lot		\$0.00						
Special Instructions:											
Subtotal: 30,202.18 Tax: Exempt Total: 30,202.18											
Approvals: Mayor: _____ Department Director: _____ Finance & Internal Services Director: _____ Budget Manager: _____ Dispatch Manager: _____ Utilities Manager: _____											

City Of Fayetteville

(Not a Purchase Order)

Vendor #		88490		Vendor Name:		HERTZ EQUIPMENT RENTAL		Requisition No.		Date:	
Address:				Fob Point:				P.O Number		Expected Delivery Date:	
City:				State:				Mail Yes: No: XX			
Requester		MARGARET HATTABAUGH		Ship to code:		050		Division Head Approval		Quotes Attached	
Item Description		Quantity		Unit of Issue		Unit Cost		Extended Cost		Inventory #	
1 2007 FELLING FT-3T TRAILER		1		EA		\$3,835.96		\$3,835.96		02077.1	
2 TO HAUL TRENCH ROLLER PER				EA				\$0.00			
3 BID #07-32, TO BE UNIT #9096				EA				\$0.00			
4				EA				\$0.00			
5				EA				\$0.00			
6				EA				\$0.00			
7				EA				\$0.00			
8				EA				\$0.00			
9				EA				\$0.00			
10				EA				\$0.00			
Shipping/Handling				Lot				\$0.00			
Special Instructions:										Subtotal: 3,835.96	
										Tax: 311.40	
										Total: 4,147.36	

Approvals: _____
 Mayor: _____
 Finance & Internal Services Director: _____
 Dispatch Manager: _____
 Department Director: _____
 Budget Manager: _____
 Utilities Manager: _____
 Purchasing Manager: _____
 IT Manager: _____

CITY COUNCIL AGENDA MEMO

To: Mayor and City Council
Thru: Paul Becker, Director of Operations
From: John Goddard, GIS Coordinator
Date: April 24, 2007

Subject: Ammendment to Proposed Resolution for Street Name Changes.

RECOMMENDATION

Staff recommends that Harmon South (south of Hwy 16) and Harmon Rd. (north of Hwy 16) to be renamed to 85th St.

BACKGROUND

A task force met on Monday April 23rd to make a recommendation to the City Council regarding the re-addressing of the West Side Annexation (Ord. 4888). In that meeting there was a unanimous consensus that Harmon South and Harmon Rd. should be renamed. There were two reasons brought forth for this: 1) The meme of referring to this Road with its "South" designation, and the concern that sections of it will now have both North and South designations. The fear is that if the name remained Harmon, it would continue to be referred to as "Harmon South". 2) We have a Harmon Ave on the University Campus.

It was also recommended that it be renamed 85th Ave to serve as a reference to the addressing Grid.

Note:

The task force consisted of Emergency Service Personnel (Police, Fire, and Dispatch) from both the City of Fayetteville and Washington County.

Task Force Members:

Tony Johnson	Fire Chief
Greg Tabor	Police Chief
Bud Thompson	Assitant Fire Chief
Chris Lynch	Assitant Fire Chief
Kathy Stocker	E911 Dispatch Manager
Ellura Denton	Lead Dispatcher
John Gibson	Assitant County Judge
John Luther	Washington County Emergency Operations
Daryll Pemberton	Washington County Emergency Operations

4/24/07

Improvement District #18

C. 1





Added at Agenda Session 4/24/07

C. 2
Fayetteville Municipal Property Owners'
Improvement District No. 20 - Quarry
Trace Commons Subdivision
Page 1 of 12

RECEIVED

APR 24 2007

CITY OF FAYETTEVILLE
MAYOR'S OFFICE

113 West Mountain
Fayetteville, AR 72701
Telephone: (479) 575-8323
Fax: (479) 718-7695
city_clerk@ci.fayetteville.ar.us

City Clerk/Treasurer Division

April 24, 2007

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

RE: Petition to form Fayetteville Municipal Property Owners'
Improvement District No. 20
Quarry Trace Commons Subdivision Infrastructure Project

Dear Mayor:

Pursuant to Arkansas Code Ann. Sec. 14-94-105 (e)(3), you are hereby notified that the enclosed Petition to form Fayetteville Municipal Property Owners' Improvement District No. 20 – Quarry Trace Commons Subdivision Infrastructure Project has been filed in the office of the Fayetteville City Clerk. Pursuant to Ark. Code Ann. Sec. 14-94-106 (a)(1), I hereby present you with the Petition.

Sincerely,

Sondra E. Smith
City Clerk/Treasurer

cc: Kit Williams, City Attorney
James N. McCord

JAMES N. McCORD
Attorney at Law
2446 ST. JAMES PLACE
FAYETTEVILLE, ARKANSAS 72701

TELEPHONE (479) 695-1134
FACSIMILE (479) 521-6733
jimmccordlaw@alltel.net

C. 2
Fayetteville Municipal Property Owners'
Improvement District No. 20- Quarry
Trace Commons Subdivision
Page 2 of 12
RECEIVED
APR 24 2007
CITY OF FAYETTEVILLE
CITY CLERK'S OFFICE

April 23, 2007

Sondra Smith
Fayetteville City Clerk
City Administration Building
113 West Mountain Street
Fayetteville, AR 72701

VIA HAND DELIVERY

Re: Petition to Form Fayetteville Municipal Property Owners' Improvement
District No. ~~19~~ Quarry Trace Commons Subdivision Infrastructure Project
20

Dear Ms. Smith:

Enclosed for filing in the office of the Fayetteville City Clerk are three executed counterparts of a Petition to Form Fayetteville Municipal Property Owners' Improvement District No. 20- Quarry Trace Commons Subdivision Infrastructure Project. Please file mark each Petition, retain one for the City's permanent file and for presentation to the Mayor, and return the other counterparts to me. The Petition is being filed under the Arkansas Municipal Property Owners' Improvement District law, Ark. Code Ann. Sec. 14-94-101 et seq.

. Ark. Code Ann. Sec. 14-94-106 provides:

- (a)(1) Upon the filing of the petition with the clerk, it shall be the duty of the clerk to present the petition to the mayor.
- (2) The mayor shall thereupon set a date and time not later than fifteen (15) days after the date of the presentation of the petition to the mayor, for a hearing before the governing body for consideration of the petition.
- (b)(1) At the hearing, it shall be the duty of the governing body to hear the petition and to ascertain whether those signing the petition constitute all the owners of the real property to be located in the district.

- (2) If the governing body determines that all the owners of the real property to be located in the district have petitioned for the improvements, it shall be its duty by ordinance to establish and lay off the district as defined in the petition and to appoint the commissioners named in the petition.

* * *

- (c) The ordinance establishing the district shall be published within thirty (30) days after its adoption by one (1) insertion in some newspaper of general circulation in the municipality in which the district lies.

Enclosed, for filing in the office of the City Clerk, is an executed Title Company Certificate certifying that the improvement district petition is signed by the owner of the record title to all the real property described in the Petition. I have drafted and enclose an ordinance which would establish the district and name the commissioners.

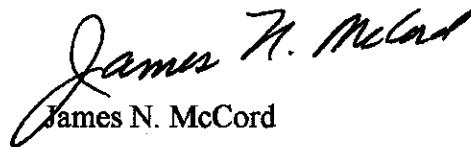
Formation of a municipal property owners' improvement district is merely a financing alternative for the cost of subdivision infrastructure. The developer must comply with all city development ordinances. The completed infrastructure improvements are dedicated to the city.

The improvement district issues special assessment bonds, bond proceeds are used to construct or purchase the improvements, the district levies an annual tax on each lot in the district to pay debt service on the bonds, the annual taxes are collected by the county tax collector and paid to the bond trustee, and the trustee makes debt service payments to the bondholders.

Quarry Trace Commons will have 114 lots on 29.887 acres located on Huntsville Road.

Should there be any questions, please contact me.

Sincerely,


James N. McCord

pc: Hon. Dan Coody, Mayor
Kit Williams, City Attorney

ORDINANCE NO. _____

**AN ORDINANCE TO ESTABLISH AND LAY OFF
FAYETTEVILLE MUNICIPAL PROPERTY OWNERS'
IMPROVEMENT DISTRICT NO. 20- QUARRY TRACE
COMMONS SUBDIVISION INFRASTRUCTURE PROJECT**

WHEREAS, a Petition to form Fayetteville Municipal Property Owners' Improvement District No. 20- Quarry Trace Commons Subdivision Infrastructure Project has been filed with the Fayetteville City Clerk; and

WHEREAS, the City Clerk has presented said petition to the Mayor; and

WHEREAS, the Mayor has set May 1, 2007, at 6:00 p.m. as the date and time for a hearing before the Fayetteville City Council for consideration of said petition; and

WHEREAS, the Fayetteville City Council has determined from an abstracter's certificate of property ownership that those signing the petition constitute all the owners of the real property to be located in the district; and

WHEREAS, the Arkansas Municipal Property Owners' Improvement District Law provides at Ark. Code Ann. Sec. 14-94-106(b)(2) that if the governing body determines that all the owners of the record title to the real property to be located in the district have petitioned for the improvements, it shall then be its duty by ordinance to establish and lay off the district as defined in the petition and to appoint the commissioners named in the petition.

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

Section 1: That the real property described in Exhibit "A" attached hereto and made a part hereof is hereby established and laid off as Fayetteville Municipal Property Owners' Improvement District No. 20- Quarry Trace Commons Subdivision Infrastructure Project for the purpose of constructing, purchasing, accepting as a gift or maintaining facilities for waterworks, recreation, drainage, gas pipelines, underground trenches and excavations necessary for the installation by public utilities or municipal utilities of electric and telephone distribution systems, sanitary sewers, streets and highways including curbs and gutters, and sidewalks, together with facilities related to any of the foregoing, or for more than one of those purposes.

Section 2: The following three individuals are hereby appointed as commissioners of said improvement district: John Nock, Steve Aust and Ryan Thornton

Section 3: The name of said improvement district shall be Fayetteville Municipal Property Owners' Improvement District No. 20- Quarry Trace Commons Subdivision Infrastructure Project.

Section 4: The district shall not cease to exist upon the acquiring, constructing or completion of the improvements, but it shall continue to exist for the purpose of preserving, maintaining, and operating the improvements, replacing equipment, paying salaries to employees, and performing any other functions or services authorized in Ark. Code Ann., Title 14, Chapter 94.

PASSED and APPROVED this 1st day of May, 2007.

APPROVED:

ATTEST:

By: _____
DAN COODY, Mayor

By: _____
SONDRA E. SMITH, City Clerk/Treasurer

BEFORE THE CITY COUNCIL OF FAYETTEVILLE, ARKANSAS
PETITION TO FORM FAYETTEVILLE MUNICIPAL PROPERTY OWNERS'
IMPROVEMENT DISTRICT NO. 20- QUARRY TRACE COMMONS
SUBDIVISION INFRASTRUCTURE PROJECT

TITLE COMPANY CERTIFICATE OF PROPERTY OWNERSHIP

Lenders Title Company hereby certifies that the deed records in the office of the Circuit Clerk and Ex-Officio Recorder of Washington County, Arkansas, reflect that the following is the owner of the record title to all of the real property described in Exhibit "A" to the Petition to Form Fayetteville Municipal Property Owners' Improvement District No. 20 – Quarry Trace Commons Subdivision Infrastructure Project, a copy of which Exhibit "A" is attached hereto and made a part hereof:

Nock Investments, LLC

DATED this 23rd day of April, 2007.

LENDERS TITLE COMPANY

By: Stephanie R. Riddle SA8263
AUTHORIZED REPRESENTATIVE

RECEIVED
APR 24 2007
CITY OF FAYETTEVILLE
CITY CLERK'S OFFICE

EXHIBIT "A"

SURVEYED DESCRIPTION:

A PART OF THE NORTHWEST QUARTER (NW1/4) OF SECTION TWENTY (20), TOWNSHIP SIXTEEN (16) NORTH, RANGE TWENTY-NINE (29) WEST, MORE PARTICULARLY DESCRIBED AS COMMENCING AT THE WEST QUARTER (W1/4) OF SAID SECTION 20 AND CONTINUING THENCE S87°22"E 1312.96 FEET TO THE SOUTHEAST CORNER OF THE SOUTHWEST QUARTER (SW1/4) OF THE NORTHWEST QUARTER (NW1/4); SAID POINT BEING THE POINT OF BEGINNING; THENCE N87°22'31"W 381.99 FEET TO A POINT ON THE SOUTHERN BOUNDARY OF SAID (NW1/4); THENCE LEAVING SAID BOUNDARY N02°40'06"E 1791.46 FEET TO A FOUND IRON PIN; THENCE N62°08'56"E 246.16 FEET TO A FOUND IRON PIN; THENCE N53°32'58"E 213.11 FEET TO A FOUND IRON PIN ON THE EAST BOUNDARY OF THE (NW1/4) OF THE (NW1/4) OF SAID SECTION 20; THENCE S02°32'24"W 664.64 FEET TO A POINT ON THE WEST BOUNDARY OF THE (NE1/4) OF THE (NW1/4); THENCE S87°16'57"E 448.50 FEET TO A FOUND IRON PIN; THENCE S02°41'09"W 1385.27 FEET TO THE SOUTH BOUNDARY OF THE NORTHWEST (NW1/4) OF SAID SECTION 20; THENCE N87°22'31"W 444.97 FEET TO THE POINT OF BEGINNING, CONTAINING 30.872 ACRES, MORE OR LESS, FAYETTEVILLE, WASHINGTON COUNTY, ARKANSAS.

LESS & EXCEPT: THE AREA WITHIN THE HIGHWAY RIGHT OF WAY FOR ARKANSAS 16 HIGHWAY ALONG THE SOUTHERN BOUNDARY OF THE AFORE SAID TRACT OF LAND, CONTAINING 0.985 ACRES, MORE OR LESS.

AREA LESS ARKANSAS HIGHWAY TRANSPORTATION DEPARTMENT RIGHT OF WAY CONTAINING, 29.887 ACRES, MORE OR LESS.

NOTICE

YOUR SIGNATURE HEREON SHOWS THAT YOU FAVOR THE ESTABLISHMENT OF AN IMPROVEMENT DISTRICT. IF THE DISTRICT IS FORMED, YOU MAY BE CHARGED FOR THE COSTS OF THE IMPROVEMENTS.

BEFORE THE CITY COUNCIL OF FAYETTEVILLE, ARKANSAS

**PETITION TO FORM FAYETTEVILLE MUNICIPAL PROPERTY OWNERS'
IMPROVEMENT DISTRICT NO. 20- QUARRY TRACE COMMONS
SUBDIVISION INFRASTRUCTURE PROJECT**

For its petition to form Fayetteville Municipal Property Owners'

**Improvement District No. 20- Quarry Trace Commons Subdivision Infrastructure
Project, the undersigned petitioner states:**

- 1. Petitioner is the record title owner to all of the real property described in Exhibit "A" attached hereto and made a part hereof as reflected by the deed records in the office of the Circuit Clerk and Ex-Officio Recorder of Washington, County Arkansas. All of said property is located within the corporate limits of the City of Fayetteville, Arkansas.**
- 2. Petitioner desires that the real property described in Exhibit "A" attached hereto and made a part hereof be established and laid off into a municipal property owners' improvement district pursuant to Ark. Code Ann. Sec. 14-94-101 et seq. for the purpose of constructing, purchasing, accepting as a gift**

RECEIVED

APR 24 2007

**CITY OF FAYETTEVILLE
CITY CLERK'S OFFICE**

or maintaining facilities for waterworks, recreation, drainage, gas pipelines, underground trenches and excavations necessary for the installation by public utilities or municipal utilities of electric and telephone distribution systems, sanitary sewers, streets and highways including curbs and gutters, and sidewalks, together with facilities related to any of the foregoing, or for more than one of those purposes.

3. Petitioners desire that the district shall not cease to exist upon the acquiring, constructing or completion of the improvements, but it shall continue to exist for the purpose of preserving, maintaining, and operating the improvements, replacing equipment, paying salaries to employees, and performing any other functions or services authorized in Ark. Code Ann., Title 14, Chapter 94.

4. Petitioners name the following three individuals, pursuant to Ark. Code Ann. 14-94-105(a)(2)(B), as designated representatives of Petitioner to be appointed as commissioners of the district: John Nock, Steve Aust and Ryan Thornton.

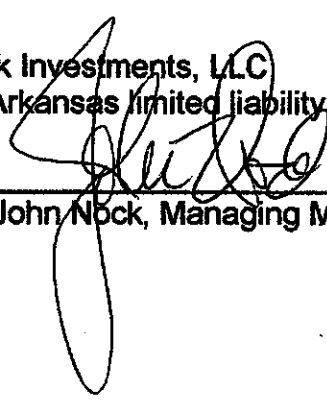
5. Petitioners propose that the name of the district be Fayetteville Municipal Property Owners' Improvement District No. 20- Quarry Trace Commons Subdivision Infrastructure Project.

WHEREFORE, the undersigned Petitioner hereby petitions the City Council of Fayetteville Arkansas to adopt an ordinance establishing and laying off the real property described in Exhibit "A" attached hereto and made a part hereof into Fayetteville Municipal Property Owners' Improvement District No. 20- Quarry Trace Commons Subdivision Infrastructure Project for the purpose of

constructing, purchasing, accepting as a gift or maintaining facilities for waterworks recreation, drainage, gas pipelines, underground trenches and excavations necessary for the installation by public utilities or municipal utilities of electricity and telephone distribution systems, sanitary sewers, streets including curbs and gutters, and sidewalks, together with facilities related to any of the foregoing, or for more than one of those purposes.

DATED this 23rd day of April, 2007.

Nock Investments, LLC
An Arkansas limited liability company

By: 

John Nock, Managing Member

EXHIBIT "A"

SURVEYED DESCRIPTION:

A PART OF THE NORTHWEST QUARTER (NW1/4) OF SECTION TWENTY (20),
TOWNSHIP SIXTEEN (16) NORTH, RANGE TWENTY-NINE (29) WEST, MORE
PARTICULARLY DESCRIBED AS COMMENCING AT THE WEST QUARTER (W1/4)
OF SAID SECTION 20 AND CONTINUING THENCE S87°22'E 1312.96 TO THE
SOUTHEAST CORNER OF THE SOUTHWEST QUARTER (SW1/4) OF THE
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THENCE N87°22'31"W 381.99 FEET TO A POINT ON THE SOUTHERN
BOUNDARY OF SAID (NW1/4);
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FOUND IRON PIN;
THENCE N62°08'56"E 246.16 FEET TO A FOUND IRON PIN;
THENCE N53°32'58"E 213.11 FEET TO A FOUND IRON PIN ON THE EAST
BOUNDARY OF THE (NW1/4) OF THE (NW1/4) OF SAID SECTION 20;
THENCE S02°32'24"W 664.64 FEET TO A POINT ON THE WEST
BOUNDARY OF THE (NE1/4) OF THE (NW1/4);
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THE NORTHWEST (NW1/4) OF SAID SECTION 20;
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CONTAINING 30.872 ACRES, MORE OR LESS, FAYETTEVILLE,
WASHINGTON COUNTY, ARKANSAS.

LESS & EXCEPT: THE AREA WITHIN THE HIGHWAY RIGHT OF WAY FOR
ARKANSAS 16 HIGHWAY ALONG THE SOUTHERN BOUNDARY OF THE AFORE
SAID TRACT OF LAND, CONTAINING 0.985 ACRES, MORE OR LESS.
AREA LESS ARKANSAS HIGHWAY TRANSPORTATION DEPARTMENT RIGHT OF
WAY CONTAINING, 29.887 ACRES, MORE OR LESS.

LAND LEASE AGREEMENT

This Agreement, made this ____ day of May, 2007, between the CITY OF FAYETTEVILLE, ARKANSAS, 113 W. Mountain Street, Fayetteville, AR 72701, hereinafter designated FAYETTEVILLE, and CALLAHAN TOWER JOINT VENTURE, with its principal office located at Callahan Tower, 520 N. College Avenue, Fayetteville, AR 72701, hereinafter designated as CALLAHAN. FAYETTEVILLE and CALLAHAN are at times collectively referred to hereinafter as the "Parties".

1. PREMISES. FAYETTEVILLE hereby leases to CALLAHAN a portion of that certain parcel of property referred to hereinafter as the Walker Park site, located in Washington County, Arkansas, and described in Exhibit "A" attached hereto (the "Land Space"), together with the non-exclusive but constant (24 hours per day, 7 days a week) access and utility easement over, under, or along the existing driveway, said Land Space and easement (hereinafter collectively referred to as the "Premises") being substantially as described herein in Exhibit "A" attached hereto and made a part hereof. CALLAHAN agrees not to block the driveway at any time and to coordinate and cooperate with the CITY OF FAYETTEVILLE and its Parks Department in their use and access to their facilities.

2. SURVEY. FAYETTEVILLE also hereby grants to CALLAHAN the right to survey the Walker Park site and the Premises, and said survey after review and acceptance by FAYETTEVILLE shall then become Exhibit "B" which shall be attached hereto and made a part hereof, and shall control in the event of boundary and access discrepancies between it and Exhibit "A". Cost for such work shall be borne by CALLAHAN.

3. TERM. This Agreement shall be effective as of the date of execution by both parties, and the initial term of five (5) years shall commence on the first day of the month following the Planning Commission's approval of the conditional use permit for a cell tower at this site, at which time rental payments shall commence and be due at a total monthly rental of **One Thousand Dollars (\$1,000.00)** to be paid on the first day of the month, in advance, to FAYETTEVILLE.

4. EXTENSIONS. This Agreement shall automatically be extended for four (4) additional five (5) year terms unless CALLAHAN terminates it at the end of the then current term by giving FAYETTEVILLE written notice of its intent to terminate at least six (6) months prior to the end of the then current term.

5. EXTENSION RENTALS. The monthly rental for the first five year extension term shall be increased by an amount equal to the total CPI increase during the five year period of the lease; the monthly rental for the second five year extension term shall be further increased by an amount equal to the total CPI increase during the second five year period of the lease; the monthly rental for the third five year extension term shall be further increased by an amount equal to the total CPI increase during the third five year period of the lease; and the monthly rental for the fourth five year extension term shall be further increased by an amount equal to the total CPI increase during the fourth five year period of the lease.

Aldermen

Mayor Dan Coody

City Attorney Kit Williams

City Clerk Sondra Smith



Ward 1 Position 1 – Adella Gray
Ward 1 Position 2 – Brenda Thiel
Ward 2 Position 1 – Kyle B. Cook
Ward 2 Position 2 – Nancy Allen
Ward 3 Position 1 – Robert K. Rhoads
Ward 3 Position 2 – Robert Ferrell
Ward 4 Position 1 – Shirley Lucas
Ward 4 Position 2 – Lioneld Jordan

Final Agenda
City of Fayetteville Arkansas
City Council Meeting
May 1, 2007

A meeting of the Fayetteville City Council will be held on May 1, 2007 at 6:00 PM in Room 219 of the City Administration Building located at 113 West Mountain Street, Fayetteville, Arkansas.

Call to Order
Roll Call
Pledge of Allegiance

A. CONSENT:

1. **Approval of the March 20, 2007 and April 3, 2007 City Council meeting minutes.**
2. **Bid #07-30 Heckathorn Construction Co:** A resolution approving a construction contract with Heckathorn Construction Co., Inc. in the amount of \$1,290,520.00 for construction of Fire Station #3; and approving a project contingency in the amount of \$170,000.00.
3. **Don Spann Architects:** A resolution approving Change Order #1 to the contract with Don Spann Architects in the amount of \$70,000.00 for Fire Station #3 Architecture Services.
4. **2007 Department of Homeland Security Assistance to Firefighters Grant:** A resolution authorizing the Fayetteville Fire Department to apply for a 2007 Department of Homeland Security Assistance to Firefighters Grant in the amount of \$330,770.00 to purchase a Live Fire Mobile Training Unit.
5. **TM3, LLC:** A resolution authorizing the Mayor to execute a contract with TM3, LLC to haul and dispose of solid waste within the city limits of Fayetteville.
6. **TWM Waste Management:** A resolution authorizing the Mayor to execute a contract with TWM Waste Management to haul and dispose of solid waste within the city limits of Fayetteville.

- Moved to New Business*
7. **McClelland Consulting Engineers, Inc:** A resolution awarding an engineering contract to McClelland Consulting Engineers, Inc. in the amount of \$71,302.00 to perform a drainage study within the Upper Scull Creek Watershed between College Avenue and Mission Boulevard.
 8. **Tomlinson Asphalt Company, Inc:** A resolution awarding a contract to Tomlinson Asphalt Company, Inc. in the amount of \$187,760.00 for traffic calming construction in the Wilson Park and Washington/Willow Neighborhoods as part of the Transportation Improvement Bond Program; and approving a project contingency in the amount of \$18,776.00.
 9. **2007 Citizen Survey:** A resolution authorizing the Mayor to negotiate and execute a contract with the Survey Research Center (SRC) at the University of Arkansas in an amount not-to-exceed of \$25,000.00 to design and conduct the 2007 Citizen Survey; and approving a budget adjustment in the amount of \$25,000.00.
 10. **Bid #07-32 Scott Construction Equipment Trench Roller Purchase:** A resolution rescinding Resolution 68-07; awarding a portion of bid #07-32 to Scott Construction Equipment for the purchase of one (1) Trench Roller in the amount of \$30,202.18 and to Hertz Equipment for the purchase of one (1) Trailer to haul the trench roller in the amount of \$3,835.96, both for use by the Water & Sewer Division; and approving a budget adjustment in the amount of \$34,400.00.

B. UNFINISHED BUSINESS:

1. **Fayetteville E911 House Numbering:** A resolution to change the names of several streets or roads within Fayetteville because of duplicate or confusing street names within annexed areas. *This resolution was tabled at the April 17, 2007 City Council meeting to the May 1, 2007 City Council meeting.*
2. **RZN 07-2504 (Sloan/Cobblestone):** An ordinance rezoning that property described in rezoning petition RZN 07-2504, for approximately 17.22 acres, located south of Salem Road and east of Crystal Springs Subdivision in the interior of the Cobblestone Subdivision from RSF-4, Residential Single-Family, 4 units per acre, to RSF-8, Residential Single-Family, 8 units per acre. *This ordinance was left on the Second Reading at the April 17, 2007 City Council meeting.*
3. **Roll Off Service, Inc:** A resolution denying renewal of the contract with Roll Off Service, Inc. to haul and dispose of solid waste within the city limits of Fayetteville. *This resolution was tabled at the April 17, 2007 City Council meeting to the May 1, 2007 City Council meeting.*
4. **The Links at Fayetteville Appeal:** An ordinance establishing a Residential Planned Zoning District titled R-PZD 07-2452, The Links at Fayetteville, located at the northeast corner of Wedington and Ruppel Road; containing approximately 152.23 acres; amending the official zoning map of the city of Fayetteville; and adopting the Associated Master Development Plan. *This ordinance was left on the Second Reading at the April 17, 2007 City Council meeting.*

C. NEW BUSINESS:

- ✓ 1. **Fayetteville Municipal Property Owners' Improvement District No. 18 - Woodbury:**
An ordinance to establish and lay off Fayetteville Municipal Property Owners' Improvement District No. 18 – Woodbury.
- ✓ 2. **Fayetteville Municipal Property Owners' Improvement District No. 20 – Quarry Trace Commons Subdivision:** An ordinance to establish and lay off Fayetteville Municipal Property Owners' Improvement District No. 20 – Quarry Trace Commons Subdivision Infrastructure Project.
- ✓ 3. **VAC 07-2522 (Johnson):** An ordinance approving VAC 07-2522 submitted by Bates and Associates for property located at the west side of Gregg Avenue, between 6th and Prairie Streets, vacating a 20' wide portion of un-constructed right-of-way, a total of 0.20 acres.
- ✓ 4. **ADM 07-2565 (North Point):** An ordinance approving ADM 07-2565, for property located at Lot 5 Block 1 of the North Point Subdivision, repealing and replacing Ordinance No. 4932 to allow for a lesser easement vacation than previously approved as indicated on the attached map and legal description.
- ✓ 5. **Walker Park Cell Tower:** A resolution to approve a twenty-five year lease with Callahan Tower Joint Venture for a small lot in Walker Park for a monopine cell tower at an annual rent of between \$12,000.00 and \$54,000.00, plus a \$20,000.00 contribution to the Walker Park Mural Project.

D. INFORMATIONAL:

City Council Tour: None

Aldermen

Ward 1 Position 1 – Adella Gray
Ward 1 Position 2 – Brenda Thiel
Ward 2 Position 1 – Kyle B. Cook
Ward 2 Position 2 – Nancy Allen
Ward 3 Position 1 – Robert K. Rhoads
Ward 3 Position 2 – Robert Ferrell
Ward 4 Position 1 – Shirley Lucas
Ward 4 Position 2 – Lioneld Jordan

Mayor Dan Coody
City Attorney Kit Williams
City Clerk Sondra Smith



**City of Fayetteville Arkansas
City Council Meeting Minutes
March 20, 2007**

A meeting of the Fayetteville City Council was held on March 20, 2007 at 6:00 PM in Room 219 of the City Administration Building located at 113 West Mountain Street, Fayetteville, Arkansas.

Mayor Coody called the meeting to order.

PRESENT: Alderman Gray, Thiel, Cook, Allen, Ferrell, Lucas, Jordan, Mayor Coody, City Attorney Kit Williams, City Clerk Sondra Smith, Staff, Press, and Audience

ABSENT: Alderman Rhoads

Pledge of Allegiance

Fayetteville Public Library – The Big Read

Sarah Terry, Marketing and Communications Manager for the Fayetteville Public Library discussed the Big Read. She stated that the Big Read is a program for the National Endowment for the Arts that encourages cities to come together and read and discuss one book. The Fayetteville Public Library has chosen Fahrenheit 451 by Ray Bradbury and we are encouraging everyone to read this book and come and discuss it April 14-21. We are going to have a week long series of programs for adults, teens and children. There is something for everyone. Sarah handed out copies of the book to all those who wanted to read it and played a public service announcement video.

Nominating Committee Report

A copy of the report is attached.

Mayor Coody: There are several different committees to report on. Robert Rhoads wants to table the Planning Commission part of this until he can be at the next meeting. If you wanted to we could postpone that part of the report until Agenda Session and have a Special City Council meeting afterwards if you would like to.

Alderman Gray: I would like to second that. I think that is very important. I will make that motion.

Alderman Cook: I split this into two reports. The first report includes everything but the Planning Commissioners. I separated that report because I think the committee needs to speak on that directly. Alderman Cook read the Nominating Committee report with the Planning Commission section removed.

Alderman Cook moved to approve the Nominating Committee Report without appointment of Planning Commissioners. Alderman Lucas seconded the motion. Upon roll call the motion passed 7-0. Alderman Rhoads was absent.

Mayor's appointment of Fayetteville Public Library Board of Trustees.

Alderman Cook moved to approve the Fayetteville Public Library Board of Trustees appointments. Alderman Ferrell seconded the motion. Upon roll call the motion passed 7-0. Alderman Rhoads was absent.

Confirmation of the Advertising & Promotion Commission appointment.

Alderman Cook moved to approve the A & P Commission appointment. Alderman Ferrell seconded the motion. Upon roll call the motion passed 7-0. Alderman Rhoads was absent.

Alderman Cook stated that he would like to make a recommendation from the Committee regarding the Planning Commission appointments. Alderman Cook read the Planning Commission Nominating Committee Report.

Two committee members recommended for appointment Candy Clark, Christine Myres and Sean Trumbo ending March 31, 2010. Two members recommended Matthew Cabe, Shelly West and Sean Trumbo. The full committee interviewed all Planning Commission applicants and discussed each nominee. We talked about past practices of the committee including reappointing applicants unless their attendance was lacking. We also discussed placing the most qualified candidates available on the Commission and the past serve of the three current members that reapplied. This conversation continued for about 20 minutes until I requested that we continue interviewing for the other boards because we still had applicants waiting. At that point Robert Rhoads left the meeting and the discussion ended with three members of the committee voting to replace two of the current Planning Commissioners. After finishing all the interviews we again discussed the Planning Commission nominees and at the end of that conversation the Nominating Committee concluded with a recommendation split two to two.

Alderman Lucas: Whether the recommendations from the Nominating Committee regarding the Planning Commissioners were unanimous, two to one or two to two we will still have this discussion about this. Especially after all the comments the Council members have made to the press this week. We must remember the Nominating Committee only makes recommendations. The full Council makes the final appointments. That evening we interviewed 12 applicants for the Planning Commission and 15 other committee applicants for a total of 27 interviews. All

applicants were very good candidates and I very much appreciate their interest in the city. During the time that I have been on the Nominating Committee we have generally interviewed applicants for all committees and commissions first. At the end of the past Nominating Committee meeting, when we had no one waiting to be interviewed, we had plenty of time for further discussion. That is why we wait until the end for discussion.

She went on to discuss the interview process in the past.

In the past the chair of the Committee made the announcement of appointments at the Council meeting. Candidates are told if they have not been reached by the chairman or the City Clerk to watch the Council meeting to find out if they are appointed. Apparently this did not occur this time. We usually defer all questions to the chairman when we have them. After more discussion following the completion of interviews regarding appointments to all committees and thoroughly reviewing all aspects to consider regarding the Planning Commission, in my opinion, personalities aside and whether one agrees or disagrees with the votes Ms. Clark and Ms. Myers are definitely the more qualified. Qualifications are what we must consider. I will vote for their reappointment

Alderman Lucas moved to reappoint Candy Clark, Christine Myres, and Sean Trumbo to the Planning Commission. Alderman Allen seconded the motion.

This motion was not voted on.

Alderman Ferrell: My fellow alderman was a member of that committee. I would certainly want Alderman Rhoads to be here before this position is made.

Alderman Gray: I was present for all the interviews and it was amazing the amount of talent, expertise and professionalism that was shown in the people who came forward. I feel very strongly that if we are not going to even consider replacing current people, we should not open it up for people to spend time and preparation for these interviews. I learned so much and I learned a lot about our city staff. Many of these applicants had worked very closely with our city staff and had nothing but good things to say about our city staff. I feel that we should wait until Alderman Rhoads is here to vote and look at the total picture.

Mayor Coody: He wanted us to table this until he could be here for the discussion.

Alderman Gray: I know how that feels sometimes you have to be out of town. I think we need to honor his request and that we wait and vote after he gets here.

Alderman Gray moved to table the appointment of the Planning Commissioners to a Special City Council meeting on March 27, 2007. Alderman Ferrell seconded the motion.

Alderman Jordan: What is the chairman of the committee's opinion on this?

Alderman Cook: I agree that we usually allow that. My frustration with Alderman Rhoads is the attendance of the Nominating Committee meetings. He has been to two in the last seven meetings. I would rather vote tonight but I understand the position of the other Alderman in that ward also.

Alderman Thiel: I know the Council tends to take the recommendation of the committee. To me when the committee makes a recommendation it does not make it a done deal. I had a chance to review some of the candidates but I assumed we would go into executive session and discuss this because this is a personnel issue, they are paid. I feel like it is something we could discuss and learn from the committee members why they made the selection they did one way or another. I would prefer waiting and having a Special City Council meeting and consider going into executive session. I would support tabling it until the Agenda Session. I don't think any of us want to discuss personalities and things publicly. I would support tabling this until Agenda Session.

Alderman Cook asked Kit what the rules are on the vote. Is it a simple majority?

City Attorney Kit Williams: Being a procedural motion it is a simple majority of those present voting.

Alderman Allen: Since this same kind of situation occurred last year and put people in limbo who were giving thousands of hours of their time and weren't paid at all until this past year, I think it's almost like putting them on trial to ask them to continue to serve on a committee while we remediate on what their fate is. If we don't want to decide right now then I think our executive session should be right now. To have them wait while we do this is unfair to the applicants. Who would ever want to apply for a committee if they felt like they were going to be put on trial. I see a lot of reasons why this would be problematic.

Alderman Thiel: I agree.

Alderman Ferrell: I would disagree that it is like being put on a trial. I don't think we are in any rush and I don't have a problem with that other than the fact that Alderman Rhoads would not be here. The account I read in the newspaper indicated that he had a definite opinion. That is why I am leaning towards having a Special City Council Meeting.

City Attorney Kit Williams: You could have a special called City Council meeting either before or after Agenda Session and then you are authorized to go into executive session for new appointments as well as personnel matters.

Mayor Coody: If the City Council decides to table this then I would call for a Special City Council meeting at the end of the next Agenda Session. It would be unusual for an Alderman to ask for something to be tabled and the City Council deny that because for lesser reasons than this you have always deferred to your fellow alderman to table things if they have asked that it be tabled when they couldn't be here.

Alderman Allen: I would say that it's because it's not a lesser item, it's a major item. I deeply disagree, I think it is awful to leave people who are serving the city and spending hours of their time in limbo and I would like to see us get this decided now.

Mayor Coody asked City Attorney Kit Williams does 4-3 pass this.

City Attorney Kit Williams: 4-3 would pass in motion.

Upon roll call the motion to table passed 5-2. Alderman Ferrell, Jordan, Gray, Thiel and Cook voting yes. Alderman Allen and Lucas voting no. Alderman Rhoads was absent.

Alderman Cook: We are not sure Robert Rhoads will be there Tuesday. That meeting will take place Tuesday whether he is there or not?

Mayor Coody: Yes that's fine.

Alderman Ferrell: He said he will be gone for a week. I assume he will be back.

Alderman Lucas: What if another Council member has to be absent?

Alderman Thiel: A main reason for tabling this has nothing to do with Robert not being here in my opinion it has to do with all these people sitting out here for a lot of issues on this agenda. It is going to be a very long agenda and we could probably spend an hour discussing this.

Alderman Allen: We could do it at the end of the meeting.

Mayor Coody: We had a motion to table this so it has been tabled to next Tuesday after Agenda Session when we will have a Special City Council meeting to discuss this.

The Planning Commission appointments were tabled to a Special City Council meeting on March 27, 2007.

CONSENT:

Approval of the March 6, 2007 City Council meeting minutes.

City Clerk Sondra Smith asked that the minutes be removed from the agenda.

CEMS Ambulance Services for 2007: A resolution approving contract Amendment # 1 to the contract with Central Emergency Medical Services, Inc. (CEMS) for emergency medical transport services.

Resolution 46-07 as Recorded in the Office of the City Clerk.

Arkoma Playgrounds and Supply, Bid # 07-22: A resolution awarding Bid # 07-22 and approving a contract with Arkoma Playgrounds and Supply in the amount of \$138,530.50 for the installation of park amenities at Harmony Pointe Park; approving a 9.5% project contingency in the amount of \$13,160.40; and approving a budget adjustment in the amount of \$50,000.00.

Resolution 47-07 as Recorded in the Office of the City Clerk.

A. Camp Equipment, Bid # 07-21: A resolution awarding Bid # 07-21 to A. Camp Equipment for the purchase of one (1) Wirtgen Milling Machine in the amount of \$392,500.00 for use by the Transportation Division.

Resolution 48-07 as Recorded in the Office of the City Clerk.

Northwest Arkansas Diversity Council Membership Fee: A resolution to authorize the City to join the Northwest Arkansas Diversity Council and pay the \$500.00 membership fee for services.

Resolution 49-07 as Recorded in the Office of the City Clerk.

Alderman Jordan moved to approve the Consent Agenda as read with the March 6, 2007 minutes removed. Alderman Lucas seconded the motion. Upon roll call the motion passed 7-0. Alderman Rhoads was absent.

UNFINISHED BUSINESS:

VAC 06-2364 (Cruz Bay): An ordinance approving VAC 06-2364 submitted by Mandy Bunch for property located north of 5th Street between South School Avenue and South Locust Avenue, vacating 150' of the 12' alley on the subject property. *This ordinance was left on the First Reading at the March 6, 2007 City Council meeting.*

Alderman Jordan moved to suspend the rules and go to the second reading. Alderman Cook seconded the motion. Upon roll call the motion passed 7-0. Alderman Rhoads was absent.

City Attorney Kit Williams read the ordinance.

Jeremy Pate, Director of Current Planning asked that the Council amend this proposal accepting the ordinance that was handed out. Since the last meeting this proposal has been amended to extend the alley vacation to the north to Archibald Yell Boulevard. I have received a letter of consent from the property owner that did not consent in the last application. I would ask that you amend the ordinance and accept this ordinance and Exhibit A. Staff recommends approval.

Alderman Gray moved to amend to the current ordinance and to add Exhibit "A" as requested by Planning. Alderman Ferrell seconded the motion. Upon roll call the motion passed 7-0. Alderman Rhoads was absent.

Alderman Thiel: At the last meeting I supported this but the more I thought about it, this is an existing alley in the Downtown Master Plan and I'm not quite sure why this wouldn't work with the traditional form that we are utilizing. I am trying to figure out why we are abandoning something that other developers are adding everywhere.

Jeremy Pate: We looked at that when we reviewed this request. A couple of things, this serves currently as a drainage corridor from the south side of the mountain and that is certainly an impediment to constructing an alley. Secondly, punching an alley up to Archibald Yell, if there was an access point there would be very limited site distance at that location as you can see on the exhibit. We would not want to have an alley or a driveway at that point. For general safety purposes I think it would be important to vacate that alley. That is something we looked at also.

Alderman Thiel moved to suspend the rules and go to the third and final reading. Alderman Lucas seconded the motion. Upon roll call the motion passed 7-0. Alderman Rhoads was absent.

City Attorney Kit Williams read the ordinance.

Mayor Coody asked shall the ordinance pass. Upon roll call the ordinance passed 7-0. **Alderman Rhoads** was absent.

Ordinance 4993 as Recorded in the Office of the City Clerk.

Wedington Circle Appeal: An appeal of the Planning Commission's decision to approve the Wedington Circle Preliminary Plat (PPL 06-2302) located north of Wedington Drive, west of Garland Avenue. *This appeal was Tabled at the February 20, 2007 City Council meeting to the March 20, 2007 City Council meeting.*

Ron Petrie, City Engineer: This item was forwarded to the Street Committee as recommended at the last Council meeting.

Alderman Jordan: Basically we thrashed it around for quite a while and one of the problems we had was as you come into that development the radius was not according to the standards the city likes. The decision of the Street Committee was we either build it according to city standards or leave it as a private drive and the developer maintain that road. One thing that was brought up was whether we could have a right turn in and a right turn out.

Ron Petrie discussed their research on moving the connection to Wedington to the west. He stated the State was willing to discuss it. The problem with doing that after a lot of work from Milholland Engineering is you increase the slope on that road from somewhere between 15% to 16% so it's one of those "what's the lesser evil." Unless we are looking at a complete substantial redo of the development, what we have before us is probably what the applicant would want you to decide on tonight. Whether it's public or private.

Alderman Jordan: So basically we are back to they either build it according to city standards and it becomes a city road or they don't build it according to city standards and it becomes a private road. Is that basically it?

Ron Petrie: That is the case. All parties looked at that to see if there were any other alternatives other than the substantial redo and there really is not.

Mayor Coody: What is the staff's recommendation on this?

Ron Petrie: It is that it remains as drawn but be a private drive. That is primarily due to the centerline turn radius is 41 feet, minimum street standards require it to be 150 feet. We have allowed some exceptions to that in residential areas. In this particular development you have 284 apartment units, 12 condo/townhouse units and approximately 16,500 square feet of commercial within this. It is substantially more than a residential subdivision that has about 300 vehicles per day. This one just from the development alone would have over 3,000 vehicles per day. That raises a lot of concerns to have it a private drive.

Alderman Thiel asked Ron Petrie if he had had an opportunity to look at this.

Ron Petrie: No I have not.

Alderman Thiel: When I'm looking at these examples of comparable radius, none of these scenarios or examples really look as short of a distance from that radius to the street. I think that is another part of the issue when we are looking at Wedington Circle, right?

Ron Petrie: Yes madam. Not really having the opportunity to look at those, I think it's the volume of traffic on the road that is really the critical and the deciding factor. At least it is for me in my recommendations. I'm not sure if those roads have similar volumes or not.

Alderman Lucas: Ron, the street we are talking about is not residential primarily. It's the street that has the commercial on it?

Ron Petrie: It does, it's a mixed use development so it's going to have some of both, but I think all the commercial is on that street.

Alderman Ferrell: That is your primary concern is the short radius.

Ron Petrie: Yes sir, that's really the only concern at this point.

Steve Mansfield, the developer on the project, stated based on the comments of the Street Committee, I asked our Engineers to go back and take a look at other streets in the city that might be of similar radius and length and try to see whether we would be the sole exception to city ordinances if this was granted as a public street. That is not the case in fact there are multiple examples of other places in the city where streets have been built that are not to city ordinance.

Rosco Black gave a presentation along with a chart of all the streets that do not meet city regulations.

Steve Mansfield: There are 39 examples that we found in a short period of time. We really didn't go into an in depth study. Of those 39 examples there are seven that are significantly worse than the street that we are proposing and two of them have steeper slopes in that they are in the Hillside District as well as have tighter turns.

Mayor Coody asked Ron Petrie all these streets that are on this chart, are they older streets that might have been put into place before we had these regulations.

Ron Petrie: Just looking at where they are located, most of them are on Mt. Sequoyah it appears, and very little in the new development that we have had over the last ten years. Minimum street standards were approved in 1995 so certainly there is going to be those exceptions and there will be streets that were put in in the early 1900's. I'm not sure that is the best reason to allow another sharp curve in the city just because we have others.

Alderman Thiel: It's not the question of not allowing it. We are allowing it; the city will not be responsible for it. That was something the Street Committee asked for from the City Attorney if we actually took over a street to maintain it would there be a liability issue.

City Attorney Kit Williams: As you are aware the city is protected by sovereign immunity for negligence so if someone is said allowing this street to be that sharp was negligent then

presumably our defense would be there. I have raised that in cases and been successful in some cases, but not in every case. I think the bigger question would be the maintenance.

Alderman Ferrell: Mr. Mansfield, I strongly believe in trying to help commercial and business but when I got to looking, I really don't see any exception of the streets where there is Commercial.

Steve Mansfield: I'm not sure why it really matters sir.

Alderman Ferrell: I think that is what the City Engineer is concerned about.

Steve Mansfield: Safety in general or commercial volume of traffic?

Alderman Allen: Regardless of our decision it seems the map is a mute point because many wrongs don't make a right.

Steve Mansfield: I would agree with that, it was an issue that was brought up at the Street Committee and we were asked to provide the data so we were trying to do so.

Alderman Allen: I think you have a good project but I don't see the map as being an applicable part of our decision.

Steve Mansfield: Kit's comment with regard to maintenance versus liability, my personal view on that is one of the things as developers that we do by making investments in the city and building development like this is we pay taxes. If the road impact fee is passed we will be paying road impact fees for this project as well. It is my belief that it is part of the city's obligation to maintain those roads in return for our obligation to pay taxes and build the infrastructure.

Alderman Jordan: One of the main concerns I had at Street Committee was this very item we are looking at tonight. I think anybody that was on the Street Committee remembers that. That was something that we determined that would be hashed out later. We know that staff and the Planning Commission were not recommending this because it is not according to city standards. My problem is that if we do this you only compound the problem. You don't fix the problem. The only way you can fix a problem is to build according to city standards as much as you possibly can. I like the developments but on this issue I believe this road either needs to be built according to city standards and made a city road or if they want to build it without it being according to city standards then it needs to be a private road.

Mayor Coody: Steve, it looks like the Council is lining up to vote against you. Are interested in looking at your design one more time to see if there is a way you can tweak this to fall within city standards? I'm sure the Council would then approve making this a public street if it meets our standards.

Steve Mansfield: I appreciate that offer. We have looked at tweaking the project many times. As a developer we have created the best density project for the site and the one thing that fell out was being able to meet this curve at the entrance. I would ask you to reconsider the whole concept and plan of the PZD and the planning of our future vision for Fayetteville on building higher dense urban projects. Those projects will not meet every single city ordinance.

Mayor Coody: Those are all very good points. If we do infill developments there will be constraints that none of us would have foreseen. The grade and the radius together with the high traffic count basically causes the problem. I think your development is a good project.

Tom Jeffcoat, with Millholland Company: The short radius curve is not on a steep slope, it is only on a 4% slope. One reason it is on a 4% slope is that it meets city standard requirements for an entrance into a development slope wish. We could have made that slope greater. We were restricted because of the size of the development and the need for shorter, tighter radiuses. The slope of the project does not occur until you get beyond this point into the development. As far as maintenance goes we are constructing this of concrete, not asphalt which reduces the maintenance on the city's part and developer's part. The point is many of the standards are met, the radius is the only issue and that's because of the layout and the design and density of the project.

Alderman Thiel: The Council approved this project. We had a lot of issues and concerns about traffic. We certainly support the whole concept.

Steve Mansfield: Thank you and I am aware of it. We did take it through all the processes that we were required to go through and the Council did approve the project.

Alderman Lucas: As it was stated, this was one of the issues that were going to be decided later whether it was a private or a public street. It is a good project.

Steve Mansfield: Unfortunately the project is all encompassing and when we take pieces out and deal with them later this is what can happen.

Ron Petrie: Just for clarity, the drawing that has the curve in is different than what was approved by the Planning Commission so if you address that in your appeal I think you have it covered. The revised drawing with the 41 foot radius.

City Attorney Kit Williams: You are recommending the 41 foot radius drawing that they submitted?

Ron Petrie: The reality is I am not recommending anything if it is private, but it is different than what was approved by the Planning Commission.

Alderman Jordan: What did they approve?

Ron Petrie: It had a T intersection and it was a different layout.

Alderman Jordan: You would like for it to be approved according to what the Planning Commission approved?

Ron Petrie: Probably the best way is we still have to discuss the off site improvements that were changed at the Street Committee and recommended by the Planning Commission. So we will need another item in the future to address that and at the same time I will address this. I think we can address it at a later date.

Tom Jeffcoat: I'm not sure what off site improvements we are discussing but the change in the layout was a change recommended by staff to eliminate the T-intersection because of safety and that was one of the things we did. That's the plan that is in front of you that has a drive entrance instead of a T-intersection. We eliminated the T-intersection due to fire safety.

City Attorney Kit Williams: I think the motion should read that you grant the appeal in relation to the plat that has a curve instead of a T-intersection but you deny the appeal in relation to making it a public street as opposed to the private street that was originally approved.

Alderman Jordan moved to grant the portion of the appeal regarding the curb instead of a T-intersection and deny the portion of the appeal in relation to making the street a public street instead of a private street. Alderman Lucas seconded the motion. Upon roll call the motion passed 7-0. Alderman Rhoads was absent.

Part of this appeal was approved and part of it was denied.

Resolution 50-07 as Recorded in the Office of the City Clerk.

R-PZD 06-2299 (Ruskin Heights): An ordinance establishing a Residential Planned Zoning District titled R-PZD 06-2299, Ruskin Heights, located west of highway 265/Crossover Road, on the south side of Mission Boulevard; containing approximately 28.93 acres; amending the official zoning map of the City of Fayetteville; and adopting the Associated Master Development Plan. *This ordinance was left on the First Reading at the February 20, 2007 City Council meeting. This ordinance was left on the Second Reading at the March 6, 2007 City Council meeting.*

Alderman Gray moved to suspend the rules and go to the third and final reading. Alderman Thiel seconded the motion. Upon roll call the motion passed 7-0. Alderman Rhoads was absent.

City Attorney Kit Williams read the ordinance.

Jeremy Pate: The only comments I have is a reminder that the Council at the last meeting amended this Planned Zoning District and adopted six changes with the new conditions of approval which are in the final agenda packet. Those are the change in density on the site, the removal of the tower, requirement for engineered foundations for all structures with the exception of accessory structures of 100 square feet or less, fence installation adjacent to an alley if the property owner desires that, limited access onto Greenview and the traffic signalization agreement for responsibility for payment installation of that signalization.

Cynthia Parker, resident of 1680 East Shadowridge Drive stated she was against this development because of the density and the traffic that it will put onto Highway 45.

Allison Harter, resident of Ward 1 stated she was worried why we did not listen to the Subdivision Committee when they said "We feel the density is too high and it should be reduced." She asked if they would have to put turn lanes on Highway 45 and if that would be a condition of approval.

Mayor Coody: Yes.

Allison Harter: After Phase IV, will a turn light go in?

Jeremy Pate: Full cost of the signal shall be submitted at the end of Phase III and then a warrant analysis is presented to the city and the highway department, with every phase of the development thereafter, to determine what improvements are warranted and what can be installed. All the funds for the signal have to be contributed to the city by the applicant which we would hold in escrow until the warrant is met for that signal.

Allison Harter: Is it possible if a warrant isn't met for a signal to at least get a crosswalk so that it's safer for people to cross that street and get to the sidewalk that will be on the other side?

Mayor Coody: We need to do more sidewalk work in that area for sure. I am assuming since that is a state highway the answer to your question would be yes, but it would take their permission.

Allison Harter: To make it more walkable it would be nice to have accessibility to the sidewalk because it isn't currently accessible on the south side of Mission to cross the street. The homes that are along the south side that border Park Place, I was told they would have tuck under garages because it's on a hill, if they have tuck under garages is that part of their 45 foot height minimum or will we end up with three story homes?

Jeremy Pate: It is considered part of their height limits. Height limits are actually measured from the existing grade so the grade. We measure before the ground is disturbed and we would measure from that particular point. It's measured on every side.

Allison Harter: So we wouldn't necessarily have three story homes?

Jeremy Pate: As long as it met all the requirements for the height limits and the hillside ordinances.

Allison Harter: And the height regulation is 45 feet?

Jeremy Pate: That is correct.

Allison Harter asked about the schools and where the children would go to school due to the fact that the schools in that area are full.

Mayor Coody: I don't think any of us can answer for the school district or the school board.

Allison Harter: It's food for thought.

Jeremy Pate: I would like to elaborate on my answer, part of the conditions of approval state that the applicant is required to make street improvements and those improvements will extend west all the way to Greenview Drive so in front of the property at Tim's Pizza, sidewalk construction would be a part of this development.

Thad Kelly, resident of 1659 Viewpoint stated he had reservations about this project but with the changes the contractors, developers and everyone involved have made with the turn lane onto Greenview, he whole heartedly supports this project.

Peggy Guccioni, resident of 1665 W. Shadowridge stated I sent you a summary of some work I've been doing. She reviewed the executive part of the summary and voiced her concerns with the slope and the runoff.

Mayor Coody: Earlier I emailed your concerns to Ron; did you have a chance to look at that email?

Ron Petrie: You really need several factors coming together to cause slides on the hillsides. It is very difficult to say that we will or will not experience any slippage in the area. To a large degree we will rely on the geotechnical engineer to do their job properly. He went on to speak on the City of Fayetteville Drainage Criteria Manual. The applicant used tables from reliable references accepted references and they are very detailed. I have reviewed that and it matches the data and to a large degree, if they have supporting documentation it's reason for me to accept it. Our work will just begin once you approve this.

Peggy Guccioni: The numbers that they used for residential are for coverage's of about 40% of the lot by impervious surfaces but if you look at their plans and numbers they are will have anywhere from 60-95% impervious surfaces. That should increase the amount of runoff considerably in the residential areas.

Ron Petrie: This report was done when it was submitted for Technical Plat Review; the density in this development has changed quite a bit through all these meetings. What we are looking at is very generalized numbers. When we have construction plans we will know specifically more details and whether these numbers are correct. We will be reviewing that for correctness at that time.

Mayor Coody: King's Drive was just an old dirt path made back when Mt. Sequoyah was young. Over time someone went out there and put gravel on it and asphalt, so it was never built as a real street. I believe that it is not the whole problem but a contributing factor.

Joanne Cavammi, resident of 1982 Greenview Drive asked the Council to stick by the rules. She stated the rules have been put into place to protect citizens from various short comings that have occurred in the past because such rules were not in place. She went on to speak on the recommendations that have already been given and she stated that the Council should consider all the recommendations they have been given.

Stuart Fulbright, a citizen stated I am strongly in support of sustainable development and I think this plan is our best bet in going down that road.

Rick Shelton, a resident of Lisa Lane spoke on the density and stated I believe this is a good thing and I am in favor of it. He stated this plan opposes sprawl and engages people to live in closer proximity. I am in favor of reducing city sprawl.

David Murry, resident of 608 N. Assembly Drive stated the neighbors in this area felt there were some concerns that did not get addressed the way they wanted them to. I can't imagine that they are going to take down all the trees and not replace any of them. Over the next couple of

decades the tree canopy on this property is going to be quite beautiful. We might compare what is there now to what is planned to be there in a couple of decades as a result of this development. It's not fair to compare it to a cleared slope; it's an engineered design slope with retaining walls, walls, streets, trees and dwellings with engineered foundations that are going to retain soil. He stated I think you should have an engineer look at this site. He said he was in favor of the project.

Paxton Roberts, resident of 406 E. Gunter Street stated you can clearly see from their plan they are keeping a great majority of the tree cover. In addition 295 units could easily be built on 295 acres outside of Fayetteville in Goshen so you are destroying 295 acres of land versus 30 to get the same amount of people to live there and I think that is important.

Shelly West, a citizen stated it is great that they are replacing all the trees they are taking down with more trees. If people are concerned about preserving our native woodlands then they should be out there looking at all the native woodlands that are destroyed in the county. I think we are on the right track with tree preservation and I really enjoy working with the Fayetteville staff. I think they are just as concerned as the citizens about this.

Anita Backus, resident of 1984 Greenview Dr. asked about the trees being cut down for the project. She stated in my backyard there are hundreds of trees and they serve a very important purpose of the drainage and runoff. She asked the Council to have an open mind and she stated that 295 units on 28 acres will be overlooking me and that is invasive to us.

Suzy Walker, resident of 1981 Greenview Dr. stated even though there have been changes made to the development I am still concerned about the problems that will be caused from cutting into a hillside and about building such a dense development. She also voiced her concerns about the traffic issue on Highway 45 and stated she did not see that making Greenview Drive an access street or a cut through as a solution to the problem.

Ken Kvamme, resident of 1983 Greenview Drive stated he is against the project. He voiced his concerns about the trees and the run-off. He discussed the traffic study that was conducted and stated that he felt traffic is worse than the study indicated. He stated I am worried that the projections for flooding and slope wash could be considerably lower than what might be the case and taking the trees off could compound the problem.

Bob Kelly, a resident of Sequoyah Drive stated I am an architect and I think this project will affect our neighborhood and I am in favor of this project. It is nicely done and it will be an asset not just for our neighborhood but for all of Fayetteville. I would like for you to support this.

Pamela P. Conner, resident of 1686 Shadowridge asked how we suddenly allow something with 43 variances to skate out of the Planning Commission. She stated that it doesn't seem that we are following the same rules for everyone. I have a problem with that.

Mayor Coody: Tim or Jeremy, you might take a moment to describe what a Planned Zoning District does.

Jeremy Pate gave the definition of a Planned Zoning District and described the process of a Planned Zoning District.

Jeff Beaver, a citizen of Ward 4 pointed out that these guidelines were not outlined solely by the U.S. Green Building Council. They were taken into consideration and worked in conjunction with the National Endowment for the Arts, the Heritage Foundation, etc. and these are all organizations that worked with the U.S. Green Building Council to develop these guidelines. There are certain guidelines that have to be met. In reviewing the information from the website they are penalized for not being dense enough. This is being developed across the whole spectrum because we are looking at future growth of our cities, municipalities, infrastructure and water and those are all things that are going to have to be taken into consideration when we start developing and these are not things that are taken lightly at all.

Dot Neely, resident of 1244 Mission stated she toured the Ruskin Heights project and there are many proposed plans for the site that are very appealing. I've looked at some of the other aspects of the site and it is particularly pleasing to know that the developers are planning to retain and utilize storm water rather than just letting it escape off site. They intend to recirculate this stormwater in their fountains and their waterscapes within the site. She voiced her concerns about the density of the project. She stated particular care needs to be taken in the western portion of the site because it is a collector for stormwater naturally and if there were a decrease in density on this site she would recommend that it be focused on the western portion of this site. She also voiced her concerns about the traffic problems this development could create. She urged the Council to be stringent on reviewing the specific plans for the areas and the phases for what will be done there and to make every effort to ensure that success of this should you pass it so the city and residents can get behind future projects such as this.

Alderman Jordan: Has the Sierra Club discussed this particular development in any of your meetings?

Dot Neely: Not as a formal topic. Some of us that are in social situations have talked about it but nothing formal. I am speaking as a citizen right now not as a representative of the Sierra Club.

Libby Wheeler, resident of 1635 West Shadowridge Drive stated there are a lot of exciting things about Ruskin Heights but the project is too dense for our neighborhood and I truly believe it is going to compromise the quality of life of residents who already live there. I think it's an exciting project but it's just too much of a good thing.

Alderman Allen: What is your reaction to the comment about the proposal of money in lieu for the trees?

A Developer for Ruskin Heights stated if we were to develop the entire site at one time we would not have to pay money in lieu because we could meet our tree preservation requirement through saving trees and through planting trees. Since Phase I is on the eastern side of the property, the portion of the property that has very few trees on it currently and we have to get up to the 30% canopy preservation requirement. The street tree requirement doesn't count towards our tree canopy, we actually just run out of places to plant trees. So it's really a phase specific issue that we have to pay money in lieu in Phase I.

Jeremy Pate: The Urban Forrester spoke with me during Technical Plat Review in looking at the ability to replant all of the trees. I think they are required a total of 265 trees for the first phase. The problem with that is if we plant trees on site, we would not be able to ensure their

livelihood and perpetuity simply because there would be future streets that would come through and then they would have to be removed. So what this requirement is on condition 19, mitigation is required, they do have to meet the tree preservation requirement and they are going to do a combination of on-site planting. So where those trees can be planted then they will be planted on the property to meet those mitigation requirements and where not there will be money in lieu. It is simply a matter of phasing at this point in time.

Alderman Thiel: Are we talking about park land fees?

Developer for Ruskin Heights: No that was tree preservation canopy.

Alderman Thiel: That has nothing to do with tree preservation.

Jeremy Pate: I think that has been a source of confusion because a lot of the members of the public have stated trading the tree canopy for fees which is technically a part of our tree preservation ordinance and that is very separate from our park land dedication ordinance. This development is required to do both and that is the amendment that you as a Council decided to make and instead of a construction of a tower and getting credit for those fees, those fees would go into this quadrant in the park land dedication fees.

Alderman Allen: I would like for you to talk to me a little bit more about the geological studies that were done in particular since this land is slate, I want to know exactly about the trees being removed, also I would like to know when your responsibility ends in terms of what might happen if this land moves and things do slide down, when does that end and when does it become the responsibility of the land owner?

Developer for Ruskin Heights: When an individual builds a home we are requiring them to have engineered foundations stamped by an engineer. At that point it is the engineer's responsibility to assure that the building will be stable. Discussing tree removal, as you can see on the western boundary we made a point of protecting the area with the most significant trees, northwest has a decent amount of canopy but it actually has a lot of invasive species and many smaller trees and in addition to the area that we set aside we also have the tree houses which are designed to have daylight foundations where you have natural flow of run-off underneath those homes and also those are on specific site locations that will be specified by the developer so we can tuck those in there to save as many significant trees as possible.

The Project Engineer for Ruskin Heights: The question might have been more towards what may happen if we remove trees from the slope and how that might effect the soils underneath the trees. On the eastern side of the site there is one single family residence. The eastern side of the slope is not forested and there is not a lot of tree canopy over there. To the western side of the site we have put our tree preservation area over there so we won't have to remove any of those trees. That is also the area of the site where we were trying to be extremely sensitive and put the tree houses in and minimize the impact on those trees. We are trying not to affect that existing forested slope.

Alderman Allen: What can you tell me about how things are different now than they were with the King's Drive situation?

Developer for Ruskin Heights: I would defer to staff on that but I think King's Drive involves a subdivision that went in and it actually has very low density. If you look at the Mission Hills Subdivision you see that you have three sections of road. They are on slab foundations and you see stairstep of grading with huge fills and cuts as each house works its way up the hill, as opposed to having homes that are designed with the structure of the hill in mind. In our case we are requiring engineered foundations and they didn't have them there. If you look at the back side of Mission Hills you see the step up from the road to King's Drive you see a huge grade change and a very large retaining wall on the back side for a road that was already failing and was built very poorly. You have several things contributing to the failure there. It also points out in very stark contrast that low density does not protect the hillside if done poorly.

Alderman Allen: The reason for the tree houses you are saying is tree preservation?

Developer for Ruskin Heights: They are designed to tread very lightly on that which we agree is a more sensitive area. It was through public conversation that we came up with the idea of the tree houses.

Alderman Gray: I have visited with these men several times and they have answered all my questions. I am very much supportive of Ruskin Heights. I think it will be a real addition to the City of Fayetteville and I'm excited to see the dirt turned.

Mayor Coody: Ron, we have talked about King's drive a lot, can you fill in some blanks on how King's Drive is unique in town and how it might compare to this project?

Ron Petrie: A lot of the failures of King's Drive were long before there was Mission Hills. The underlying factor is how the road was constructed and where it was constructed. You had no subgrade that met any subgrade requirements and it was all topsoil. You had very poor soil piled on very poor soil that has an underlying water table problem and problems with utilities over the years that were leaking completely saturating that core material. You combine all these with the fact that a shell layer exists about 20 feet below the road and how that shell layer is actually sitting on the hillside at that area and you don't really know if it's the same in other areas. You accumulate all these issues and you can add in a Mission Hills and you get the failure that occurred. It's not something that happens in many locations throughout the city. When all those factors come together it will occur.

Alderman Jordan: I have had some concerns with the traffic once this is fully built out. What is your solution to some of the traffic problems?

Developer for Ruskin Heights: Our solutions are as proposed to the state, three turn lanes on Mission Boulevard, one at Lisa Lane at the main entrance which we are proposing to be signalized as well and then a westbound turn lane at our eastern entrance.

Alderman Jordan: So what about traffic lights and things like that?

Developer for Ruskin Heights: The two turn lanes and the traffic signal at Lisa Lane and a west bound turn lane on the eastern most entrance.

Alderman Jordan: And you all are going to pay for the traffic signals and the turn lanes.

Developer for Ruskin Heights: We are paying for the traffic signal and the turn lanes.

Alderman Jordan: Traffic has been a concern of mine and that road is a problem.

Alderman Ferrell: You can't dictate what the State does as this development goes forward. I like this development. Fayetteville is a city built on hills. I would concur with several of the speakers tonight that this development will not only be good but great for Fayetteville and it will reflect favorably upon the progressive city that Fayetteville is and will continue to set the bar for infill development in a very professional and sensitive manner. I think this has been clearly thought out, I think you have the best people available to do it, you went out to the community and sought public input, you were flexible and took what the public said and put it in there to the best of your ability. You worked with our planners and I think it is ready to go. I'm looking forward to supporting this and voting for it.

Alderman Lucas: I agree with the things that have been said tonight. I was concerned about the traffic and I like the way you are addressing that. I appreciate the changes that have been made to address what the people in the area have requested. Not everything has been met but you have certainly worked hard to meet what the neighbors wanted. We have an excellent planning staff and excellent engineers on staff and they are going to watch these things very carefully. They are going to look out for the best interest of the city and I have a lot of faith in our Planning and Engineering Department. I think they are great and if they think this is workable, I think it is a good thing.

Alderman Cook: I think this is a good standard for other developments that we want to try to bring to the city because they have gone above and beyond what other developers have done in the past for us. We have to remember this is a concept plan and this will still go through much scrutiny, this is just the beginning. I commend the process up to this point. I'm looking forward to moving forward from this point.

Alderman Thiel: The engineering part will still go through Planning. This is a conceptual PZD and my understanding is that each phase will go through a large scale development.

Jeremy Pate: At this point in time you are approving the development of 57 dwelling units which is the northeast corner that everyone keeps talking about. It will still have to be reviewed in further detail with final reports. Everything shaded will have to come back through the Planning Commission and be approved as well and then follow through with construction plan review also.

Alderman Thiel: I just wanted to confirm that because I know there have been some points brought out that sound like very valid points and concerns about the drainage. I tried to point out that it was my understanding that this was not engineered yet at all and the drainage will be fully engineered once this concept is approved. The developers have moved the density down to the lower area of this project. I feel like there are so many plusses with this project. As long as we can have faith that our Engineering and Planning staff will really make sure that this project works because if it doesn't then that makes all of us look like fools in a few more years because we are approving a test model. I love the fact that you are having engineered foundations, I wish we had that in our Hillside Ordinance and maybe we will revisit that in the future. I support this project.

Alderman Allen: I have to be consistent about sticking with my ward. I am going to be consistent in my voting tonight and support this project because that is what I am hearing from the people in my ward that they believe it should be built. It is a lot easier to be for something when it's not in your back yard. I have a lot of concerns however I believe this fits the goals of our city and I trust in our Engineering staff. I am pleased with the significant changes that have been made in this project. I am going to trust that these developers are going to be accountable and make this the very best project that they can make. If it were in my back yard I could see where these people would be concerned. This is probably the best project and the best group of people to develop it and it fits our plan so I will support it.

Mayor Coody: The three lanes that are planned for in front of this development, we discussed having a continuous turn lane along Highway 45 from Highway 265 all the way to North Street. Had we done that we would have alleviated a lot of traffic problems on that stretch of road because right now everyone has to stop behind you while you are trying to find a break in traffic. When you finally get to take a left, you let a long stream of traffic go and if someone is trying to take a left coming from the other direction, they have to wait and they are backing up traffic. On a three lane, if someone could just get out of a travel lane and let traffic flow, the whole problem goes away. I wish we would have left that on the Bond Issue because we could've solved this traffic problem all the way from Highway 45 to North Street. I am guessing when this turns into a three lane in front of this development that might be the least congested part of Mission because it's going to have the turn lane in it.

Alderman Ferrell: We are going to put that back on the burner before it's over but that is a different subject.

Alderman Jordan: What's the position at the State?

Mayor Coody: Everything that the petitioners have said is verified. That is the same way they do business everywhere.

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

Ordinance 4994 as Recorded in the Office of the City Clerk.

Amend § 161.21 and § 161.22 Height Regulations: An ordinance to amend § 161.21 (G) Height Regulations of Main Street Center and § 161.22 (G) Height Regulations of Downtown General of the Unified Development Code by limiting the height of new development to three stories or 45 feet, whichever is less, and to repeal § 156.02 (B)(6). *This ordinance was tabled at the February 20, 2007 City Council meeting to the March 6, 2007 City Council meeting. This ordinance was left on the First Reading at the March 6, 2007 City Council meeting.*

Alderman Gray moved to suspend the rules and go to the second reading. Alderman Ferrell seconded the motion. Upon roll call the motion passed 7-0. Alderman Rhoads was absent.

City Attorney Kit Williams read the ordinance.

Alderman Allen: I would like to offer a friendly amendment to the ordinance to include only Dickson Street from East Street to University Avenue, and Lafayette Street from Hyland to Arkansas Avenue. Two weeks ago I listened very carefully to what you all had to say and I went home and thought about it. I thought what could I do to waylay the concerns of the people and developers in this area and also not compromise myself with my constituents who have asked for this. What I decided I could do is to pair it back to the barest of bones in order to be responsive to them and just use those two streets. The three story buildings would still be allowed by right and the Planning Commission variance would still be in place, the PZD would still be there and the buildings that exist would be grandfathered in, buildings that are destroyed by fire and other natural disasters could still be rebuilt. This is just one extra step to see that a tall building is compatible. This is not an effort to prevent tall buildings or oppose density. These are streets that are treasures to all of us, our entertainment district and the primary view shed of Old Main. These areas and the square bring people to Fayetteville to spend their money. Let's capitalize on them instead of distorting them. Let's not risk having buildings built that are not completed or sit empty. Let's make sure they fit. Let's not destroy what we have to become any city USA.

She went on to discuss pictures from the original Dover Kohl process. She stated I think our community is worth this one extra step so this is what I have proposed as a compromise.

Alderman Lucas: Nancy, explain to me again what you are proposing.

Alderman Allen showed Alderman Lucas the locations she was referring to on the map.

Alderman Lucas: So you are not going up to the square?

Alderman Allen: No, I would like to go to the square but I am not going up to the square. I am talking about Dickson Street and Lafayette. Lafayette is our primary view shed and Dickson Street is our entertainment district and I would like us to keep those two special places and not build but take that one extra step of a variance.

Susan Chaddick: I believe as we grow we must protect our sacred places; therefore I support the proposed height amendment. Where our significant and beautiful spaces are concerned, I say let's air on the side of caution and care rather than on the side of hurry up development. I ask those of you with other perspectives regarding development, can you take a step towards compromise. This amendment represents the voices of those who say in special places let's move ahead with care and protect our valued assets.

Bob Estes, former chair of the Planning Commission: It is your prerogative to enact legislation regarding bulk, area and height. You are the policy making body of this city, however when you enact legislation that relies upon the variance process it is not good legislation. The reason for that is it removes definition and predictability from the process and it increases the amount of time that your Engineering and Planning staff must devote to the effort. My request to you is to consider before you pass legislation relying upon the variance process to make that legislation workable.

Rob Sharp, a citizen expressed his frustration with trying to understand what the diagrams mean. He stated it is hard to understand how this affects the property. I understood there would be a compromise because of what I read in the paper and what I read in the paper is different than what has been talked about here. I do appreciate the idea that there might be a compromise

to the initial idea of a three story height limit throughout downtown. I'm concerned about Lafayette Street from what I read in the paper it was going to apply from Hyland to Gregg but it has changed now from Hyland to Arkansas.

Alderman Allen: This say's Lafayette from Hyland to Arkansas Avenue in the paper.

Rob Sharp: In that particular piece from Hyland to Gregg, 38% of that is schools and churches, 40% of that is already zoned neighborhood conservation and 21% is privately owned of that 21% 85% is owned by Eric Lloyd. His property is currently zoned for a four story height limit and this would have the effect of lowering his to a three story height limit. It seems odd to talk about Lafayette when you are in fact only talking about 21% of the property within the Downtown Master Plan and that 21% is the lowest along the street. This is a symptom of the fact that this has not come through the Planning staff, it has not come through the public and it has not come through the Planning Commission. I think the process is confusing. I think building height is very important but architectural standards, historic preservation initiatives, landscaping, and attracting downtown retailers are really critical ideas also and these are ideas that we need to be working on with all our energy. I think tall buildings are criticized because they are often featureless. I think picking on height is not necessarily the right way to go. I hope that we will devote this energy to strict and enforceable architectural standards.

Michael Pritchard, a citizen spoke in support of the compromise. He stated if we do not create a stop gap measure to preserve that area we are going to see tremendous pressure to tear down what's there and put in much higher buildings which destroy the character of that neighborhood. This is something worth preserving. This is a bare minimum of what we can do to protect what we have and enhance what we have and I urge the Council to take that step tonight.

Fran Alexander, a citizen stated if you are considering a story to be 10 feet and this ordinance is calling for 45 feet or three stories or whichever is less. Essentially this could be a four story building and this will begin to close in the skyline that we get on Dickson and Lafayette. We have to have transition and compatibility in order to have a consistent cityscape. Mayor, at the last meeting you alluded to severe ramifications and problems that Nancy's ordinance would create. I think it is time that you divulge to the city what you were referring to.

Mayor Coody: After two and one half years of so much effort being put into the Downtown Master Plan and a lot of staff working a lot of hours and a lot of time, they poured their hearts and souls into the Downtown Master Plan process. To have something pop up like this makes the staff think what on earth are we busting our butts so hard for just to have something change instantaneous like this. There are a lot of questions that have not been answered on Lafayette, what are some of the ramifications there, we don't even know. I asked Tim, has anyone gotten in touch with the Planning or Legal Department about any of this and so far that hasn't happened. The Planning Department has a lot of questions about how this would possibly work. When I talk about ramifications we have a very stressed out, over worked, under valued staff and this is a real problem.

Fran Alexander: It seems like to me that is a problem for management correction and not for wanting to do away with an ordinance in three readings in one night. The urgency that you have expressed is there is something going down and I think it is time the citizens found out what it was before something is checked off of our list of things to do which would protect according to those of us who can see the sky line that would ruin Fayetteville. I think if there is something

coming to town we should be told what it is and we discuss that openly and perhaps wait to pass this until we know exactly what that is.

Thad Kelly, a local architect: One of the amendments to the amendment is to protect the view of Old Main. Old Main was designed to be on exes with Lafayette. This amended height restriction ordinance before you tonight is a change. It's a change from the long work that went into the over two year Downtown Master Plan. This plan was a compromise of the design professionals, the building community and the developers with the citizens of Fayetteville to have an agreeable, understandable and reliable plan that all could use. To have a specific section carved out goes against the cities policies and principals of having spot zoning. The Downtown Master Plan should be kept as it is. This amendment and the amendment to the amendment should be voted down tonight.

Jim Minor, Senior Project Manager with Baldwin and Shell Construction Company: We are very fortunate to be doing a lot of business in town. This amendment I don't see where it affects the district in a positive way. I affirm that you are either growing or declining and being able to hold a position is unaccomplishable. We would like to stand firm in opposition to this and thank you very much for your time.

Shelly West, a Ward 2 resident: Dickson is a prize and there is some very valuable land on Dickson but by further limiting what our engineers have worked so hard to create, we are taking away from profitability and the maximization of that land. I think that is something that is important and I want to let you know that I am not the only student that feels that way. There are many students that hope that someday Dickson Street will be able to provide them with everything that they might need commercially and socially.

Allison Walker, a citizen presented the Council with a petition that was circulated in support of the Downtown Master Plan's current height regulations. She stated more than 200 people have signed the petition. She went on to list the businesses that signed the petition as well.

Steve Mansfield, a citizen: I was an investment banker and worked on Wall Street. I am very familiar with investments and how people invest their money.

Mr. Mansfield explained what a risk premium is.

The reason I bring up the concept of risk premium is that for investors, understanding the rules is really important. This ordinance changes the rule. We had a very good process to come up with a plan. If this ordinance is passed in any way what it does is increase the risk premium of Fayetteville. It tells people who want to put money into our city; that they can't know what the rules are to play with because there is a chance that it will be changed in the process. I would ask that you seriously consider the concept of putting in place ordinances and making changes to ordinances without some sort of grandfather period, without some way that the path is shown, it really hurts our town. I think the process is flawed and I ask that you turn down this ordinance.

Cyrus Young, a citizen: Those who spoke against this ordinance spoke on density and height whereas during the Downtown Master Plan sessions citizens talked about preservation and compatibility. What the people asked for and what is on the books is not the same. There was a call for predictability and I agree with that. I think the citizens of Fayetteville, when they go and participate in these sessions and ask for preservation and they put it in the plan, then the City

Council chimes in and says yes, we want that too, the citizens have a right to expect that the ordinances you pass matches what they asked for. The citizens are not asking to have Fayetteville change to be like other cities that is what the developers are asking for and that is what the ordinance as it stands right now will do. The citizens of Fayetteville are simply asking to have Fayetteville remain Fayetteville. I support the ordinance revisions.

Dr. Ethel Goodstein Murphree, a college professor and citizen: In deed we have important land marks no one will argue that Old Main is unimportant, no one will argue that our square and the post office at its center are significant. As an architect who believes the validity of preservation as a process is vested in the degree to which it can accommodate change. Part of what makes Fayetteville special is that we have managed to be ancient and modern at the same time. My commitment to this place and the kind of community it might be is about looking both backwards and forwards. I worry when we have a Downtown Master Plan document that talks carefully about historic preservation that is currently struggling with the best ways to implement the concerns about scale, tradition and continuity and community that have been expressed here tonight. I hope that you will let the good processes of planning the sensibilities of design standards and I think a genuine interest on the part of so many people in this community to go to work and make the kind of place that everyone is arguing that they believe exists truly exists.

John Lewis, a citizen stated for the first time since the 1960's we can recognize that it is not a given that Fayetteville is going to prosper and thrive in the new age that we live in. We have created a community that people love. I don't think that height has anything to do with Dickson Street being a dynamic thriving area that is alive that attracts people. I like the Downtown Master Plan and I think there is other ways to shape our growth without height limitations. I know how committed Nancy is to our community but I think if we have a problem we can get at it some other way.

Jill Anthes, resident of Ward 1: I would ask that if you choose to enact this ordinance which invites a variance process that you also include the criteria by which we are to weigh that variance. The way it is now I do not know how staff can make findings and I do not know how the Planning Commission can evaluate what is an acceptable variance to the three story limit.

Sharon Hoover, a citizen: I think if you are going to consider something like this it needs to go to the neighborhoods that this affects directly, I don't believe that process has taken place. I am on the Architectural Standard Code Committee and I believe we are going to have one more meeting and then you will see what we have been working on. However, if you want to get with Planning staff and see ahead of time some of the ideas we have come up with, I think you will see that what we are trying to do is preserve the character. It has nothing to do with height; it has to do with proportion scale of columns, overhangs, balcony's, windows and materials. I think these are the issues we really need to be talking about right now if we want to preserve the character. If you are not a design professional it is easy to think that height is going to answer all the questions but it is not.

Mayor Coody: Jeremy, how long will it be before we can have something because I didn't know this was so close to being done? How long do you think it will be before we can see something?

Jeremy Pate: We are going to have one more meeting with the committee and after that meeting we will go to the Planning Commission and I will assume that they will discuss the item and then forward it to the Ordinance Review Committee.

Julie Durrow, resident of 230 W. Meadow Street: The majority of the folks in our neighborhood are in favor of the Downtown Master Plan as it is written. We all spent a lot of time participating, giving opinions, compromising and feeling like what we have now should be given a chance to work.

Linda Ralston, resident of Ward 3 spoke in favor of the amendment. She stated unfortunately very few people choose to show up and participate. I love what Nancy is bringing forward. I think this is a wonderful compromise. I wish the citizens could actually vote on this. We have an election coming up on April 10th and I wish I could stick this on the ballot and I would predict that a majority of the citizens would vote for this amendment. I hope the Council will consider this.

Gary Mansfield, a Fayetteville home owner and investor from Miami, Florida: I am an investor in your town. I have brought several other investors and developers from outside of your town and from outside of the country to look at investments in your town. The first place that I went and the first place that each of these investors have gone as been your Downtown Master Plan. Before I made my very first investment I read every single page of that document. It wasn't until the adoption of that plan that I could feel rest assured that a property that I would buy would have certain rights associated with it and that I could make an investment based on those rights that I made my first investment. Everyone that I have brought to your town has read that same Downtown Master Plan. We have relied on it, we continue to rely on it and today we have several existing projects that have renovated some nasty looking buildings and turned them into tax revenue generating properties that have vibrant businesses in them that are employing your residents of your town, generating tax revenue, property tax revenue and increased values. We have several projects on the drawing board that we have not closed yet. We are now considering whether we need to reconsider making those investments because we're somewhat concerned that the rights that are inherent in the properties that we buy will be stripped out from underneath us. We will have to really think twice about putting our dollars to work here in your town if we can't feel secure that the property values that we are making investments in are not going to be stripped from us with ordinances that have not been approved and zoning rights that have been transcribed with those properties. I would ask you to reconsider any proposal that would change anything that is within the Master Plan document that we have used to make our investments and to consider being here in your town.

Rick Alexander, a developer: You have investors that have approximately \$100 million in project that they are considering doing in Fayetteville downtown. If you scare them off you won't get that \$100 million dollars. We keep saying we want to increase density but every time we take a step toward that we talk about taking two steps back. These guys have projects directly affected by the amendment as originally proposed and directly affected by the amendment as now proposed. I am on the Fayetteville Economic Development Commission. We spent significant time and money with the city and University trying to lure a business here to spend \$200 million and we promised them all sorts of incentives. You have guys wanting to spend \$100million and you are not helping them, you are scaring them. What are we doing, what is our message? This is the eighth reading at this Council on height for Dickson Street in the last year. At some point you have to have predictability. I live on Dickson Street, my office is on

Dickson Street, and I have invested millions of dollars on Dickson Street, why did I do that? This is commercial property, it is historic downtown Fayetteville. We have already limited the height from unlimited. We need predictability. A \$100 million in projects is \$700 million for our economy. I brought the Downtown Master Plan that was proposed in 2004 and it says "stay the course". Stay the course at least for a little while, more than a month or two. Thank you.

Beth Presley, a citizen: I understand that development is essential; I don't understand why it has to be in the few blocks that Nancy has blocked out with her ordinance, above three stories. I think some development has harmed the citizenry of Fayetteville in some ways. I think those of us that have lived here for a long time are getting tired of being burdened with being expected to supplement and benefit somebody who is just coming in. Everybody should pay their own way.

Bob Kelly, investment owner of Ward 2: If you go back and read the documentation of the Downtown Master Plan you can feel the enthusiasm and excitement and the enormous effort that went into making that document happen. Thousands of man hours have been invested from professional staff and citizens. Compromises were made but at the end you still had a very good product. If you factor in the value of the volunteer hours and the staff overtime that should have been paid it would be millions of dollars that were invested in it. It does project a bad image of Fayetteville to the business community. Fayetteville is very difficult to get anything done. It is entirely different than the rest of Northwest Arkansas. Changing this after it is just getting started is going to add to that difficulty and it may have started a downhill slide of Fayetteville. There are two jobs being created in Rogers for every one job being created in Fayetteville. We have slipped to third in revenues in Northwest Arkansas. This effort would be a detriment to making it more difficult to put any project in Fayetteville. The one size fits all has no foundation in good planning. This should be withdrawn and you should let the Master Plan run its course.

Bill Ramsey, Chamber of Commerce representative: You have a resolution from the Chamber Board in opposition to changing this ordinance but what fired me up was the gentleman from Miami. I hope you listen to what he had to say because we hear it almost everyday at the Chamber of Commerce. It isn't this particular ordinance; it's the fact that we are so unpredictable in the City of Fayetteville that we are scaring folks away. We are at a turning point in this city and we can't afford to lose commercial growth. This is just another example of unpredictability. I hope you listened to what the gentleman from Miami had to say. He was trying to encourage and develop and bring economic development. If you don't quit this unpredictability we are going to be in a heap of trouble.

Alderman Lucas: Bill, do you think that only in the downtown area is where we can get economic development?

Bill Ramsey: No, the real retail engine of this city is the mall area. We have people looking at us right now saying do we really want to do this. I was just made aware today of a commercial development that says we don't need this, and they had planned to come to our city. We are going to kill the goose that laid the golden egg if we continue down the path that we are on. I really and truly think we are at a critical point in Fayetteville's future.

Steve Russ, President of the Fayetteville Economic Development Counsel: Developers are asking that you set the rules and let it be predictable and we'll build here. There are really only two simple things that you need to do. If you follow the Downtown Master Plan those are well thought out documents, they are going to produce results if they are followed that everybody will

be proud of, we are not going to destroy the square or Dickson Street and I think we will grow at a nice reasonable rate. Stick with the Downtown Master Plan, the 2025 Plan and I think the problem is solved. We have to compete with the market share. I recommend that you stick with the Downtown Master Plan the way it is and, stick with the 2025 Plan and everything is going to be great in Fayetteville.

Dot Neely, Ward 1 resident: Fayetteville is unique and we do have a plan that sets us apart from Rogers and Bentonville which I've heard many of our business leaders keep looking to the North as if it were an example of Fayetteville needs to be and it is not. Mayor Coody you have opened the way to attract green technologies and green industries to Fayetteville. We are sitting in the position of tremendous potential to create an economic base with green industries. I don't think we need to be fanning the flames of fear that Fayetteville is going to fall into economic ruin if we take a few small steps to preserve the historic character of the core of downtown Fayetteville which is in the essence what Nancy Allen's amendment is making the attempt to do. The thing that sets Fayetteville apart is when a city maintains the essence of its character and honors its history while it makes way for new to come in. There has to be a balance between economics and new growth and preserving the very essence of where we've come from the history of the community. The historic component may set Fayetteville apart from Rogers and Springdale and that can continue to be a part of it while we grow and attract the green industries to Fayetteville. There has to be a balance and we have to preserve our historic character.

Mayor Coody: One thing I might add is that green businesses are still businesses. Even though they are green they still have to do what it takes to stay afloat or they go under. That is something we all have to be concerned about.

Eric Lloyd, a citizen: All these builders have been trying to do is make a buck and now their frustrations are running over. Old main is blocked by trees, not buildings. It's a case of the tail wagging the dog. I'm having my day and it's coming forth.

A citizen stated I am very much in favor of three story living on Dickson Street. I find it hard to believe that anyone wants a tall building in their town after 9-11. There are so many reasons to not want tall buildings in that area down there. If we are going to try to frighten people with something, I don't think we have to worry, people are going to come here and invest and want to be here. The closer we keep it to the way it's been for decades and the way it's become as we've progressed, some where we've reached the best days of it. Let's hope that what we look at will be trying to preserve the right parts of that. You are not hearing from the majority of the people at this meeting. I've seen previous meetings on this subject and the developers and people who are so frightened that we won't get fast enough economic growth that they will say yes to anything that comes along are winning. There weren't many here who spoke for Nancy's amendment. Promises are made but they are not made by the guy who finally does the work, they are made by an architect, a man who wants to get the project approved and has good intentions, that doesn't mean they will all happen. Walk on Dickson Street and get a feel for what it will look like with six or more story buildings down there.

Alderman Allen: I was raised by the then called manager of the Chamber of Commerce and my mother had a business right off the square for 22 years so I am fully aware of the importance of economic growth in this town and the need for a firm tax base. We need to watch what we sacrifice, we know what has been successful we don't know when we might be at the tipping point and lose what we have. It seems to be repeatedly said that I have some sort of private

vision and this has nothing to do with my thoughts. I am trying to do this because people have asked me to. I don't want uniform three story buildings; we are talking about just a simple variance. The Downtown Master Plan was made to be a fluid document. Is predictability a synonym for rubber stamp do we just rubber stamp everything just so we can get it in and see if we can make a buck or are we going to think about what kind of city that we have in the future. I think we stay the course but we stay the course of what the citizens bought into. This is what the citizens saw, if we call what you are talking about that are speaking against this ordinance what they bought into then it is not a charrette it is a charade. I would hate for that to happen. I hope you will think about this ordinance. I think it has merit it is one tiny step to just make sure that we have a continued good place to live and a continued good place for people to come and spend their dollars.

Alderman Ferrell: Nancy I appreciate you trying to come up with a compromise. I think many of us compromised after the public process in trying to come to some commonality on where we were headed on this. Someone said Fayetteville will end up being a standardized regular urban development. That will never ever happen. Fayetteville will never be a standardized regular urban development. Under the existing law nobody is guaranteed anything, four stories, five stories or six stories, all you are guaranteed is to be able to start the process. The only thing that is guaranteed is that there will always be plenty of public discourse and comments from people that want to be involved from the residents and non residents of this city. There is always going to be a lot of discourse and comment on what goes on and I think that happened before.

Alderman Cook: It is really a difference of opinion. No one is up here to try to throw Fayetteville in the tank. It drives me crazy when I continue to hear people say that Fayetteville is difficult to develop in, in my line of business every city is difficult to develop in. In fact Fayetteville's staff works better than most of the staff in any other cities here. To say everything is going north to Rogers and we have to compete with them. They say they have a city north of them that they are concerned about which is Jane, Missouri. It is a never ending cycle of competition like that. It is about job creation and trying to bring disposal income to our city. It is not about competing with the people north of us. That is a never ending cycle and it will never change. To say this height ordinance is going to dedicate the demise of the City of Fayetteville drives me crazy.

Alderman Cook moved to suspend the rules and go to the third and final reading.
Alderman Allen seconded the motion.

City Attorney Kit Williams: At one point Alderman Allen said she was doing a friendly amendment which is sometimes done with motions but I don't think you can do that with an ordinance. With our code book we zone by zones and we control heights and stuff by the zone that the property is in. Now you have a map that goes through different zones. I have not even seen the map, I did not get a copy and I don't have a description. If you want to seek to amend your ordinance I don't have the wording for it because we do not have a zone there to place this on. We could possibly do some sort of overlay district and describe that and have an exhibit for that. I am not in a position to read anything except what I already have here. I can't read an ordinance as you have described tonight. You need more than a map.

Mayor Coody: Tim you mentioned there are a lot of unanswered questions that you have. Would you mind going through those questions that you have.

Tim Conklin: Typically if you have a zoning map amendment you would have a map. Some of the questions that need to be answered are we creating a new zone, are we creating an overlay district? This also goes outside the Downtown Master Plan and through multiple zones including an RMF-40 zone that was excluded from the Downtown Master Plan. Those are some of the issues that we talked a little about with regards to this amendment. If you vote on this I am not sure how we would enforce it or map it. I think it would be impossible at this point.

City Attorney Kit Williams: An ordinance must be read three times before you pass it and if I can't write it, I can't read it. We would not be able to pass the proposed amendment if the City Council wants to amend it. An ordinance would require a formal amendment which must be seconded by someone on the Council and that amendment must be voted on.

Mayor Coody: To take a project that took over two years of public input, staff time and legal work to come up with a document that is still being implemented one step at a time to make a quick change on that just doesn't work. There has been no process on this at all. I don't think this is ready to be voted on with any kind of reliability that we have a clue as to what this is going to wind up being. There is a long list of unanswered questions that are significant. If the City Council is serious about adopting something like this I think that we should vote this down and take time to actually look at what you actually want and come up with a process and involve the players and stakeholders in this that have not been involved yet. I think it is unfair for this Council or anyone else to make a blanket change to an ordinance that everybody had participated in and was use to, to have a complete surprise out there without the process of stakeholder involvement that we owe them.

Alderman Allen: If I were to have waited to bring this ordinance forward and see how it worked for several years by then it is done, it is built, and it is finished. I would like us to go ahead and vote on it.

Alderman Thiel: We are not voting on the Dickson Street and Lafayette. We are voting on reducing the height on the entire Downtown Master Plan.

Mayor Coody: What was brought to us two weeks ago.

Alderman Allen: There was an amendment to my original ordinance.

City Attorney Kit Williams: I think the one I read was your second version, where you included existing structures that exceed three stories or 45 feet shall be grandfathered in and not considered nonconforming structures. It is two sections of our code Section 161.21 and Section 161.22 one of them being the Main Street Center and the other being the Downtown General.

Upon roll call the motion passed 7-0. Alderman Rhoads was absent.

City Attorney Kit Williams read the ordinance.

Mayor Coody asked shall the ordinance pass. Upon roll call the ordinance failed 4-3. Alderman Lucas, Jordan, Cook and Allen voting yes. Alderman Ferrell, Gray and Thiel voting no. Alderman Rhoads was absent. Mayor Coody chose not to vote.

City Attorney Kit Williams: Any ordinance or resolution requires five affirmative votes to pass no matter how many members of the City Council are here. It had four votes and the Mayor has a vote only when it is necessary to pass an item. He can choose to vote yes and the item would pass or he does not vote at all. By not voting, the item failed because it does not have the five affirmative votes needed to pass.

This ordinance failed.

Farmington De-annexation: An ordinance concurring with Farmington Ordinance No. 2007-1, providing for the voluntary detachment of certain lands from the City of Fayetteville, and attaching said lands to the City of Farmington.

City Attorney Kit Williams: The City Council asked me at agenda session to draft an ordinance that would de-annex the five family lots that sought de-annexation and went through Farmington. There were two other families that signed the petition but they never went through Farmington so they can not be considered tonight.

City Attorney Kit Williams read the ordinance.

This is totally a decision of the City Council to decide if you feel like it is in the best interest to detach this property. I think some of the property owners are here tonight.

Larry Weeks, Fayetteville Businessman: We asked to be de-annexed back to Farmington. It started out as a hometown loyalty issue, all of our children went to Farmington schools, and we were raised in that community. Later on it got to be an issue of services provided one in particular is our trash service. If I am going to take trash out I have to transport it a third of a mile to get trash service. My neighbor has to transport his a fourth of a mile and so do three other families. Farmington has coupled with independent contractors. We have private drives and the trucks that you have are actually too heavy to come down our roads. If we are to have trash service we were asked to provide a turn around for the truck, which we are going to incur an expense and we are asked to keep up that road which we are going to incur expense. So right now we are paying for trash service that we don't get. It is a good deal for you it is not a very good deal for us. We are on septic systems and we were informed that we were going to have to pay sewer because Fayetteville did not recognize septic. I don't know if that is the cause or not.

Mayor Coody: That is not the case.

Larry Weeks: We are just asking to be de-annexed back to Farmington.

Alderman Ferrell: Did you say that right now you are paying Fayetteville trash pickup.

Larry Week: Yes sir.

Alderman Ferrell: You already paid that and they are not picking up the trash.

Larry Weeks: That is right.

Mayor Coody: I think the issue is if they could write us a wavier to where we could drive down their driveway. We did not want to do that without their permission.

Larry Weeks: Actually that is not the case Mayor.

Mayor Coody: Is that right. I'm sorry.

Larry Weeks: The trash service sent someone out to our house and said the truck could not turn in our driveway and then we would have to sign a waiver for any damage that was done by the truck; I think they weigh about 55,000 pounds. We were also going to have to provide a turn around in our yards. I have five acres and my neighbor has three and they are all private drives back to the properties. We are going to have to incur some expense to have trash or we are going to have to haul it ourselves. Rather than carry mine a third of a mile down to Double Springs Road, I am a Fayetteville businessman so I throw it in the back of my pickup and haul it myself. I am not in the trash hauling business and all of our time is valuable. We are just so limited for time. I commend you on your efforts; I couldn't do what you do.

Alderman Ferrell: Is in fact the main reason that you don't want to be a part of Fayetteville is because of your historic ties to Farmington.

Larry Weeks: That is what this began as. We had already asked Farmington to annex us before your island annexation. Farmington didn't get that done and then Fayetteville came along and annexed us. We had petitioned Farmington and that was in the works.

Alderman Jordan: Mr. Weeks what did you do for trash service before?

Larry Weeks: Farmington couples with independent trash services. They have smaller trucks. They brought a one ton truck to my house and picked up my trash and drove to my door and picked it up. So I didn't have to mess with it.

Alderman Jordan: That does seem somewhat unfair.

Gary Dumas: All this property was in the county and it was served by various independent haulers that service the county. Farmington has a contract with Waste Management whether they will serve on a private drive or not, I don't know. Service is provided to everyone within the City of Fayetteville however if you have a private drive we ask that you sign a waiver in case the truck damages your drive that we are not responsible for that. We are not asking for a waiver if the road damages the truck just if the truck damages the drive. We asked for a turnaround otherwise the truck would have to back either a third or a quarter of a mile as you just heard stated.

Alderman Lucas: Do you have a turn around for other people that come down to your house?

Larry Weeks: I do for cars.

Alderman Lucas: So you do have a turn around.

Larry Weeks: It is in my driveway. I don't have a turnaround per say. I have a place that a car can back out of my driveway but it would not be suitable for a truck of that size.

Mayor Coody: The other folks that wanted to de-annex but they did not go through the Farmington process, have they done that yet?

City Attorney Kit Williams: I don't know if they have even petitioned Farmington. I have not seen any ordinance or anything.

Tim Conklin: I have not heard or seen anything regarding the other two families from Farmington.

Larry Weeks: There were seven of us that petitioned Farmington originally and then when we came to the meeting here we could not get in touch with the other two families that evening so we brought a petition signed by the five families that we could get in touch with at that time. There were seven families that originally petitioned. It was stated in the paper there was seven families to begin with and now there are only five families. That seemed to be an issue so we went back again to the other two families and got them to sign that document. It was after it had been submitted to Farmington the second time. In the original document to Farmington there were seven families that petitioned. In this process we have actually submitted two petitions, the first was the five of us and then we got the other two to sign.

City Attorney Kit Williams: I think the petition has been in your packet but it is nothing that we can consider because by state law we can only consider the five that went through the process at Farmington and are now before you.

Tim Conklin: Have the other two individuals gone to Farmington and has Farmington passed an ordinance because I am not aware of that.

Mayor Coody: Apparently they have not. The question is the original five.

Bud Anderson: We petitioned at one time and we took all our paperwork to Farmington and at that time they were changing Mayor's and the paperwork got lost. When we went back to get them signed again one of our neighbors was in a divorce and they could not sign because the property wasn't clear. When we got ready to have them sign again to bring back to you the other property was cleared and they were able to sign the paper work. That is the reason that we didn't have the seven.

Mayor Coody: So you are not one of the original five?

Bud Anderson: I am one of the original five.

Mayor Coody: You are? So you are one of the ones that Farmington has in their resolution.

Alderman Lucas: There is one property owner that wants to stay in that is in the middle of these properties.

Tim Conklin: It is my understanding that Mr. Rankin wants to remain in Fayetteville.

Alderman Lucas: Yes, so it makes the boundary lines very jagged.

Tim Conklin pointed out Mr. Rankin's property on the map.

Alderman Jordan: Is it going to create an island or a peninsula?

Tim Conklin: It would create peninsulas of property to the west of Double Springs Road in its current configuration.

Alderman Jordan: One of the problems I have with this is it creates some peninsulas that I think is a problem. At one time Shirley and I brought forward an ordinance to bring in the islands within the City of Fayetteville. I have a difficult time having brought forward an ordinance like that to create something like that.

Bud Anderson: That really wouldn't create an island.

Mayor Coody: He means to create a peninsula which it would. This Council is flexible so I think if we wanted to let these people out it might create a little bit of a peninsula. We have annexed 1,400 acres and we would give up 14 or something like that.

Tim Conklin: It is about 21 acres.

Alderman Lucas: Some points were brought up that their children go to Farmington school. Well we have people in the City of Fayetteville that their children go to Springdale and receive their mail in Springdale.

They are not charged, sewer and trash pickup could be available if they wanted to sign a waiver. It makes the boundary very jagged which makes it very hard for our police and fire. We were trying to square up our boundaries with this annexation. Even Farmington was talking about when they annexed they were squaring up their boundaries. I think this is creating something that is going to cause us problems in the future with our fire and police and knowing where the boundaries are.

Alderman Ferrell: I have been thinking about this a lot since the first night and I think we had some questions for Mrs. Weeks. You might have believed as I did that if you wanted out you could get out. Although I don't particularly like peninsulas and we have tried to stop doing that, I have some reservations. I think you had the idea that you could get out if you wanted out.

Michelle Weeks: I did and I have been talking to Mayor Penn of Farmington about this and I know if our other two neighbors went to Farmington then I am almost positive that Farmington would accept them and that would even up the boundaries more.

Mayor Coody: I remember when we spoke months ago I spoke to staff to put this through the process and let them de-annex. I never perceived it to be a problem based on our conversations back months ago.

Michelle Weeks: We didn't know exactly how to proceed so we sit on it for about three weeks or so. I talked to our Alderman and I also talked to Farmington and they were trying to figure out how to start the process. They were communicating with Rogers when Rogers had a thing with Lowell and so they had to wait until they could tell Farmington what to do and how to proceed on it.

Mayor Coody: I was supportive and we said in good faith if you wanted to get out we didn't think we would have any problem letting you out. That's why we got with Tim and he was going to start the process to do that. I think the hang up came when other people joined you in that process.

Michele Weeks: I didn't know that we were going to exclude Mr. Rankin which I am glad we can. I don't want to make him go to Farmington with us if he doesn't want to. When I turned in the signatures I thought a majority would do it. When I read the statement in the paper saying I didn't have seven, I didn't deceive you I just did not pursue getting those other two. That's why I came back with those other two. That's why Farmington didn't have those other two when they passed theirs.

Mayor Coody: We don't feel deceived, don't worry about that.

Alderman Jordan moved to suspend the rules and go to the second reading. **Alderman Lucas** seconded the motion. Upon roll call the motion passed 7-0. **Alderman Rhoads** was absent.

City Attorney Kit Williams read the ordinance.

Alderman Jordan moved to suspend the rules and go to the third and final reading. **Alderman Ferrell** seconded the motion. Upon roll call the motion passed 7-0. **Alderman Rhoads** was absent.

City Attorney Kit Williams read the ordinance.

Mayor Coody asked shall the ordinance pass. Upon roll call the ordinance failed 3-4. **Alderman Ferrell, Gray and Thiel** voting yes. **Alderman Lucas, Jordan, Cook and Allen** voting no. **Alderman Rhoads** was absent.

This ordinance failed.

Mayor Coody: You guys are Fayetteville residents it looks like.

Larry Weeks: Is there a process that we can appeal this?

Mayor Coody: Is there a process Kit?

City Attorney Kit Williams: I don't believe so. I think this is really just a totally discretionary decision by the Fayetteville City Council. I am not aware if it can be appealed but you might want to talk to your own attorney. I don't want to try to give you legal advice.

Larry Weeks: Sure. As my wife stated on the first meeting that we had here it was indicated to us if we did not object to that island annex then there would be no problem with this. That is how we proceeded all along in good faith. It is just real disappointing. We will try to appeal this.

Alderman Allen: Has Mr. Weeks been given some misinformation?

Larry Weeks: The information was when my wife came here the first time we met it was stated that all we had to do was go through this process. We were led to believe all we had to do was go through this process and we would be de-annexed.

Mayor Coody: That's exactly right.

Larry Weeks: That there was no problem. It was stated that it had been done in Springdale. That information was given to us and it was indicated to us that there would be no problem with this. All we had to do was go through this process.

Alderman Lucas: I think it was mentioned that both Council's Farmington and Fayetteville would have to approve this. You may have assumed that it would automatically be approved but I think it was mentioned and I think I even mentioned it to Mrs. Weeks when I talked to her that it had to be approved by both the Council's; Farmington and Fayetteville.

Mayor Coody: Did Farmington approve this is Kit?

City Attorney Kit Williams: Yes they have approved it.

Mayor Coody: Since the Weeks were the first ones to come up and we basically told them that they could go through a process and be de-annexed.

Alderman Lucas: I didn't tell them that.

Alderman Jordan: I didn't tell them that, you told them that.

Mayor Coody: It was on camera at a City Council meeting, maybe you weren't there.

Alderman Jordan: Oh we were there but we didn't say that.

Mayor Coody: It looks like you are out of luck. I am sorry.

Alderman Thiel: Who can make a motion to reconsider?

Mayor Coody: Someone who voted the majority.

Alderman Thiel: Who voted in the majority?

City Attorney Kit Williams: Anybody who voted no.

City Clerk Sondra Smith: The no votes were Lucas, Jordan, Cook and Allen.

Alderman Thiel: So the no votes would need to make a motion.

Mayor Coody: They would have to make a motion to reconsider. Is there any interest in that?

Alderman Allen: I just hate for a citizen to be forced to live in the city they don't want to live in. I am really torn about our ordinances and regulations about the islands as opposed to his desire to not live in the city. I guess I don't know what trumps what exactly.

Alderman Ferrell: Nancy the reason I questioned Mrs. Weeks was because that was my understanding too. I could see how they thought it was going to be a perfunctory deal and I did too at first. That if they agreed to this then they could opt out after it was done. That's the way I remember it.

Mayor Coody: I know we were at the Council meeting and that's the way I saw it too.

Larry Weeks: That was our understanding. We live in the far corner and a 55,000 pound truck on my driveway that's going to cost me a lot of money to just keep my driveway up. Then it is going to cost me money to build him a turn around that will support a 55,000 pound truck as it will Mr. Anderson. So we are going to incur expenses to live in the city that we shouldn't have to incur. The city should buy a smaller truck and come out and haul that trash.

Alderman Gray: How long is your driveway?

Larry Weeks: It is a third of a mile from Double Springs Road to my house.

Alderman Gray: We carry ours to the end of the driveway. It is not quite that long but that would be an alternative.

Larry Weeks: That is my driveway.

Alderman Gray: Could they pick it up without having to get on your driveway?

Larry Weeks: If I carried it a third of a mile yes. I just prefer not to carry trash a third of a mile. I leave early in the morning and get home after dark.

Alderman Gray: I was just trying to think of an alternative.

Larry Weeks: I have an alternative. I am hauling my own trash. I prefer not to do that if I pay for the trash service.

Mayor Coody: I understand. I am sorry it did not work out for you tonight. I am distracted because I just don't feel like it is more important to keep this guy in the city than it is to basically fulfill our promise but that is a dead issue it is behind us.

Alderman Jordan: Mayor neither one of us said anything that night. We didn't necessarily agree with that. We have a right of representatives of that ward to do what we think is best.

Mayor Coody: You are exactly right but I was left with the impression that once they annexed they could just come back through and we would let them go.

Alderman Jordan: Well now you know.

City Attorney Kit Williams: I explained that night that both City Councils would have to affirmatively approve that and that you as a Mayor really can't make promises for the City Council.

Mayor Coody: No I did not make promises. I was not making promises but it was clearly the impression that if we forced them to come in and they wanted out, that if they went through the steps, which they have done that we would let them out. Obviously for several of us here it must have been just miscommunicated.

Alderman Jordan: Obviously.

NEW BUSINESS:

SWEPKO Public Service Commission Hearing: A resolution to express the intent of the City Council for the Public Service Commission hearing on SWEPKO's proposed enlargement of its 69kV transmission line to a 161kV transmission line in Fayetteville.

City Attorney Kit Williams: Mayor, I presented this resolution. Section one of the resolution is blank because I am not the policy maker for the City of Fayetteville, this body is and therefore I need direction from the City Council. With this agenda item is a copy of the city's initial petition for leave to intervene. That has been slightly amended to allege that the power line goes over Dickson Street and other city streets. We submitted that to the Arkansas Public Service Commission and they have allowed us to intervene. The city is now a party to this particular case. Before they said we had not alleged enough to intervene but we have now intervened appropriately.

I should also report what happened at the State Legislative today. The State Senate with a single Senator voting no approved Swepco's bill which would mean in a situation like this they would not have to ever get a Certificate of Public Convenience and Necessity even if they were replacing short poles with tall towers as long as their easement is not widened. Which is not usually the concern that people have, they are looking up at the towers. That passed, it had already passed the house at a 70 to 20 vote and passed almost unanimously at the State Senate with only a single Senator voting against it.

Mayor Coody: That's why they call them the power company. Our Senator Sue Madison must have voted for this bill?

Alderman Jordan: She supported it.

City Attorney Kit Williams: There was a single no vote and it was not hers.

Alderman Lucas: So then we have no recourse.

City Attorney Kit Williams: The law is not immediately effective so it might be that they will still go forward with the hearing. Although they could also just kind of pull back from the hearing and let the law take effect and then they would not need to have a hearing. I don't know what their plans are. Assuming the hearing would go forward on April 5th in Little Rock, I still need guidance from the City Council. As you know in the initial letter from the Attorney representing SWEPKO they presented several options. None of these options look very good to me and probably did not look very good to you. I tried to be at least somewhat open to something so I said not only would I recommend that we bury the line but also possibly looking at somehow getting the line out to the bypass and go that direction. That would be rather

expensive and go across some property that is not already owned with the right of way by SWEPCO and would affect other people in that direction. Therefore I want your advice, do I drop the suggestion that we use the western option that SWEPCO made as one of their options? Do we still argue that it should be buried; the problem with burying the line SWEPCO says they are ready to bury them as long as we are ready to pay them \$5 million to do it. As you see we don't have very many good options. There is another potential issue that we could raise, this is part of a much larger project, they are not just trying to connect to Fayetteville's south and Fayetteville's north substations but they are connecting this entire long line to upgrade their system from a 69 kv to a 161 kv line, making it a very much larger more substantial line because this area needs it. The question is when they do a much larger project than this it is arguable, but whether or not they need to do a more detailed permit process than what they are doing right here. It is possible that we could argue that they should have gone into that process when they first began building this very long line instead of waiting until the very end when they are putting their last segment in, which is what they are trying to do right now.

Basically I need some advice from the City Council. My first question to you is should we have any kind of recommendation about what SWEPCO had proposed as their Western option. It would basically run almost due west from the current power station, over Markham Hill and then run to 540 and then go along 540 until it went to the northern substation. I don't know what the City Council feels about that, if that is something we should propose to the Public Service Commission.

Mayor Coody: One of the things we talked about was that the city and Swepco can partner on this, we could dig a trench and you could bury all the small burial lines and we could bury the phone and cable with it. That would allow for smaller core tin steel poles to go up. You would still get the transmission overhead like you wanted it and it would not be a \$5 million job. We offered to dig the trench which is by far, from what I understand, the trenching, digging and burial of the work is actually the most expensive part of burying the lines until you get to the big lines. We didn't get much of a warm reception on that. I think Swepco said they wanted us to dig the line five feet wide and five feet deep for three blocks or so to where you could bury the small lines that are easy to bury and have the smaller poles. You still want half a million dollars from the city just to lay the lines in the ground and then run the circuits from the lines under ground to the new services to the homes.

Is there any way on God's green earth that Swepco can take mercy on us since you have us over a barrel and work with us and try to do something like this?

Tommy Deweese, Swepco: We have had a lot of conversations regarding this over the last 18 months. We have looked at a lot of different options on this particular transmission line. Swepco has identified a preferred route which is doing the existing route and building a 161 kv line on those easements. We looked at the structures in Shreveport and those are very large. They are pretty monstrous. They would need to be placed next to Dickson Street or in close proximity to it.

Mayor Coody: That is not an option.

Tommy Deweese: The other alternative that you were talking about if you review those email records that I sent you; there are two distribution circuits that are under built on that transmission line there. Distributions circuits serve the close immediate area to the line. They serve not only

that area but each customer that is located adjacent to those lines would be required to relocate and redo their service from overhead to under ground. We went back and looked at that. We had a lot of different discussions. We did a cost estimate on burying those two distribution circuits. The total cost of that project was about \$1.8 million. I think your total ditch cost was around \$400,000.

The reason I am here tonight is to not debate one issue over another but to answer questions that you have asked me. When you do this you would hope that you would get the benefit of having smaller poles and removing wires down there. In reality due to the location and the safety code clearances that we have to have around the buildings and across Dickson Street you are not going to gain very much if any on lowering the height of those poles. As you go north along that circuit and continue to get away from Dickson Street towards Maple Street then you can start some of the pole height down. You can't say we are going to drop the pole height down to what it is right now. I don't want you to leave here with that impression at all. The bottom line to the city on that, the cost difference between overhead and under ground, which is what we do for all cities that we serve throughout the State of Arkansas, for all developers that we serve throughout the State of Arkansas would be about \$1.5 million, not \$500,000 Mayor but \$1.5 million to bury those two distributions circuits.

Mayor Coody: That would be after we dig the trench though.

Tommy Deweese: Yes. Total cost about \$1.8 million you throw in the \$400,000 or \$450,000, whatever your bid was on the ditching and you would be asked to make up the difference on it. The thing that you need to realize is just don't think that you are going to make those lines go completely away. You have a large amount of switching cabinets that will need to be in places along Gregg Street, if you have ever looked at the Southeast corner of Bud Walton Area you will see some large equipment there, large metal boxes. Those will have to be placed some place along Gregg Street, in relation to all the businesses needing to redo their services there. It is a tough thing. I wish I could tell you that we had the absolute best solution to it. Our solution to it is to rebuild the line in place and that is what we have stated on there as our primary preferred route.

City Attorney Kit Williams: Swepeco has already filed testimony to that effect of the cost and that cost does not include the other lines that were there, other services that are already using those poles and some other costs that would probably increase that more.

Tommy Deweese: We want to try to move those transmission structures away from Dickson Street as far as we can.

Mayor Coody: Can you at least use the core tin steel poles instead of the bright shiny galvanized?

Tommy Deweese: There are some alternatives there that we would be happy to work with you on. It is matter of personal preference on what color that you would like there. We will work with you on that.

Mayor Coody: At least they blend in better.

Tommy Deweese: We plan to have the hearing on April 5 and in our period to object to intervenors we never objected to the City of Fayetteville being an intervenor in this area.

Mayor Coody: The law has now changed so that we might not have much say in this after all.

Tommy Deweese: As far as I know we will still have the hearing, you will still have intervenor status; it will still be up to the administrative law judge to say what he rules in the matter. Even though they had that vote down there today that you were talking about we still plan to go ahead with this process.

City Attorney Kit Williams: We plan to be down there too. That is why I did this resolution because I need to know what the City Council wants us to propose to the PSC, if any thing. I certainly want to cover the western route and see if anyone is interested in that or should we remove that from our petition.

Alderman Ferrell: Any alternative that could be considered that would have an impact on the rates paid by citizens, either all citizens in Fayetteville or this area; I don't think that is an equitable deal for the rate payers and the citizens and I would support that. Any alternative that requires charges that would be added to rate base for them to recoup I would be opposed to that. Not just the citizens on Dickson Street but the citizens everywhere would have to pay for.

City Attorney Kit Williams: That is a possibility that has been suggested. I have been informed by Swepco's attorney that is a possible thing we could ask for, which is a special district in Fayetteville and have the Fayetteville rate payer pay for the cost on this. I did not suggest that in my petition but if that is something that you are opposed to Alderman Ferrell and would want, then that is certainly something you can instruct me to do. Swepco's position is that they would oppose any non-Fayetteville rate payers to pay any portion of this but they might not oppose a special district being set up in Fayetteville to pay for this. I felt that was probably not going to be acceptable so I did not suggest that. This Council can tell me differently if that is your decision.

Mayor Coody: There are basically two ways that the citizens of a city can come together to raise funds to move lines, bury lines and do work that Swepco will not pay for. Those two ways are to increase franchise fees, which is the least attractive option. Out of the franchise fees comes retirement benefits, profits and things like that that we would get maybe 50% of the use of the money that we would put in. We would use about fifty cents out of every dollar. The other option is what is called a special tariff district and if the citizens so choose we could form in Fayetteville a special tariff district. Whatever money is collected, 100% of that money goes for particular jobs. Those seem to be the only ones and I don't know if they are viable or if the city is interested in something like that or not.

Tommy Deweese: I think Fort Smith has passed a special sales tax that was dedicated towards utility relocation and burial. That is something you may want to do in the future.

Mayor Coody: As long as we have over head power lines this conversation will be eternal.

Tommy Deweese: Right, it really will be.

Irene Pritchard: I am asking you to intervene on my part and also for everyone in Fayetteville. I would like to have a fair evaluation of alternate routes.

Ms. Pritchard spoke of different routes that might work.

I don't think it is fair for us not to have the right as a city to have a fair appraisal of what we are giving up and look at cost versus benefits. These power lines cost the City of Fayetteville. It doesn't make a lot of sense for all the money that has gone into Dickson Street and for the development of Fayetteville for us to let Swepco build these huge lines wherever they want.

Fran Alexander: I have a suggestion about dealing with Swepco and the state. Kit you said that this had to be in Fayetteville and this had to be a district here that it was not something that we could spread the cost of this over the state is that correct?

City Attorney Kit Williams: My petition asked for it to be a cost of their doing business but when talking to Swepco's attorney and reading their staff report, it says that the taller poles are more aesthetic than the shorter poles.

Fran Alexander: I think the issue seems to be centered around who is going to pay and that Fayetteville is going to be the one that has to pay. This University is a state structure and it is a historic area. I think if we tried to deal with this on a state level that this might be an angle.

Frank Sharp: \$5 million is a lot of money. That line is amortized over how many years?

Mayor Coody: The \$5 million was if we buried the 161 kv line which just isn't feasible. Burying everything else besides the big line and using smaller poles is about \$2 million.

Frank Sharp: I have property on Dickson Street and we have walk-in coolers and my meter spins. If you formed this district it would be interesting to see what this is going to cost.

A discussion followed on the cost to the customers.

Jim Spillman, Ward 2: Is the amount of maintenance that is required on a buried cable greater, lesser or about the same as a cable that is suspended on poles.

Mayor Coody: It is more for under ground.

Tommy Deweese: Although you have the savings of tree trimming and other things when you have a fault or an outage on an under ground facility, the vast majority of the time you have to replace the entire system.

Alderman Lucas: I had a citizen call that is opposed to the western line because it goes right beside a neighborhood and up over Markham Hill. It would take out a swath of trees that we have tried very much to preserve. I have gotten several calls on that.

City Attorney Kit Williams: Is that a consensus of the City Council that you want the western option removed from the petition?

Alderman Cook: We are in a no win situation. There is really no good answer to that. There is really is no answer at all.

Alderman Allen: Are there no other options that could be brought forward of other places that it could be?

Mayor Coody: Not really, that would not be even more damaging than what we are talking about with Gregg.

Alderman Lucas: Could we request they camouflage the poles?

City Attorney Kit Williams: We could request that.

Irene Pritchard: I was talking about going out west of town, on the edge of town and it does not go over Markham Hill and it does not go down Sang Avenue.

City Attorney Kit Williams: It would go from the south Fayetteville substation. We could ask the PSC to have them not bring that line right into town, like they already have, but instead to take it along the bypass the entire way. The problem with that is they have already built half of the line so they have kind of painted us into a corner. Our response to that would be that they should have presented this entire project at once before they built half the line so we could have looked at it then and the PSC could have looked at it then and made a rational decision early on. Swepco's response to that says one of their primary customers is the University of Arkansas and that they must have substations fairly close to their primary customer in order to deliver enough voltage. The only other thing that I think we can propose is that they should have built the line from the south Fayetteville station all the way to the north without coming through the middle of town.

Alderman Cook: If they have a substation right there to serve the University why can't they start farther south and swing out around 540?

City Attorney Kit Williams: At this point in time it would cost them considerably more than extending the line from where they are. They will argue that they should not have to do that because they are supposed to provide service at the least cost possible. That is their argument right now to the PSC. I can make that argument that they should have provided this to us earlier and to the PSC earlier so that we would have had an option before they made this other major investment that they have already done if that is what the City Council wants me to do.

Alderman Allen: That seems the best to the worst.

Alderman Thiel: I think so.

City Attorney Kit Williams: I plan to remove the western option that Swepco has proposed except where it would join the line that would come up from the southern substation and would join this eventually at 540 near Wedington and then just go on from there.

Alderman Gray moved to have Kit withdraw the recommendation of the western route that goes over Markham Hill and recommend that SWEPCO should have notified us earlier and should have connected the southern substation with the northern substation

along 540 instead of coming through the middle of town. Alderman Thiel seconded the motion. Upon roll call the motion passed 6-1. Alderman Ferrell voting no. Alderman Rhoads was absent.

Resolution 51-07 as Recorded in the Office of the City Clerk.

Power Secure, Inc. Bid Waiver: An ordinance waiving the requirements of formal competitive bidding and approving a contract with Power Secure, Inc. for the purchase of back-up power generation equipment and installation services for the West Side Wastewater Treatment Plant and the Hamestring Sewer Lift Station in the amount of \$1,986,786.68; and approving a 2% contingency of \$40,000.00.

City Attorney Kit Williams read the ordinance.

Alderman Jordan moved to suspend the rules and go to the second reading. Alderman Cook seconded the motion. Upon roll call the motion passed 7-0. Alderman Rhoads was absent.

City Attorney Kit Williams read the ordinance.

Alderman Jordan moved to suspend the rules and go to the third and final reading. Alderman Ferrell seconded the motion. Upon roll call the motion passed 7-0. Alderman Rhoads was absent.

City Attorney Kit Williams read the ordinance.

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

Ordinance 4995 as Recorded in the Office of the City Clerk.

ANX 06-2288 (Broyles): An ordinance annexing that property described in annexation petition ANX 06-2288, located at 3601, 3611, 3677 Weir Road, containing approximately 10.61 acres.

City Attorney Kit Williams read the ordinance.

Jeremy Pate gave a brief description of the annexation. Planning Commission voted 7-0 in favor and staff recommends approval.

Alderman Jordan moved to suspend the rules and go to the second reading. Alderman Ferrell seconded the motion. Upon roll call the motion passed 7-0. Alderman Rhoads was absent.

City Attorney Kit Williams read the ordinance.

This ordinance was left on the Second Reading.

R-PZD 06-2281 (Holcomb Heights): An ordinance establishing a residential planned zoning district titled R-PZD 06-2281, Holcomb Heights, located at the southwest corner of Weir and Salem Roads, north of Salem Meadows Subdivision: containing approximately 13.47 acres; amending the official zoning map of the City of Fayetteville; and adopting the Associated Master Development Plan.

City Attorney Kit Williams read the ordinance.

Jeremy Pate: I think it would benefit all if we waited until the next meeting to present this project.

Alderman Jordan moved to suspend the rules and go to the second reading. Alderman Lucas seconded the motion. Upon roll call the motion passed 6-0. Alderman Ferrell was absent during the vote. Alderman Rhoads was absent.

This ordinance was left on the Second Reading.

ADM 07-2477, BioBased: A resolution to approve a change in the building elevations and materials previously approved by the City Council as required in its contract with BioBased Realty, LLC.

City Clerk Sondra Smith: I received an email requesting this be tabled to the next meeting.

Alderman Jordan moved to table the resolution to the April 3, 2007 City Council meeting. Alderman Lucas seconded the motion. Upon roll call the motion passed 6-0. Alderman Ferrell was absent during the vote. Alderman Rhoads was absent.

Mayor Coody: I'm sorry but there has been somebody that has been here since 6:00 this evening to speak to this. Would it be tacky and rude to let them speak?

Alderman Jordan: I am sorry I should have opened it to public comment.

Thad Kelly: I brought this project to you several times but I am no longer associated with the BioBased development team. My being here tonight should not be construed as my wanting this project back. My wish is for this to be a successful project with the original vision of the firm. I and my partners enjoyed working with the Muccio's on this, his team was good. The design was to be a LEED building; the promise was for it to be a LEED building. The management of the company, their vision was for this to be an agrarian look and for it to personify the renewable natural nature of the components of their project. Things changed from a company vision to an investor's vision. The initial cost became more important than the sustainability. A LEED building is a lot of things, it is sustainable, it is energy conservation, it is ecologically friendly and it sits lightly upon the land. LEED is a philosophy of conservation and sustainability that is considered and incorporated in to the building throughout the design process.

Mr. Kelly continued to explain the LEED process.

I think this new change to this project should be rejected because it does not live up to the promises and the potential of the building that this company could build. This area should be a gateway and a front door to Fayetteville's technology park.

Steve Rust: I would encourage you to table this and reserve judgment until we can get a meeting scheduled.

This resolution was Tabled to the April 3, 2007 City Council meeting.

Amend Chapter 92 – Animal Ordinance: An ordinance amending Chapter 92, Animals, Code of Fayetteville, to improve the treatment of animals and ensure the safety of the citizens of Fayetteville.

City Attorney Kit Williams read the ordinance.

Alderman Thiel: I would like to leave this on the first reading.

This ordinance was left on the First Reading.

Amend Chapter 51 – Sewer Volume Based Rates: An ordinance amending Chapter 51, Water and Sewers, of the Code of Fayetteville, to adjust monthly sewer rates.

City Attorney Kit Williams read the ordinance.

David Jurgens: This is a by product of the agreement between Fayetteville and Farmington for wastewater services. All we can do tonight is have the first reading and announce a public hearing. We will have that public hearing at the next City Council meeting and then we can look at the rate ordinance after that public hearing. This affects rates for outside city customers only. It has no affect whatsoever on inside the city customers. Our auditing firm did a mandatory review on this to make sure that we still met our bond covenants and we in fact do meet those.

Alderman Lucas: We had a study before that had certain rates and now we have a study that says less rates, what if we have a study in three years and find out that we have different rates? Are you sure this is the right study?

David Jurgens: There were questions that came up about the study that was done by Black & Veatch in 2003. While I don't think it was deemed to be illegal or inappropriate it certainly seemed out of balance. When HDR tried to recreate it, it was difficult to recreate the process by which Black and Veatch produced those numbers. We feel this rate is in fact valid, fair and true.

Alderman Lucas: We will be able to pay our bills with this rate?

David Jurgens: Yes madam.

This ordinance was left on the First Reading.

Announcement of a Public Hearing to be held on April 3, 2007 regarding the sewer volume based rates.

No action was taken.

Forrest F. Brooks Revocable Trust Land Purchase: A resolution to purchase 13.75 acres from the Forrest F. Brooks Revocable Trust located north (and below) the Lake Lucille Spillway for \$495,000.00 and to sell 1.89 acres to the United Presbyterian Church for \$68,000.00 and to sell the development rights of the remainder to the Fayetteville Natural Heritage Association and Neighbors for \$179,500.00.

Alderman Cook: I brought this forward. Citizens are supportive of us buying green spaces. Goal # 5 of our 2025 Plan states we will assemble an enduring green network. I thought I would bring this up for discussion.

Bob Faught, Fayetteville Natural Heritage Association showed the Council on the map the property. He gave a brief summary of their assessment of this property. He stated there is good public access on two sides. In addition to the public access there is a proposed trail in this area and it could come through this property in the future. He discussed their work to preserve this area and the donations they have received thus far. He urged the Council to pass this resolution.

Alderman Ferrell: There use to be a cemetery on that property.

Bob Faught pointed out the cemetery on the property.

Alderman Ferrell: I think this Council has tried to be supportive of green space.

Bob Faught: We got the option to purchase this six months ago.

Alderman Ferrell: It is a nice piece of property but we are not under obligation after the Mayor visits with you?

Mayor Coody: I can't obligate the City Council for any thing. We would have to get appraisals and then see what would happen after that.

Walter Manger, Ward 1 stated he supports the purchase of this property.

Shay Hopper, Hillcrest representing the neighbors of the property, I think this is a phenomenal opportunity for the city to show how an infill project can marry with a green space project immediately in the heart of the city. We think it is a really great opportunity.

Pete Heinzelmann spoke about the uniqueness of the property. We have an opportunity to leave a legacy. I think this is a special opportunity.

Mayor Coody: Thanks for your work and everyone's work in the Fayetteville Natural Heritage Association. One of these days we need to start talking about some kind of substantial funding structure. I hope you are considering that.

Bob Faught: That is the next project that we are going to take on. This model is not a sustainable model for you or for us. We need to do something different. We have formed a small group and are looking at what other cities around the country have done.

Mayor Coody: Sales tax is how we fund things like this, fire, police, street, and sidewalks you name it, it comes out of sales tax. It is very important for us to realize that business is very good for Fayetteville.

Alderman Ferrell: I am glad that we have citizens like you out there finding these treasures. I want to thank all of you that are involved in this.

Alderman Cook: I would hope that the Council agrees that we move forward and at least see if we have an opportunity that we might be able to acquire this piece of property.

Alderman Lucas: I think we are all in favor of this; the bottom line is money at this time. We have areas on 540 that could be developed and bring sales tax into Fayetteville. The only thing I am concerned about is sometimes resolutions become laws. Everyone assumes we have voted for this but the bottom line is money in my opinion. I applaud you all.

Mayor Coody: To be perfectly clear I didn't say the City Council would do it I said that raising half would increase the changes of the City Council agreeing to it.

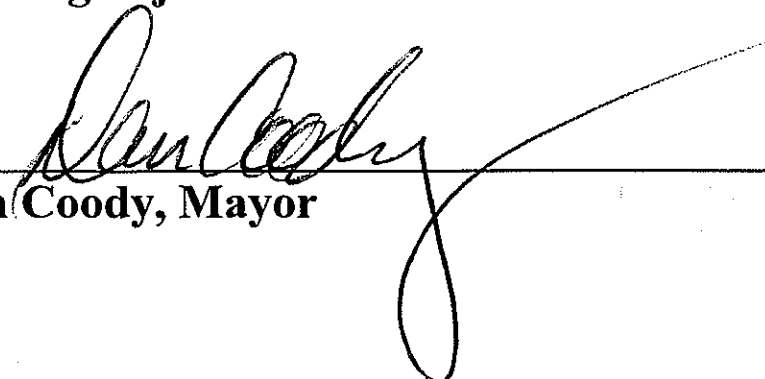
Alderman Gray: I agree with what Alderman Lucas said. This group should be applauded. I certainly hope we can find a way to finish it out and buy it.

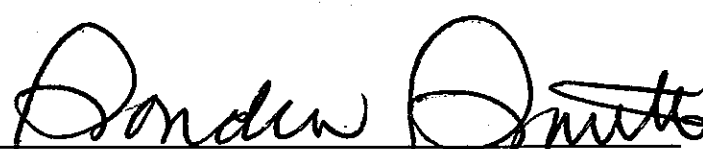
Alderman Gray moved to amend the resolution to authorize the Mayor to negotiate for the purchase of the property. Alderman Cook seconded the motion. Upon roll call the motion passed 7-0. Alderman Rhoads was absent.

Alderman Jordan moved to approve the resolution. Alderman Gray seconded the motion. Upon roll call the resolution passed 7-0. Alderman Rhoads was absent.

Resolution 52-07 as Recorded in the Office of the City Clerk.

Meeting adjourned at 12:25 AM


Dan Coody, Mayor


Sondra Smith, City Clerk/Treasurer

Aldermen

Ward 1 Position 1 – Adella Gray
Ward 1 Position 2 – Brenda Thiel
Ward 2 Position 1 – Kyle B. Cook
Ward 2 Position 2 – Nancy Allen
Ward 3 Position 1 – Robert K. Rhoads
Ward 3 Position 2 – Robert Ferrell
Ward 4 Position 1 – Shirley Lucas
Ward 4 Position 2 – Lioneld Jordan

Mayor Dan Coody

City Attorney Kit Williams

City Clerk Sondra Smith



**City of Fayetteville Arkansas
City Council Meeting Minutes
April 3, 2007**

A meeting of the Fayetteville City Council was held on April 3, 2007 at 6:00 PM in Room 219 of the City Administration Building located at 113 West Mountain Street, Fayetteville, Arkansas.

Vice Mayor Jordan called the meeting to order.

PRESENT: Alderman Gray, Thiel, Cook, Allen, Rhoads, Ferrell, Lucas, Jordan, City Attorney Kit Williams, City Clerk Sondra Smith, Staff, Press, and Audience

Mayor Coody was absent until 6:40 PM

Pledge of Allegiance

Vice Mayor Jordan announced that Mayor Coody was attending the Alternative Fuels and Vehicles Institute and would be coming to the City Council Meeting later.

Louise Schaper -- USGBC LEED Silver Certification for Blair Library presentation

Louise Schaper, Library Board Director presented the City Council with a framed official certificate for the Blair Library Construction. She stated since it's a city building it is your certificate. It was awarded last fall by the U.S. Green Building Council and it came in at a silver rating. We held our official ceremony in December however the certificates didn't arrive until last month so we wanted to bring it to you. She went on to describe the requirements for receiving such an award.

CONSENT:

Approval of the March 6, 2007 City Council meeting minutes.

Approved

Park Land Dedication Fund Project: A resolution approving budget adjustments in the amount of \$19,500.00 from the Southeast Park District to build an ADA accessible trail in Mt. Sequoyah Woods, and \$4,100.00 from the Southwest Park District to install stone pavers at the Wilson Park Castle.

Resolution 53-07 as Recorded in the office of the City Clerk.

Multi-Craft Contractors, Inc. Airworks Division Bid # 07-25: A resolution awarding Bid #07-25 and approving a contract with Airworks Division of Multi-Craft Contractors, Inc. in the amount of \$51,559.09 for the renovation and replacement of the HVAC system in the Central Dispatch Center; approving a project contingency in the amount of \$4,850.00; and approving a budget adjustment in the amount of \$56,409.00.

Resolution 54-07 as Recorded in the office of the City Clerk.

Waste Management of Arkansas, Inc: A resolution authorizing the Mayor to execute a contract with Waste Management of Arkansas to haul and dispose of solid waste within the city limits of Fayetteville.

Resolution 55-07 as Recorded in the office of the City Clerk.

Ozark Sanitation, Inc: A resolution authorizing the Mayor to execute a contract with Ozark Sanitation, Inc. to haul and dispose of solid waste within the city limits of Fayetteville.

Resolution 56-07 as Recorded in the office of the City Clerk.

Compensation and Classification Phase III: A resolution approving a contract with HR Factor in the amount of \$46,885.00 to complete Phase III of the Compensation and Classification System Project; and approving a contingency not to exceed \$1,000.00.

Resolution 57-07 as Recorded in the office of the City Clerk.

Arkansas Historic Preservation Grant: A resolution authorizing the Long Range Planning Division to apply for and accept a 2007-2008 Certified Local Government Grant in the amount of \$7,313.00 to fund travel and training for the Fayetteville Historic District Commission and approving a budget adjustment recognizing the grant revenue.

Resolution 58-07 as Recorded in the office of the City Clerk.

Safe Neighborhood Heroes Grant: A resolution authorizing the Fayetteville Fire Department to apply for and accept a Sam's Club "Safe Neighborhood Heroes" Grant in an amount not to exceed \$1,500.00.

Resolution 59-07 as Recorded in the office of the City Clerk.

Fayetteville Arts Council Establishment: A resolution creating the Fayetteville Arts Council and establishing the bylaws, rules and procedures to govern such council.

Resolution 60-07 as Recorded in the office of the City Clerk.

Alderman Cook moved to approve the Consent Agenda as read. **Alderman Lucas** seconded the motion. Upon roll call the motion passed unanimously.

City Clerk Sondra Smith: Mayor Coody submitted a veto in writing so we have to present it to the Council tonight. You may choose whether or not you would like to place it on the agenda.

Mayor's Veto

Alderman Allen moved to add the Mayor's Veto to the agenda. **Alderman Thiel** seconded the motion. Upon roll call the motion passed unanimously.

City Attorney Kit Williams: At the last meeting I was concerned, I did not think you could actually veto without putting it in writing and filing it in the Clerk's office and that was in fact correct. Every vote that happened after that was of no effect. The override could not be done until this meeting which also means that the position that was then voted on to place another person in the position could not be done because there was not an open position. Tonight it is up to the City Council to decide if you want to do anything in relation to this veto. Secondly you would need to appoint someone to the Planning Commission. Ms. Clark has submitted her resignation so regardless of the veto there is a position that is open in the Planning Commission and someone would need to be appointed to that.

Alderman Cook: Based on our discussion at Tuesday's meeting I'll just go ahead and make a motion to appoint Matthew Cabe to fill that position.

Alderman Cook moved to appoint Matthew Cabe to the Planning Commission. **Alderman Thiel** seconded the motion. Upon roll call the motion passed unanimously.

Matthew Cabe was appointed to the Planning Commission.

UNFINISHED BUSINESS:

ANX 06-2288 (Broyles): An ordinance annexing that property described in annexation petition ANX 06-2288, located at 3601, 3611, and 3677 Weir Road, containing approximately 10.61 acres. *This ordinance was left on the Second Reading at the March 20, 2007 City Council meeting.*

Alderman Lucas moved to suspend the rules and go to the third and final reading. **Alderman Cook** seconded the motion. Upon roll call the motion passed unanimously.

City Attorney Kit Williams read the ordinance.

Jeremy Pate, Director of Current Planning: I don't have anything further to add on the annexation. The Planned Zoning District which is the item that follows this we didn't get a chance to present that last time so if you have any questions on the annexation I would be happy to answer those.

Alderman Jordan: I haven't heard anything against it. It's been through the Ward 4 meetings and we've looked at this project quite a bit. There will be some discussion on the residential PZD that I may want to talk about but as far as the annexation goes we have looked it over and I don't have a problem with it.

Vice Mayor Jordan asked shall the ordinance pass. Upon roll call the ordinance passed 6-1. **Alderman Cook** voting no. **Alderman Rhoads** was absent during the vote.

Ordinance 4996 as Recorded in the Office of the City Clerk.

R-PZD 06-2281 (Holcomb Heights): An ordinance establishing a residential planned zoning district titled R-PZD 06-2281, Holcomb Heights, located at the southwest corner of Weir and Salem Roads, north of Salem Meadows Subdivision: containing approximately 13.47 acres; amending the official zoning map of the City of Fayetteville; and adopting the Associated Master Development Plan. *This ordinance was left on the Second Reading at the March 20, 2007 City Council meeting.*

Alderman Lucas moved to suspend the rules and go to the third and final reading. **Alderman Ferrell** seconded the motion. Upon roll call the motion passed unanimously.

City Attorney Kit Williams read the ordinance.

Jeremy Pate gave a brief description of the R-PZD. He stated staff is recommending approval of this Planned Zoning District.

Alderman Thiel: Those look like multi-family, is that not correct.

Jeremy Pate: Those are all single family detached homes.

Alderman Thiel: That is one very large house.

Todd Jacobs, Project Manager: This project is high quality and we are proud of it as a design group and the development team as well.

He went on to give a power point presentation on the project.

Alderman Thiel: At the very last minute we received this request for a change in the street dedication in the cost share.

Alderman Jordan: Honestly I would like to take this to the Street Committee next week if that is doable.

Alderman Thiel: Can we do that though and still approve this PZD?

Alderman Jordan: Yes that would be fine. Some of the PZD is hooked into what we are deciding to do on the roads if I remember correctly.

Lex Broyles, Project Developer: We have committed to doing 5% attainable housing in this project and in all our future projects. After meeting with Alderman Lucas, Alderman Jordan, and Gary Dumas it's something they have presented to us and we have accepted. One of the reasons that is so difficult, is it is difficult that you are not seeing it anywhere and compounding that is the fact that we have to line up Weir Road with Gypsum Road coming out of Crystal Springs. That's our land to the north that we have right now that is undeveloped because it's an awkward triangle so it takes our land and we're having to do the entire cost of moving the street, losing density and everything else. What we've asked for is a cost share on the road. We would still curb and gutter like we would and improve the road but just a cost share on the movement itself which we thought was fair. It is something that would make it a little more assessable for the attainable housing.

Alderman Jordan: What I wanted to do before I actually made a commitment like that, I wanted to run that through the Street Committee and I wanted to be sure that the Council was on board with it. I wanted the Street Committee to see the designs and the different ways that we could do that.

Alderman Thiel: That is fine but procedurally I was wondering how we would do this, would we have to go back and amend this PZD? If we are not going to make that a part of the condition at this time and we approve this PZD tonight then we would have to come back and amend it wouldn't we?

Alderman Jordan: Everything seems to be tied to the cost share. To me the best course of action is to hold it to the third reading tonight, have a Street Committee meeting next week and then at the next City Council meeting we will have everything thrashed out.

Alderman Ferrell: I applaud the developers and the Alderman that are working on this to have a have 5% attainable housing goal and I think this is something that would be good for our whole city.

Lex Broyles: As much as our team would like to take credit for that this has been a very coordinated effort between our group, Jeremy Pate, staff, Ron Petrie, Lioneld Jordan, and the Mayor's office. It's the contributions of this entire group that has made this project something that we are proud of. It really exemplifies the 2025 Plan and this is a project that we haven't had any comment from the public all the way through this process. That's from a lot of meetings from the neighbors of Ward 4 and again the contributions from the city.

Alderman Allen: I think that is such a wonderful way to go about the attainable housing to put 5 % or whatever percent within the project and make it a part of the whole rather than setting aside the attainable housing to be tomorrow's loans. This way is very effective and I applaud you for that.

Alderman Cook: Did we discuss this at Street Committee 1 ½ years ago?

Alderman Jordan: It's the same intersection. We did kick that around. It's the one that cuts a pie across there and I wanted the new Street Committee to be refreshed on what we have.

Todd Jacobs showed a few more slides of what the project will look like.

Alderman Lucas: Is the attainable housing contingent upon the city cost sharing with the street?

Alderman Thiel: That's a very good point because that's not in the conditions of approval.

Lex Broyles: No ma'am we are not doing a quid pro quo but we are asking in good faith if you guys could help us out on that.

Alderman Lucas: Then can we not go ahead and approve this and work the cost share out? It's going to have to come back to the City Council isn't it if we cost share.

Ron Petrie, City Engineer: The cost share would be a formulation by the Council.

Alderman Jordan: So we could go ahead and approve this tonight and then come back with the cost share and we could meet as a Street Committee anyway.

Lex Broyles: That would be our preference.

Alderman Thiel: I certainly applaud the attainable housing being volunteered but is it part of the condition? I can't find it.

Jeremy Pate: It is not currently. Those letters were submitted to you with the Final Agenda packet and we have not included those as conditions of approval at this time.

Alderman Thiel: So they're not a condition of approval?

Jeremy Pate: Not right now they are in offer and a commitment by the applicant to you. I asked the City Attorney if the applicant is committing to that if it could be part of the statement of commitments in conditions of approval if he felt it was appropriate.

Alderman Thiel: I think we are accepting that it is a condition of approval.

City Attorney Kit Williams: It depends on the applicant if he wants it to be within the conditions of approval. Otherwise it is an oral offer that is probably not enforceable.

Lex Broyles: As long as it does not cause a delay we do not have a problem with it being a condition of approval. We don't want a delay.

Alderman Thiel moved to amend the ordinance to add as a condition of approval the project will have 5% attainable housing as defined. **Alderman Ferrell** seconded the motion. Upon roll call the motion passed unanimously.

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

Ordinance 4997 as Recorded in the Office of the City Clerk.

ADM 07-2477 (BioBased): A resolution to approve a change in the building elevations and materials previously approved by the City Council as required in its contract with BioBased Realty, LLC. *This resolution was Tabled at the March 20, 2007 City Council meeting to the April 3, 2007 City Council meeting.*

Alderman Jordan: Mayor I would like to leave this tabled because I would like to put together a meeting with the neighborhood to discuss this building design.

Alderman Jordan moved to table the resolution to the April 17, 2007 City Council meeting. Alderman Ferrell seconded the motion. Upon roll call the motion passed unanimously.

This resolution was tabled to the April 17, 2007 City Council meeting.

Amend Chapter 92 – Animal Ordinance: An ordinance amending Chapter 92, Animals, Code of Fayetteville, to improve the treatment of animals and ensure the safety of the citizens of Fayetteville. *This ordinance was left on the First Reading at the March 20, 2007 City Council meeting.*

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

City Attorney Kit Williams read the ordinance.

Alderman Thiel: Over nine months ago an Ad Hoc committee was formed to review and update the current animal ordinance for a couple of reasons. One was to update the wording and basic fees, the second was to deal with citizens concerns about dogs running at large, barking and aggressive behavior. I believe the committee dealt with those issues by bringing forward a progressive, proactive ordinance. The committee was made up of the following people: Jill Hatfield, Animal Services Director, Dr. Amy Kaspriss, Animal Shelter Veterinarian, Tony Rankin, Animal Services Officer, Mitzi Odell, Animal Services Coordinator, Dominic Swanfield and Kevin Phillips, Community Policing Representatives, Brian Thomas, Assistant Prosecuting Attorney's office, Lib Horn, former Animal Services Director, HSO Representative, Eva Madison, local attorney and Humane Society of the Ozarks Representative, Harve Thorn, Therapy Dog Trainer, Robert Brandon, local attorney, and myself. These people both the city personnel and citizens should be commended for the time and effort they put into these revisions. In addition there were many concessions and changes made based on the public input at those meetings.

The committee concentrated on dog issues in response to the complaints that the Animal Services staff were receiving. We didn't really review the existing leash or confinement laws for cats. However from emails and calls we have received it is evident that this policy probably needs to be reviewed. I would be very reluctant to simply amend a proposed ordinance to allow cats to run at large without thoroughly reviewing this policy. It's a complex issue. Model trap neuter and release programs can be a very successful way to deal with cats, however they are costly and they take a large community involvement. I believe that an ad hoc committee with a new focus should be formed to study the entire cat issue.

I have also heard from people wanting a no kill shelter. That possibility could also be discussed by this committee. However getting the pet population under control is the first step to a no kill policy. The incentives this ordinance provides along with a low cost spay and neutering offered

by the city, Humane Society of the Ozarks, and the county will make a difference. After we hear from the staff and the public tonight I plan to make an amendment to this ordinance to go into effect six months from its adoption rather than the usual 30 days. That should give everyone the time to get their pet spayed or neutered if they choose to do so and to provide the proper enclosures. This ordinance went through the Ordinance Review Committee and was recommended for passage to the full council.

Jill Hatfield, Animal Services Manager gave a description of the new proposed ordinance. She spoke on the dangers of chaining an animal and went on to describe the details of each section of the new proposed ordinance.

Alderman Thiel: Under definitions, I received a call about the lead. We had originally talked about four feet and I wanted to emphasize that that has been extended to six feet but the animal must be kept within four feet of the owner. That is only in public events of 100 persons or more. That's not walking the dog in the park. That's for the safety of people like at Springfest and events like that where you have dogs that are running too far out and trip people and that sort of thing.

Alderman Ferrell: Would you have any idea of what percentage of the existing animals in Fayetteville that are spayed and neutered are licensed in the city, specifically on cats?

Jill Hatfield: I don't have specifically on cats, I can tell you about three percent of the animals in Fayetteville are licensed. It runs anywhere from 2,600 to 3,000 licenses sold per year.

Alderman Ferrell: I know you guys did a lot of work on this and some of it I like and some of it I don't. The numbers say from 2003 until this last year there were 9,000 animals that have been spayed or neutered. Could you give me a breakdown on how many of those were paid for by the dog's owners and how many of them were low income individuals who received assistance in the cost.

Jill Hatfield: The 9,000 that we quoted were within three programs. The three programs available today are the city's program, Washington County's program which is free to their citizens and the HSO Program which gives a coupon of a discounted amount and they go to their own veterinarian. About 7,000 of those animals were done at the city shelter and those were low cost spays and neuters. We did those at a \$10.00 cost to the citizen.

Alderman Ferrell: A lot of my concern, what does a person have to do to demonstrate that they can be considered for a low cost spay or neutering?

Jill Hatfield: Through the city program, they basically have to fill out an application and they have to give some form of income level such as an income tax statement, recent check stub and then we ask to make a copy of the photo I.D. so we can check the person on the check stub. That is all we require. So it's relatively easy. We also provide a rabies vaccination for \$10.00.

Alderman Ferrell: That sounds like a pretty good deal to me but I'm worried that there are parents that are not going to come down there and show their W-2. So that child is not going to be able to have a pet or they're going to be a renegade. Do you plan to implement this with existing staff?

Jill Hatfield: Correct.

Alderman Ferrell: So there won't be any additional vehicles?

Alderman Thiel: No, we talked about this at the budget meeting that this probably will require additional staff at some point. We need this enforcement to be better than 3%.

Alderman Ferrell: How will this affect the community's we contract for service with? Will their animals be subject to the same things that the dogs in Fayetteville will if they are picked up and brought to our pound?

Jill Hatfield: No, they will not. If an owner comes to reclaim, they have existing fees that they pay through their city. We just shelter.

Alderman Lucas: Jill, are they going to go out and measure confinements or is it going to be complaint driven?

Jill Hatfield: Right now that is how we do most of the things that we do because we do not have the staff. Our biggest key is complaint driven. We don't have the staff at this point to go out and educate as much as we'd like to. I'd be the first to say there are a lot of opportunities that we miss and we miss those opportunities because we are busy enforcing, trying to adopt, and euthanizing.

Alderman Jordan: I have had a few phone calls on this. There are two concerns that I keep hearing over and over again. One is the lease laws for the cats. The other one is they see cats and dogs running loose all the time. How are we going to enforce a stricter law if we're not enforcing the law that we have right now.

Jill Hatfield: That is part of it. It's sort of like when we do policing of the speed limit, some of us get caught and some of us don't. It is difficult and we can't be there at every time that a dog or cat is at large. When we're called we go out there. We have animal services officers that are on call 24 hours a day to try to go to the trouble spots where animals are let go and there's no fences. At this point it is very much complaint driven.

Mayor Coody: I will point out that there is a difference between not enforcing our ordinances and not being able to catch every thing at the same time. We do enforce the ordinances.

Alderman Jordan: I don't disagree with that, that's just some of the complaints we are getting.

Joe Alexander, a citizen gave the council a stack of petitions that have been signed by people who are opposed to the new ordinance. He stated if you pass this ordinance I would say you are not representing the majority of the people in Fayetteville. He stated the definition of dangerous animals is too broad. I would only call a dog dangerous if he has a history of biting or attacking people and not just because he seems to be doing his job as a watch dog to guard his owner's property. He also addressed the conditions required to fit the definition of a hobbyist. He stated I don't like all these conditions required to fit the definition of a hobbyist, I like people to be free to pursue their hobbies without the government defining what makes them a hobbyist. The definition of kennel and pet shop, I don't like the idea that this activity has to be confined to places that are specifically zoned for that. Personally I do not see a population problem with dogs and cats around Fayetteville. I see a few dogs and cats running around here and there but it does not seem to be a big deal. I don't like the restrictions of selling or giving away a viscous

animal, if someone wants to buy this animal they should be able to buy or receive one as long as they are properly notified that the animal has been deemed to be viscous. I agree that everyone seems to think that the idea that cat's have to be on a leash is ridiculous and Alderman Thiel said that she thinks that should be revisited and I would certainly agree with that.

Jennifer Shreave, a citizen stated I am here to urge the Council to vote for the proposed changes to the animal ordinance. While I support all of the proposed changes I would like to focus on the two I feel the strongest about. The first one is the banning of chaining dogs to a stationary tether or a stake in yards by owners; first of all we have a safety issue. When you take a social animal like a dog and chain it to a stake, this will lead to boredom, chronic barking, frustration, anger and finally aggressive and dangerous behavior such as biting and attacking. She went on to discuss statistics on dog bites caused from dogs being chained. I would like to urge the Council to make Fayetteville the second Arkansas city to ban chaining. The second point I wanted to make was with regards to increasing the yearly license fee for unneutered and unspayed pets, unaltered animals are more likely to wander and behave aggressively. If neutering decreases roaming by 90% we can make a real dent in this. I urge the Council to please institute these changes and to make our community a safer and more humane place for all us.

Christian Gunn, President of the Humane Society of the Ozarks read a letter from Eva Madison, the former President and a member of the Animal Ordinance Ad Hoc committee. The letter simply urged the City Council to adopt the proposed ordinance. It also addressed her concerns about chaining or tethering animals.

Jeremy Gunn, a citizen described an instance of an animal that was chained up. He stated nothing can really be done about it. I am for this proposal just for that reason because I like to know that if I drive by and see a dog that is chained in the front yard and it's the 6th time this year that I've seen puppy's for sale, I'd like to know that I can call the city and they will do something about it.

Judy Bond, a certified dog trainer stated I want to encourage the passage of this ordinance for the safety of our animals.

Carmen Nelson, a business owner encouraged the City Council to pass the ordinance. She stated as a volunteer at the shelter, it's heartbreaking that you see full bred, wonderful animals coming in because they have no tags and they are not micro-chipped. If we could pass this ordinance and people could have their tags on their dogs, they will go home and I won't have to see any kind of animal at the shelter.

John Paully, resident of Ward 1 voiced his concerns regarding the ordinance. He stated I was wondering mainly how the City Council was going to consider measures of success for when these laws are implemented. These sort of spay or pay type of laws tend to increase cost and I'm all for putting more animal officers on the street. I feel we're extremely understaffed. The next question is regarding how you classify keeping a dog in your yard. We had a discussion at the last meeting about these ordinances pertaining to the underground electronic fences and I never really received an answer to that and the discussion lead toward saying that they would not be allowed because the way to restrain the dog is either on a trolley system when you are at home or if they are in a fenced yard. I wanted clarification as to whether those are going to be allowed or prohibited.

Alderman Thiel: There are some POA's that do not allow fences and so that is a concern too. To some extent that might be a little bit complaint driven and some areas where a dog has stayed within a confined electronic fence forever, that would never be a problem.

Mayor Coody: I believe the first question was what metrics we would use to judge success.

Alderman Thiel: I think that is very important. The euthanasia rate would be a very good way of measuring whether or not it was successful and whether or not we were getting less dogs and cats into the facility. If this is passed, it is very important and we do need an officer that all they're doing is making sure the licensing is being complied with. The fees themselves would compensate that employee. Some cities have at least one officer and that is all they do.

John Paully: So are you saying the underground fences will be allowed.

Alderman Thiel: According to the definition, yes, if it prevents the animal from escaping I suppose it could be.

Jill Hatfield read the definition in the ordinance. She stated really everything that we do when we deal with living creatures is a unique, case by case basis. We don't really find that there are any two instances that are exactly the same so we have to deal with them with the person and the animal that that particular situation is talking about. How do we know we are successful, again it goes to the intake rate, how many animals are coming in and how many animals are euthanized. That is considering that the adoption and the reclaim rate stays the same. I think our re-claim rate would go up if more folks would actually license their animals.

John Paully: I would urge the committee to at least consider hiring another officer. It would be nice to have people patrolling trying to keep those things in line.

Lib Horn, a resident stated the current ordinance met our needs when it was passed back when we were a small city. Ordinances have to change to meet the current needs of the city. I like this ordinance because I think it meets the needs that we have now. I really like the part that encourages spay and neutering. The only way we can ever have a no kill shelter is to get the population under control. Ms. Thiel said let's wait six months to get it enforced. During that time people will have time to use the shelters low cost program and the county and the Humane Society's low cost program. We all believe this is critical, we must stop the killing. For too long we have dealt with the over population problem by killing the surplus, that's wrong and we don't want that to be the way Fayetteville deals with things. Mr. Ferrell, the child will be able to have the animal if he gets it from the shelter, it will be neutered before it leaves there, if he doesn't get it from the shelter, he can use one of the programs and the Humane Society's program has a little bit higher income limits than the city's does so we will manage to get that animal spayed and neutered for that child.

Alderman Ferrell: Let's just say you have a 12 year old boy and you want a dog and you go down there, your father works very hard for a living. They say you can get this dog but Dad you have to take off work to go down there to show your W-2, tell me how I can get that dog without my dad having to take off work.

Lib Horn: You can't get the dog if you are only twelve because the twelve year old can't make a contract. Your dad has to come down and help you get it in the first place so while he is there he can show the income.

Alderman Ferrell: So you are not going to get one unless you have an adult there?

Lib Horn: Because a child can't make a contract. You are making a contract with the city based on the care you will give this animal that you will obey the city's ordinances and treat the animal humanely and if you no longer want it you will return it.

Alderman Ferrell: You just talked about the six month grace period, and you said take them and have them spayed or neutered during that period of time, after the six months is up will the help for the spay and neutering program from the city and the Humane Society of the Ozarks and the other one still be in full?

Lib Horn: Yes, that is an on-going program. It will go on until we don't need it anymore.

Alderman Thiel: We have a full time veterinarian. We have a good program and it has been going on for several years.

Nan Lawler, resident of Ward 1: I have seen Fayetteville's animal ordinance just get better and better. There is quite a push to confine cats and a lot of responsible people do confine their cats. I have some misgivings in terms of the enforcement realizing how few people license their dogs to begin with. I want to encourage you to pass this amendment; I think it is worth a try.

William Couch, a citizen stated I've had hunting dogs all my life. I've had dogs since I was big enough to walk and I have never had any of them go to the animal shelter or any of them bred that I didn't want bred. I think all this criteria is a crock.

Emily Williams, a citizen stated in the definition of kennel it specifically mentions individual, it doesn't tie it to a hobbyist, somebody who may breed once every year, every two years, and every three years. It talks about having to be zoned for business and that is something that needs to be looked at again as to whether or not that is really the definition that you want in there. The other thing I want to address is the chains. I have done a lot of rescue in my life. Dogs are social animals and they need company. I hate chains with a passion, at the same time we need to be very careful with the ordinance about chains. There are people who chain their dogs for what they feel are necessary reasons. They are doing what they feel they can do and what is best. I would like to see the city address this problem in a constructive way instead of just suddenly at the end of the six month grace period going and saying it's against city ordinance. I would like to see you do something to try to help people who have dogs on chains who cannot put up a fence for whatever reason. If you are going to tell them they cannot put a dog on a chain then we need to as responsible citizens, not just the city, council and animal shelter, we need to do something to try to help them get the dog off the chain if they are willing to do it. Some of the people are willing to do it they just don't have the means of doing so.

Alderman Thiel: In response to your question about the kennel or pet shop definition, that has always been in existence, that's business. We didn't change anything. Whenever we visited with Planning staff about this we discovered that was the ordinance. It just wasn't in this ordinance. We came back and changed this because we don't want kennels next door to residents. It's a big problem in residential areas but as used herein the term kennel or pet shop can be construed to include any individual or establishment with the intent and purpose of raising, training, boarding, or selling cats, dogs, birds, mice, rats, fowl, or fish, or other small

animals for higher profit. I think that is pretty clear. I think the Animal Services Director and officer understand what the intent and purpose is. I think it is also going to be complaint driven.

Emily Williams: I understand that but that wasn't what I was asking and I'm not sure it actually is clear cut because it lists individuals with the intent of raising and selling a litter of puppies. So that does mean that even though somebody doesn't have what is recognized as a kennel, we're talking about the person who is considered a hobbyist. This does not affect me, but I believe the way that is worded it says if someone has a litter of puppies even if that's the only litter they have and their intent is to sell them and they are not in an area that is zoned for that then they would be in violation of the ordinance. I just don't like to see ordinances that say this is the ordinance but we'll overlook it.

Alderman Thiel: It says intent and purpose of raising. I think that "intent and purpose of" clearly defines that that is a business.

Emily Williams: Does it?

Alderman Thiel: Purpose is the word we added.

Emily Williams: But your purpose is to sell a litter of puppies whether it's one litter or ten litters. I'm just saying it may not be as clear cut as it seems to you because you've read it so many times.

Alderman Thiel: Well we changed it and actually revised it, on your comments.

Emily Williams: All I'm saying is I think there may actually be an issue there that we are not aware of. I don't like to see an ordinance that says it's only going to be enforced if someone complains. I would like it if it could be looked at and made sure that that is what it says so if somebody does breed one litter of puppies they are not in violation of this ordinance because where they live is not zoned for that.

Mayor Coody: Kit, I suggest you come up with the right answer on this one.

City Attorney Kit Williams: All I can say Mayor is I'm glad the City Council rezoned our land to residential agricultural so we don't have a problem with that.

Alderman Thiel: I would like to make the amendment to add a section to the ordinance that states that it will not go into effect for six months.

Alderman Ferrell: Does that mean if this is amended between now and passage, the amended would go into effect in six months.

Alderman Lucas: We probably would never get it to where it will please everyone but I think it's a move in the right direction. I have gotten a number of calls saying please approve this.

Alderman Thiel moved to amend the ordinance to have it effective 6 months after passage. Alderman Lucas seconded the motion. Upon roll call the motion passed unanimously.

Alderman Cook: There is one comment in here that says the animal shall be micro-chipped at the expense of the owner. How much does it cost to micro-chip?

Jill Hatfield: At the expense of the owner right now at the shelter it is \$20.00.

Alderman Cook: I had another call about the size of the pen being 10x10 for dogs and cats. I've seen some rather large dogs and there was some concern whether 10x10 was large enough for some breeds of dogs. I was just curious where the 100 square foot came from.

Alderman Thiel: We looked at other cities. Maumelle has 150 square feet per dog over six months, Lawton, Oklahoma 100 square feet, Sulphur Springs, TX 100 square feet. East Long Meadow, Massachusetts 100 square feet, San Bernardino 100 square feet, it varied and that's why we rounded it up to that. We went back and forth and settled on what seemed to be the most common.

Alderman Lucas: Something about what could be purchased.

Jill Hatfield: Right, we did at one time go by 10x15 but when you look at purchasing a kennel that is a special purchase and they don't make them that size. So we went back to a 10x10 which is standard and they are around \$150 to \$250. We looked at the ease of the citizens and it being cost effective for them.

Alderman Cook: Just an observation, one of my dogs is one that ran away from his owner because it was tethered to a tree and got frustrated and finally we just kept her. Another one we got from the shelter. We love our dogs. One thing that makes me nervous is it puts a lot of pressure on the animal control officer because there is a lot of instances in here where it's up to their discretion, the way they see things going and that is going to put a lot of burden on them. I think that overall the changes that are in here are good changes because responsible owners most likely won't be affected at all by these changes. Your changes are reasonable I'm just concerned about the burden it puts on the control officer.

Alderman Lucas: One of things that we talked about was it gave them something to back them up to what they could do in enforcing things. Whereas now we weren't backing them with our ordinances.

Alderman Cook: I agree that you are not going to make something perfect. I know there is going to be issues where some people are going to say that dog is driving me crazy and then there are going to be neighbors going back and forth with each other. Who's going to get involved with that? I would hate for the city to even get involved with that. It's going to happen at some point, it probably does now.

Jill Hatfield: It does, most of our barking complaints go that way.

Alderman Cook: That is going to be a difficult situation but I agree with your comment.

Alderman Allen: I'm hoping we can figure out some way to handle the "acts in an aggressive manner". Still I have some concern about it being arbitrary. I think they can act in an aggressive manner and it not be anything that goes beyond that kind of concern.

Alderman Lucas: I believe them when they act that way.

Alderman Allen: I think sometimes they are playing and I thought there might be a wording we could use so it wouldn't be as arbitrary as to what that really means.

Alderman Thiel: I might just say that that was something that was discussed a whole lot. There were a lot of concerns about that and how that would be judged. You have to remember this is like anything else, we added that this person has the right of law to argue. It takes an observation by the animal control officer and the Animal Services Director. One committee member wanted there to be a section in here that dealt with animals that had never bit anybody but might have that potential. They are not put down or anything, they just have to have stronger restraints. I don't think it's that difficult to comply with. They need to have a locked enclosure so that children can't get in.

Alderman Allen: I just wondered if there was anything on the books about the number of dogs or cats a person can own.

Jill Hatfield: No, there isn't. Due to the variety of sizes of lots and houses and such, that is one of the benefits of the 10x10 to allow people who have certain areas to go with the amount of animals in a space rather than how many per person.

Alderman Jordan: I need clarification on something. We are talking about the minimum pen size being 10 x 10. I understand the reason behind not wanting to chain a dog, but if a dog is on a stake in the ground and it's a 20' chain and it's a large dog, what we're saying is it's better to put it in a 10x10 pen than to put it on a 20' chain. Why is that?

Jill Hatfield: There are several options. You can put them in a fenced in area that is bigger or on a trolley system.

Alderman Jordan: But they could put a large dog in a 10x10 pen.

Jill Hatfield: Yes, they could. Part of that was the safety of children so the enclosure helps with that type of situation where it is an enclosure and it's not a trolley situation where the dog is out there.

Alderman Jordan: I understand but that doesn't seem very humane to me.

Alderman Thiel: I think the big argument by one of the committee members was that the animals that were chained sometimes a child can wander in and there is no fence around the dog and that child gets bit, where if it is in a pen or if it is on the trolley system with the owner there, that's the key. We are looking at both the humane treatment of the animals but the committee was also very balanced and some of the committee members were concerned about the citizens and the children and the bite statistics we have in this city. We do have a considerable amount of bites and a big part of those have come from chained animals because a child can get in there.

Alderman Jordan: I am not disagreeing with that, but I have a feeling that folks are going to take a 10x10 pen and slap a large dog in it and I do have a problem with that.

Alderman Ferrell: I'm an animal lover, and my concern is there is a certain part of this that's going to be like herding cats and that is what I'm trying to figure out.

Alderman Thiel: We have heard from a lot of people and I would like to move this forward.

Alderman Cook: You have been working on this a long time and I understand that but this is the first time that we have debated it amongst ourselves and the public and that is my only concern.

Alderman Thiel: Okay, let's leave it on the second reading.

This ordinance was left on the Second Reading

Alderman Thiel: I do want to point out that the 100' pen that you are referring to, that is the minimum size. People can get bigger.

Alderman Jordan: I understand that. I would rather see it bigger.

Alderman Lucas: But what if they have a little dog.

PUBLIC HEARING:

Public Hearing for Monthly Sewer Rate Ordinance.

Mayor Coody opened the Public Hearing

There was no public comment

Mayor Coody closed the Public Hearing

UNFINISHED BUSINESS

Amend Chapter 51 – Sewer Volume Based Rates: An ordinance amending Chapter 51, Water and Sewers, of the Code of Fayetteville, to adjust monthly sewer rates. *This ordinance was left on the First Reading at the March 20, 2007 City Council meeting.*

City Attorney Kit Williams read the entire ordinance.

Alderman Thiel: I think the fact that it is a reduction in fees, is probably why no one is here.

Alderman Jordan: This is only until after the rate study comes in right?

David Jurgens, Water/Wastewater Director: These numbers were derived from the evaluation of the rate study and the preliminary looks from the rate study that is underway as we speak. We do not anticipate at this point with what we've seen thus far that there would be any recommendation for a sewer rate increase at this point immediately following the rate study. We will have one in the future but we are not looking at having one for outside city customers based off the rate study at this time. This number that is proposed in this ordinance was based off of the latest information from the rate study.

Alderman Cook: What is the status of the rate study?

David Jurgens: We are looking at the rate study coming out probably late spring early summer. We are looking at in the next two or three months. It has taken us a little bit longer than we originally planned.

Alderman Cook: I will say that \$4.66 was calculated last fall or summer.

David Jurgens: Yes sir, but when we met with HDR, the rate consultant a month and a half ago they said they thought that number was still valid.

Alderman Cook: We are doing this based on negotiations with Farmington. This is tied with our Farmington Wastewater Service Contract. Going back and looking at the Black and Veatch Study there were some concerns about not being able to replicate those rates based on the assumptions that they made. So we went back and brought HDR in and they looked at them and made the same comment, they couldn't quite replicate it and we asked them to calculate it and this is the number they came up with. If we move to reduce Farmington's rates we should reduce that for all outside customers because that's the fair thing to do pending the next rate study.

Alderman Ferrell thanked Alderman Cook for the time he spent working on this project.

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

City Attorney Kit Williams read the ordinance.

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

Ordinance 4998 as Recorded in the Office of the City Clerk.

NEW BUSINESS:

Fayetteville and Farmington Wastewater Service Contract: A resolution approving a contract between the City of Fayetteville, Arkansas and the City of Farmington, Arkansas to provide wastewater collection and treatment system service and operations and maintenance service to the City of Farmington; and approving a budget adjustment in the amount of \$650,000.00 to implement the refund of a portion of rate payments made from February 9, 2004 through April 30, 2007.

David Jurgens: This contract was approved at the Farmington City Council meeting last night and they delivered two signed copies to the City Clerk's office this morning. It has taken a long time to get to this point and we feel it is equitable and resolves problems that were existing from the previous contract in 1993 and we're glad to be at this point.

Alderman Thiel: Where does this budget adjustment come from?

David Jurgens: This will be coming from the fund balance of Water and Sewer.

Alderman Lucas: Farmington has to adopt a sewer ordinance to match ours, is that right?

David Jurgens: Yes Ma'am or they can adopt our ordinance by reference.

Alderman Lucas: How soon was that going to happen?

David Jurgens: That is already in place because that requirement was in the previous contract as well. The field folks enforce our ordinances just exactly like they do in Fayetteville.

Alderman Lucas: Impact fees, I saw in here where Fayetteville has impact fees, Farmington has impact fees, I'd like to know who gets these impact fees and how does that work?

David Jurgens: What will happen is residents of Farmington will pay impact fees to Farmington and they will also pay impact fees to Fayetteville because their added wastewater will have an impact on both cities systems. The Farmington rate will be based on whatever the impact fee study comes up with. There's one anomaly and that is if there are Fayetteville customers whose wastewater flows into Farmington and back into Fayetteville, those customers by this contract will pay both fees as well. The impact from their wastewater affects both the Farmington system and the Fayetteville system.

Alderman Lucas: So everybody out there will be paying two impact fees?

David Jurgens: Everybody in the Farmington system or that flows into the Farmington system, yes.

Alderman Lucas: On page 29 of 38 it says "if Fayetteville annexes basin I54 or basin I55, I think that is kind of a typo. Are we going to annex something else?"

David Jurgens: This is a 15 year contract. The reason why is basins I54 and I55 are currently not in either city. If you look at the map at the basins in the very bottom we included those votes in the Farmington calculation for determining what percentage of each city paid. Those two basins are assumed by the contract to be Farmington basins. We were trying to make sure that we thought everything through for the next 15 year period.

Alderman Lucas: Thank you very much. I know it states in another place that if Farmington annexes them, we still pay for the cost of sending service to the area?

David Jurgens: If Farmington annexes those they are already paying the cost of the pipes to service that area. That is included in the Farmington percentage.

Alderman Lucas: I thought it stated in here that if Farmington annexed them we still had to pay for the cost of it.

David Jurgens: No ma'am, that is only if Fayetteville annexes them.

Alderman Ferrell: Approximately how many customers are you talking about that would have to pay both the impact fees?

David Jurgens: For both impact fees the Fayetteville portion of the population is 4,318 at 2030 and so the 2030 anticipated population flowing into the Farmington system in 4,318 and that's population numbers and not households.

Alderman Ferrell: Do you have an estimate on households?

David Jurgens: It would be that number divided by 2.6. We're looking at about 1,800 or 1,900.

Alderman Ferrell: And they are cognizant of this?

David Jurgens: It would be any new developments that would be going in that basin and we would inform them of the same method that we would inform any other. Any development going in that area would certainly be aware of it.

Alderman Cook: The issue with that is Farmington's capacity is limited at this point so their impact fee will help increase their capacity so that is why they have their impact fee and then we have ours to cover our Wastewater Improvement Program.

Alderman Cook moved to approve the resolution. Alderman Jordan seconded the motion. Upon roll call the resolution passed unanimously.

Resolution 61-07 as Recorded in the office of the City Clerk.

ADM 07-2532 (Bungalows at Cato Springs PZD Modification): An ordinance amending a Residential Planned Zoning District entitled R-PZD 05-1797, Bungalows at Cato Springs, located on the north side of Cato Springs Road and west of Cline Avenue, containing approximately 5.52 acres, more or less, to reflect revised planning area boundaries and site layout as described and depicted herein.

City Attorney Kit Williams read the ordinance.

Jeremy Pate: Planning staff recommends approval of the ordinance amending this already approved Planned Zoning District, it was before the Council in December of 2005 and it was approved as a concept PZD at that time. The applicants came forward with a preliminary plat for development, meeting all the criteria established by that meeting. What the Council dictated to them and one of the conditions of approval is compared on pages 6 and 7. The determination made by the Planning Commission was to have that stub out and this project is now under construction. Instead of having lots off the end of the cul-de-sac the lots get shifted to each side of the road. So this is simply a modification to take out the planning area that was indicated at the end of that cul-de-sac and make it much like the other planning areas that were already approved. The number of lots would remain at 31 which is the same number of lots approved by the Planning Commission as part of the preliminary plat.

Alderman Thiel: I asked at the last meeting whether or not all the neighbors have been notified and I have not been contacted by any. When I look at this new configuration I think some of the residents that were most concerned were those back two existing lots on Pine Avenue and they actually have improved the density behind them and the rest of the density stays the same along the other existing lots. Everything on the north and west of this is not adjacent to existing homes.

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

City Attorney Kit Williams read the ordinance.

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

City Attorney Kit Williams read the ordinance.

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

Ordinance 4999 as Recorded in the Office of the City Clerk.

Amend Chapter 152, Administration: An ordinance repealing and replacing Chapter 152, Administration, of the Unified Development Code to designate and clarify the administration, interpretation and enforcement authority of various sections of the UDC.

City Attorney Kit Williams read the ordinance.

Jeremy Pate: This is an ordinance amendment that Planning staff is requesting that you make to the Unified Development Code; it would repeal and replace Chapter 152. Our current Chapter 152 is quite outdated and there are a number of chapters that have no administrative authorities so this would catch us up to that.

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

City Attorney Kit Williams read the ordinance.

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

City Attorney Kit Williams read the ordinance.

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

Ordinance 5000 as Recorded in the Office of the City Clerk.

Amend Chapter 177, Landscape Regulations: An ordinance amending Chapter 177, Landscape Regulations, of the Unified Development Code to require minimum eight-foot wide sidewalks when utilized in conjunction with Urban Tree Wells.

City Attorney Kit Williams: I've talked with Jeremy about this and in order to further clarify and make this better grammatically I have rewritten this, not to change the intent. The effect of this is going to be exactly as explained to you by Jeremy at Agenda Session. If possible I would like you to amend this ordinance to what I just handed out to you. I will then read that.

Mayor Coody: Before we make this amendment, lately I have seen some tree wells that are 3x8 or 3x10 so they are narrower but longer so they have the same number of square feet. Would this lock us out of being able to use narrower but longer tree grades?

Jeremy Pate: The current ordinance and we are not proposing to amend that, currently states the minimum width of the urban tree well shall be 4 foot; minimum area shall be 16 feet. It would always be larger than that, I think you could probably get narrower but we are trying to maintain clearance which is an 8 foot sidewalk and we want to make sure that there is an unencumbered area for sidewalk. I would really have to check with Sara Patterson on that.

Mayor Coody: I think what grades must be out there is to maintain a wider sidewalk but still add plenty of moisture into the tree roots so if you would ask about that, we can always amend this later to see what's on the market these days. I see the intent and I really appreciate it.

Alderman Cook: Can I ask that this come before the Sidewalk and Trails Committee?

Jeremy Pate: Sure.

Alderman Cook: We have a meeting next Wednesday.

Alderman Allen: Would there be less probability of these trees surviving?

Jeremy Pate: The actual tree grade size is not getting any smaller. What we are looking at is instead of a 10 foot wide sidewalk and a 4x4 tree grade we are narrowing the amount of concrete so it's an 8 foot wide sidewalk and you will still have a 4x4 tree grade with structural soil.

Mayor Coody: Do you know, is the sidewalk in front of city hall an 8 feet sidewalk?

Jeremy Pate: I don't know.

Alderman Cook moved to amend the ordinance as requested. Alderman Jordan seconded the motion. Upon roll call the motion passed unanimously.

City Attorney Kit Williams read the ordinance.

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

City Attorney Kit Williams read the ordinance.

This ordinance was left on the Second Reading.

CAJ, LLC Cost-Share Agreement: An ordinance waiving the requirements of formal competitive bidding and approving a cost-share agreement with CAJ, LLC in the amount of \$42,470.00 for the upsizing of approximately 1520' of 8" water main to 12" water main.

City Attorney Kit Williams read the ordinance.

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

City Attorney Kit Williams read the ordinance.

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

City Attorney Kit Williams read the ordinance.

Alderman Lucas: This is in the city limits isn't it?

Mayor Coody: Yes ma'am.

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

Ordinance 5001 as Recorded in the Office of the City Clerk.

City Council's Support of Road Impact Fees: A resolution to express the City Council's support of road impact fees and to encourage citizens to vote for the road impact fees on April 10, 2007.

Alderman Jordan: I brought this forward after numerous calls from citizens in my ward and other wards. The amount of time that we have spent on this particular ordinance, I know we have worked with staff for a couple of years and we've went through the study and passed that. We had Duncan and Associates come back in, we've put it before the vote of the people and now some of the citizens want to know where the Council stands on the ordinance itself so I brought this forward to see where everybody is.

Alderman Ferrell: I'd like to recognize Alderman Jordan's leadership on the Street Committee as far as trying to build streets; you did a good job at it. We have moved forward and got some bonds for the sewer and the streets. This says the City Council expresses its full support of the Road Impact Fee ordinance and I would like to amend that because I don't support it. Several of the paragraphs I don't agree with.

Alderman Ferrell moved to amend the resolution to state a majority of the City Council hereby expresses their support. Alderman Jordan seconded the motion. Upon roll call the motion passed unanimously.

Mike Henry, a citizen stated last year when the City Council wanted help getting the sales tax increased citizens of Fayetteville were there with you and worked very hard to make sure that that it received a majority of voter support. Now we find ourselves on the other side of this issue. There are so many unintended consequences to this proposed ordinance that are going to be very bad for Fayetteville. This is going to cause commercial projects to move out of our city. When those commercial projects move out of our city we lose the real estate tax that would have been derived and the sales tax that comes with them.

Mr. Henry went on to speak against the passage of the impact fees. He stated this is something that does not deserve the support of the City Council and does not deserve the support of the voters because instead of reducing taxes it's going to increase taxes.

Jeff Erf, a citizen stated I would like to urge you to pass this ordinance tonight and I would encourage people at home to vote for the impact fees. Also, just a reminder if the road impact fees are implemented it has been estimated that they will generate about \$3.4 million a year for road improvements. I think that is very important and it would be very helpful. I think the road impact fees would be very fair.

Mayor Coody: Tim, does the \$3.4 million amount include the backing out of what a developer wouldn't have to do that we are requiring them to do now that they wouldn't have to do if the impact fees are approved?

Tim Conklin: I used the May 2006 Impact Fee Study and I adjusted the fees and used the same methodology with regard to projects and their impact and what type of credit they would get. It's difficult to answer without seeing some of the traffic studies. The impact fee is based on trip generation and what type of infrastructure is needed for that project for that new development. It's a case by case basis.

Alderman Ferrell: If somebody had a commercial property and they were adding 5,000 or 6,000 square feet to their property, but they were not adding any employees, would they still sustain a street impact fee?

Tim Conklin: The addition of the 5,000 or 6,000 square feet would require an impact fee.

Alderman Ferrell: I was looking at some other cities on the web that have impact fees and if you are not adding employees they exempt storage, outbuilding and things like this. I don't see how that's going to generate more traffic.

Tim Conklin: If it's a warehousing use for storage we would apply the warehousing storage rate. If it's retail office we would apply the retail rate. It's somewhat difficult from project to project. We would sit down and look at the traffic study, what infrastructure is needed to serve that development and then report those decisions to Planning Commission and the Council.

Jim Bemis invited the Council to a public forum that would be held regarding the road impact fees. He stated you will see some excellent presentations and you will get some real facts.

Alderman Thiel: I am a little concerned. In a way I am expressing how I'm going to vote on this. Support or not support on this is not necessarily an indication of how I'm going to vote. However, I am speaking at this level as a representative of the citizens of Fayetteville and Ward 1 and I thought about the points made about the commercial. Then, I also looked at the fact that this is going to create a revenue stream that will off set future sales tax for infrastructure. If we would have done this many years ago, we wouldn't be in the position we are in now. We wouldn't be trying to reconstruct streets and widen streets and deal with intersections all of it at one time. That in itself is creating traffic problems. At some point you do have to start doing this. We had a situation where one developer had very little frontage so they did not have a very large amount of street to improve based on our current policy. It was unfair to the next developer who had that little section and a lot more. He didn't have much more land but he had a lot more frontage. The point is I think this will make it more equitable for all the developers;

diversified revenue is always a benefit to the city, obviously the more we can do, the less costly it is. Commercial is going to locate here because people want to live here. People are not going to live here if infrastructure does not keep up with the growth. People want good streets. This is just another way of providing that. I certainly think the public should vote for this. I as an Alderman will support this resolution.

Alderman Ferrell: I would like the people that are going to vote to consider this. We had a developer tell us that he had a 200 room hotel that he was trying to contract to bring in. They went out the back door when they heard about this. Continue to figure for a minute if other retail and commercial goes to other places, then what is going to happen to the taxes? If they go somewhere else we are not going to have that sales tax here or the property tax for our schools. Before you go and mark your X, keep that in mind.

Alderman Lucas: I appreciate the help from the citizens from Fayetteville who helped us with the sales tax. It was very good. The citizens voted for that sales tax, they picked up their fair share and we promised to diversify and not put the entire burden on the shoulders of the citizens so I am in support of impact fees. It seems reasonable that since the citizens have picked up their share that the people who cause the impact pick up their fair share. I think if the citizens will support this, it will be another means of bringing in revenue to improve our infrastructure and it's going to have to be paid for in some way. So maybe if we can diversify it maybe it won't be too heavy of a burden on any one person.

Alderman Allen: I also support the impact fees. I can't think of any fairer way than to say that those who create the impact, pay for the impact. If we don't do it that way, we are going to end up with a sales tax and that is going to hit the little guy that could least afford to pay. Unless he is creating the impact, he shouldn't have to pay so I will be in support of this and work towards its passage.

Alderman Gray: I have some concerns about it. I said in my campaign that I supported impact fees and I do as a general rule. I have some concerns about this one and great concerns about someone who is building a one bedroom house having to pay the same amount as someone who is building a five bedroom house. I feel like the five bedroom house owner is probably going to have a greater impact on the roads. I do have some concerns but I also am listening to what our street chairman says and that we're \$40 million behind on taking care of our streets and I know that is not a good thing. Is that right?

Mayor Coody: Well, we have about \$44 million dollars worth of road improvements in town that we need to do right now.

Alderman Gray: That is not budgeted, is that right.

Mayor Coody: We do not have the money right now to do that.

Alderman Jordan: Let me assure you, it is not budgeted.

Alderman Gray: I do have some concerns and I'm going to continue to research it myself and listen to my constituents as they call me and I would encourage every constituent in town if you cannot attend the meeting tomorrow night you can certainly watch it on Channel 16. I know there would be a lot of information that we can all benefit from.

Mayor Coody: I want to read this press statement because a lot of people have taken comments out of context and I can see why because they have been fully expressed and I will read the same thing that I gave to the press.

Mayor Coody read the following: I have supported the impact fees we have put into place so far but I find it hard to reconcile some of the negative impacts of this one. While I do not oppose the concept of street impact fees I think the consequences may outweigh the benefits of this legislation as it is written. I appreciate the Council and street committee's efforts to bring this forward but I cannot bring myself to cheerlead for something that I do not completely support. If we see a proposal in the future that is less regressive and can be more useful as a tool for managing and planning our growth, I would be more likely to support it.

I just wanted to be on the record clearly stating this so people won't think that anything less or more is the case.

Alderman Jordan moved to approve the resolution. Alderman Cook seconded the motion. Upon roll call the resolution passed 5-3. Alderman Lucas, Jordan, Thiel, Cook, Allen voting yes. Alderman Gray, Rhoads and Ferrell voting no.

Resolution 62-07 as Recorded in the office of the City Clerk.

Meeting adjourned at 9:05 PM



Dan Coody, Mayor



Sondra Smith, City Clerk/Treasurer

1. The first part of the report is a general
introduction to the subject of the study.
It discusses the importance of the study and
the objectives of the research.

2. The second part of the report is a
review of the literature. It discusses the
work of other researchers in the field and
how it relates to the current study.

3. The third part of the report is a
description of the methodology used in the study.

4. The fourth part of the report is a
discussion of the results of the study.

5. The fifth part of the report is a
conclusion and a list of references.

6. The sixth part of the report is a
list of references. It includes a list of
books, articles, and other sources used in
the study.

FAYETTEVILLE POLICE DEPARTMENT

ANNUAL REPORT



2006

Our Mission

To serve citizens and all people within the City of Fayetteville with dignity, respect, compassion, and fairness, through the protection of life, property, and constitutional guarantees, by preserving the peace, enforcing laws appropriately and courteously, assisting those who cannot care for themselves, while conducting ourselves in such a manner as to inspire confidence and respect for the position of public trust we hold.

MESSAGE FROM THE CHIEF

As part of the growing Northwest Arkansas region, Fayetteville remains one of the preferred places to live. People often remark how nice it is to be in Fayetteville. The City can fairly boast that we are below the national average in terms of violent crimes. That doesn't occur by accident, and it is fair to say that Fayetteville achieves this success based significantly on the efforts and talents of our police officers in combination with a well-informed community, which has repeatedly shown its willingness to be involved in crime prevention efforts.



With the population estimated to grow significantly over the next several years, it is important that Fayetteville be prepared for the changes to come. The right mission or strategy for the Fayetteville Police Department will ultimately be chosen by citizens and those who lead our government. Our challenge is to administer our budget responsibly and find the highest valued use of the department's capabilities according to public expectations and demands for service.

We urge you to view our data with an open and visionary mind.

Chief Greg Tabor



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DEPARTMENT PROFILE



POLICE RESPONSIBILITIES

The Fayetteville Police Department, in partnership with the community, is committed to enhancing and protecting the safety and security of our citizens by providing consistent professional law enforcement services to everyone.

Our most basic services and primary responsibilities are to:

- ♦ Respond to calls for service;
- ♦ Investigate crimes;
- ♦ Arrest suspected offenders;
- ♦ Regulate traffic;
- ♦ Handle crowds and demonstrations; and
- ♦ Provide a variety of emergency and social services.

COMMUNITY ORIENTED POLICING

Community Oriented Policing is at the heart of our service delivery philosophy.

Community Oriented Policing drives organizational strategies that promote proactive problem solving and community partnerships to address the causes of crime, fear, and other quality of life issues.

Our vision of reducing crime and the fear of crime, and delivering improved police services through community policing will require us to balance the many competing interests if our goal is to meet all the police needs of the citizens of Fayetteville.

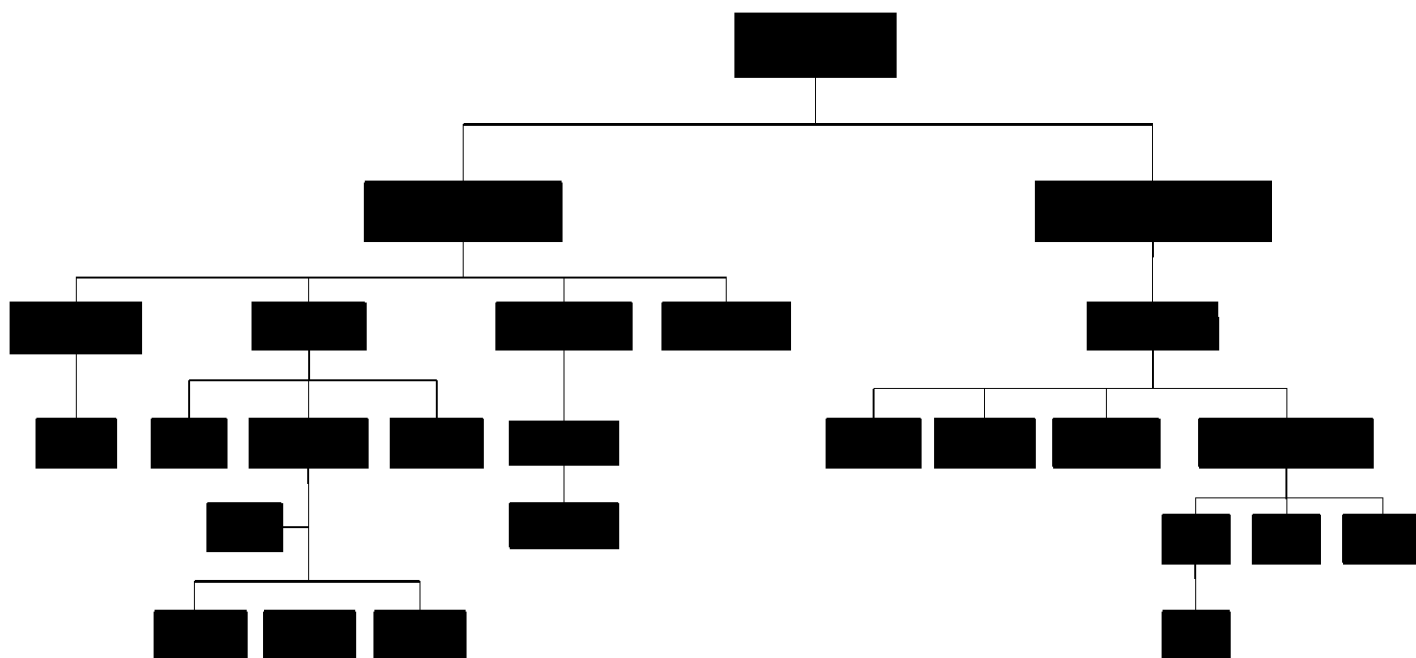
Employees of the Fayetteville Police Department see this challenge as an opportunity to do our part in maintaining Fayetteville's reputation as a safe city.



ORGANIZATION

The City of Fayetteville Police Department is under the direct supervision of the Chief of Police who reports to the Mayor. The Fayetteville Police Department serves an estimated population of 67,158 citizens throughout the city of approximately 53.27 square miles. There are 187 employment positions within the Fayetteville Police Department:

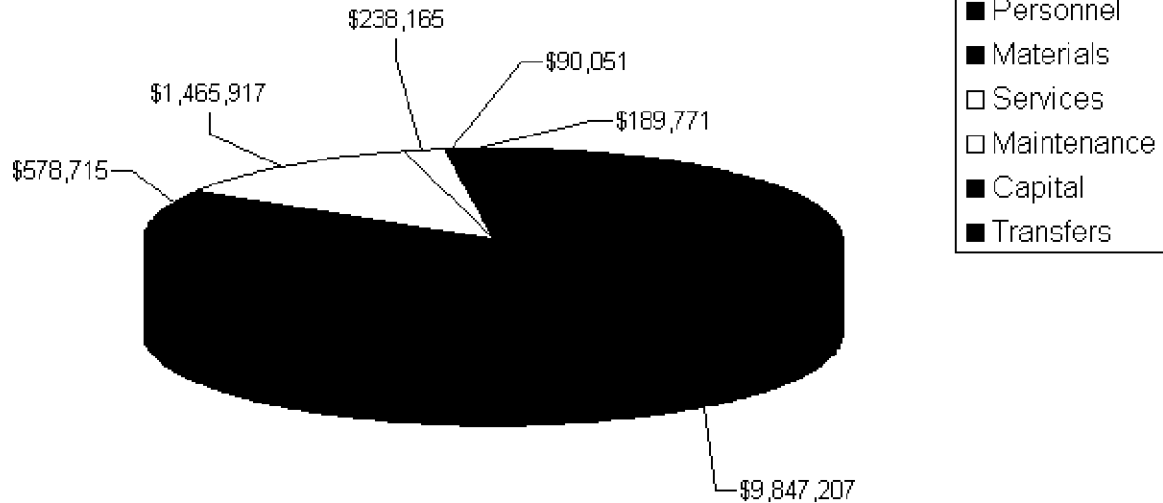
<u>Police (146.63)</u>		<u>Dispatch (24)</u>	<u>Animal Services (16)</u>
<u>Sworn (120)</u>	<u>Civilian (26.63)</u>		
Chief (1)	Support Services Manager (1)	Manager (1)	Superintendent (1)
Deputy Chief (2)	Records Manager (1)	Shift Supervisors (3)	Veterinarian (1)
Captain (2)	Financial Analyst (1)	Trainers (2)	Veterinarian Tech (1)
Lieutenant (5)	Administrative Support (2)	Dispatchers (16)	Supervisor (1)
Sergeant (13)	Support Specialist (8)	Part-Time (2)	Officers (5)
Detective (18)	Police Clerk (2)		Caregivers (6)
Patrol (79)	Property/Evidence (3)		Part-Time (1)
	Investigative Support (3)		
	Crime Scene Investigator (1)		
	Information Technology (2)		
	Part-Time (2.63)		



2006 POLICE BUDGET

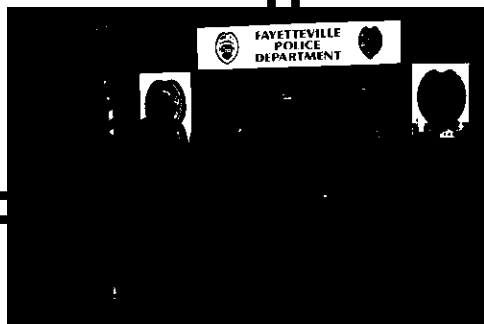
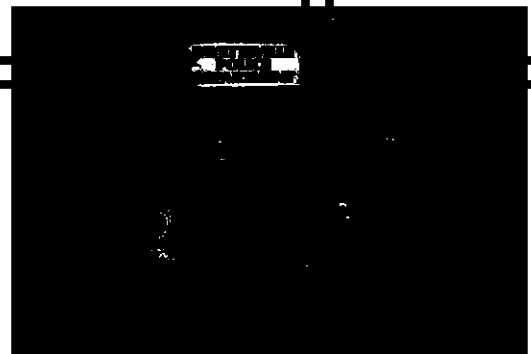
The 2006 operating budget for the Fayetteville Police Department was \$12,409,826. Personnel salaries and wages accounted for the largest expenditure at 79%.

2006 Police Budget (\$12,409,826)



DEPARTMENT GOALS

The Police Department is committed to meeting the Department Management Agenda goals set out for the year. The 2006 Management Agenda is broad and focuses on improving our city and our services. We also identified specific, measurable objectives in our 2006 Department Goals.



2006 DEPARTMENT MANAGEMENT AGENDA



Improved Mobility—Directed Traffic Enforcement

Develop strategic plan to improve police traffic services through public education, selective traffic enforcement, implementing traffic related performance measures for officers, and better use of state accident data.



A Beautiful City - Clean and Green Litter Prevention and Enforcement Program

Improve litter enforcement efforts through directed patrol assignments and source investigations. This integrated approach includes training on applicable ordinances and statutes, identifying specific littering and waste problems and other environmental crime.



Service Improvements

Develop a call management policy which diverts low priority calls to a more cost-effective response that directly or indirectly increase the availability of resources, and develop a plan for efficient and effective deployment of available personnel to meet the growing demand for police services.



Strong Partnership with the University of Arkansas

Work with the University of Arkansas School of Journalism to develop a student off-campus housing guide and public awareness campaign focusing on community relationships and underage drinking.



Accreditation from Commission on Accreditation for Law Enforcement Agencies

Obtain accreditation from CALEA. The overall purpose of the Commission's accreditation program is "to improve delivery of law enforcement service by offering a body of standards, developed by law enforcement practitioners, covering a wide range of up-to-date law enforcement topics. It recognizes professional achievements by offering an orderly process for addressing and complying with applicable standards."

Besides the recognition of obtaining international excellence, the primary benefits of accreditation provides management model, provide better services, controlled liability insurance costs, administrative improvements, greater accountability from supervisors, increased governmental and community support. CALEA accreditation is estimated to take 24 to 36 months.

2006 DEPARTMENT GOALS

Our organizational goal is to find the highest valued use of the department's capabilities in an environment of population growth, annexations, increase in citizen calls for services, and fiscal constraints in order to maximize on opportunities to improve on our delivery of essential services and focus on strategic planning for operational efficiency.

Public Information

☒ Achieved

To complete a services report to the Mayor for the 2005 operating year by the end of the 1st. quarter to include year-end statistics on index crimes, clearance rates, arrest, and calls for services.

Organizational Development

☒ Achieved

Begin the process of achieving accreditation with The Commission on Accreditation for Law Enforcement Agencies, Inc. (CALEA), by reviewing all department policies and procedures and achieving 30% compliance to CALEA standards by the end of the 4th quarter.

Finances

☒ Achieved

To prepare and submit the 2007 budget in a timely manner

Patrol

☒ Achieved

Increase the number of DWI arrests by 10% through directed patrol assignments.

Traffic Enforcement

☒ Achieved

Increase hours devoted to traffic enforcement in an effort to reduce traffic collisions.

2006 DEPARTMENT GOALS, CONT.

Environment



Achieved

Increase number of litter citations issued by 55% from 76 in 2005 to 110 or more in 2006.

Safety



Achieved

Increase the number of contacts made in investigating child safety seat violations by 50% from 82 in 2005 to 120 or more in 2006.

Animal Services



Achieved

Increase patrol time and animal cruelty investigations by 25% by adding a fifth animal services officer.

Criminal Investigations



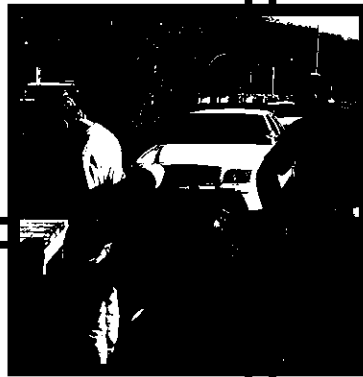
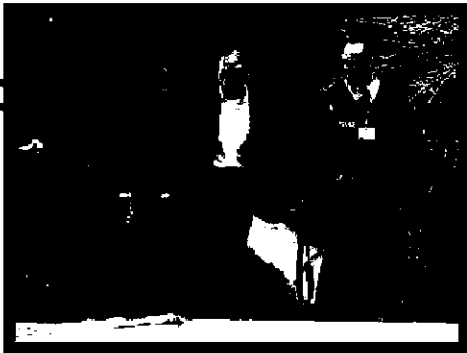
Achieved

Investigate 100% of all computer crimes involving children including child pornography and on-line solicitation.

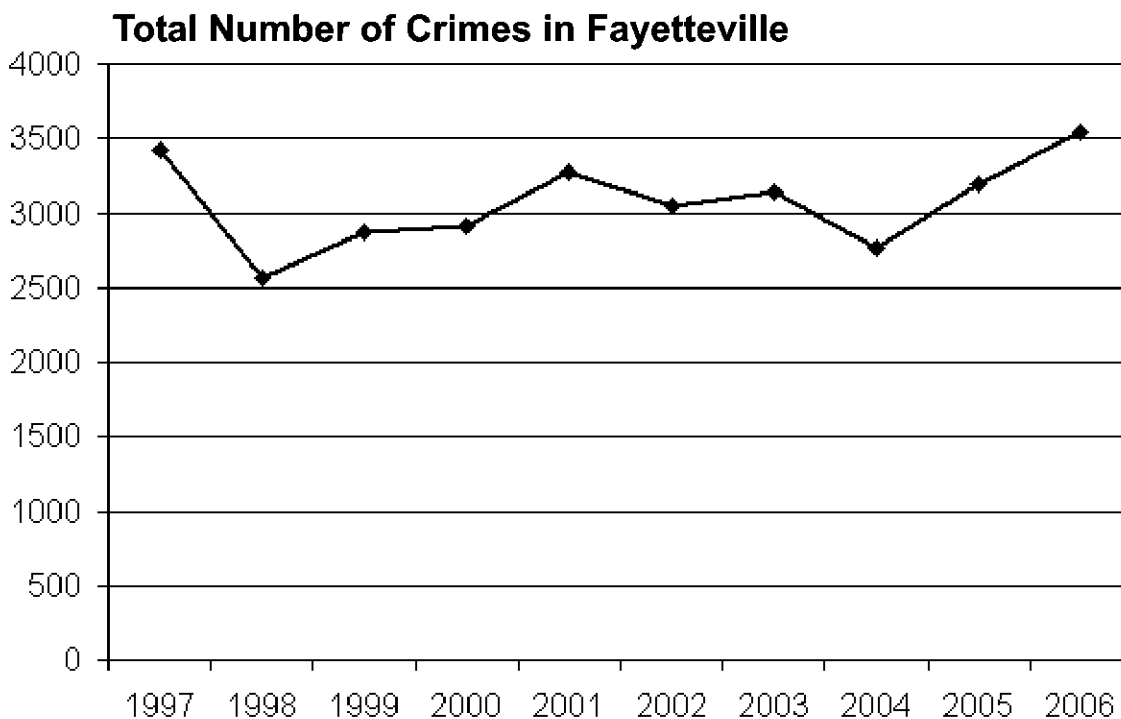


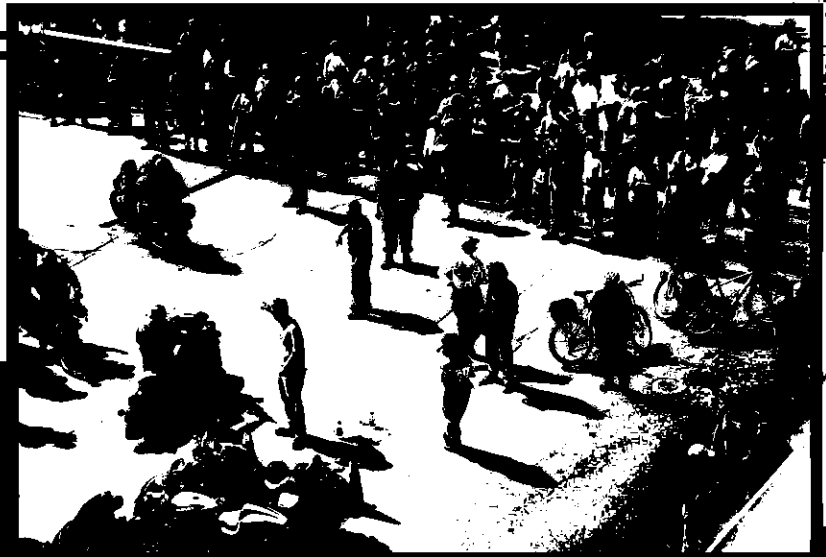
CRIME STATISTICS

The chart below illustrates the ten year trend based on the total number of crimes in Fayetteville. When the crimes are separated by category, it is clear that on a national level, Fayetteville violent crime rates are fairly low while property crimes continue to be above the national average.



TEN YEAR CRIME TREND





Crime Index (1997—2006)

Crime Index	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006
Homicide	0	1	1	6	0	0	1	2	2	2
Rape	27	26	28	32	24	42	35	37	43	46
Robbery	25	37	21	37	27	31	36	25	33	34
Agg. Assault	67	119	141	123	152	149	179	161	192	217
Burglary	574	490	377	347	388	355	292	369	451	586
Larceny/Theft	2578	1770	2162	2215	2509	2352	2452	2024	2326	2480
Vehicle Theft	146	105	122	135	149	97	140	138	144	166
Arson	3	13	20	18	30	16	7	10	6	11
Number of Crimes	3420	2561	2872	2913	3279	3042	3142	2766	3197	3542
Fayetteville Crime Rate*	6750.0	4789.2	5360.8	5018.3	5609.6	5169.7	5143.9	4412.1	4933.0	5274.1
Population	50,622	53,474	53,574	58,047	58,453	58,843	61,082	62,691	64,809	67,158

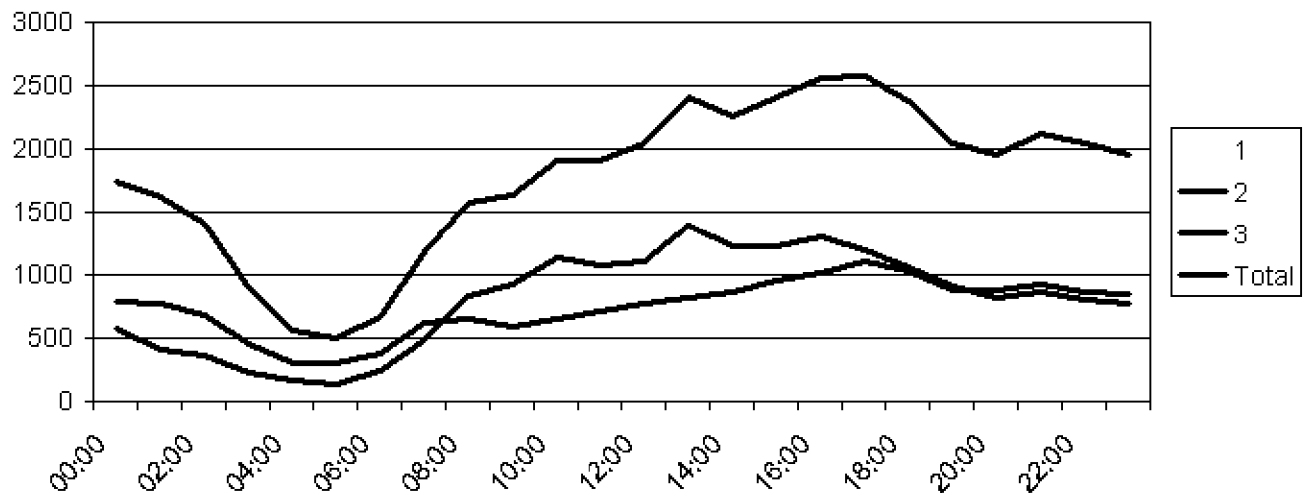
* Crime Rate is figured by the number of crimes divided by population X 100,000.

CALLS FOR SERVICE

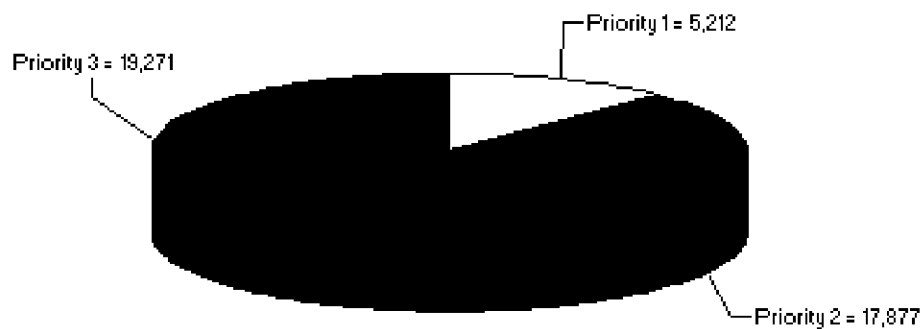
Police Calls for Service Defined:

- ◆ **Priority 1:** Emergency calls.
- ◆ **Priority 2:** Non-Emergencies with potential to become emergencies.
- ◆ **Priority 3:** Routine or Non-Emergency calls.

Police Calls for Service by Priority

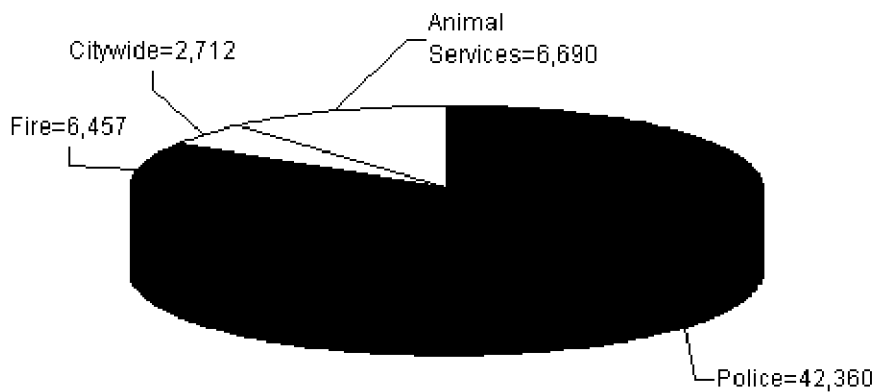


2006 Police Calls for Service (Total Calls = 42,360)

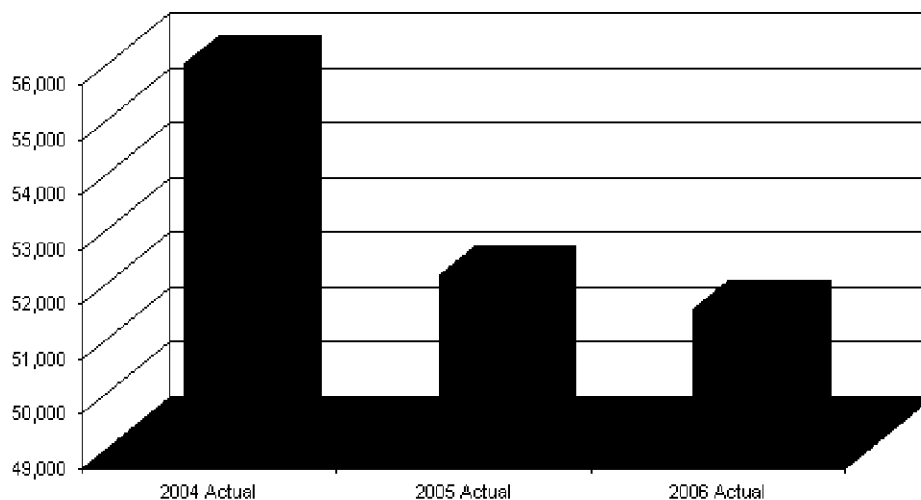


CALLS FOR SERVICE, CONT

2006 Total Department Calls for Service



Total Dispatch Calls for Service—Fire, Police, and Citywide*



*Citywide calls include all after hours calls routed through Dispatch, including Meter, Water & Sewer, Transportation, and other City service departments.

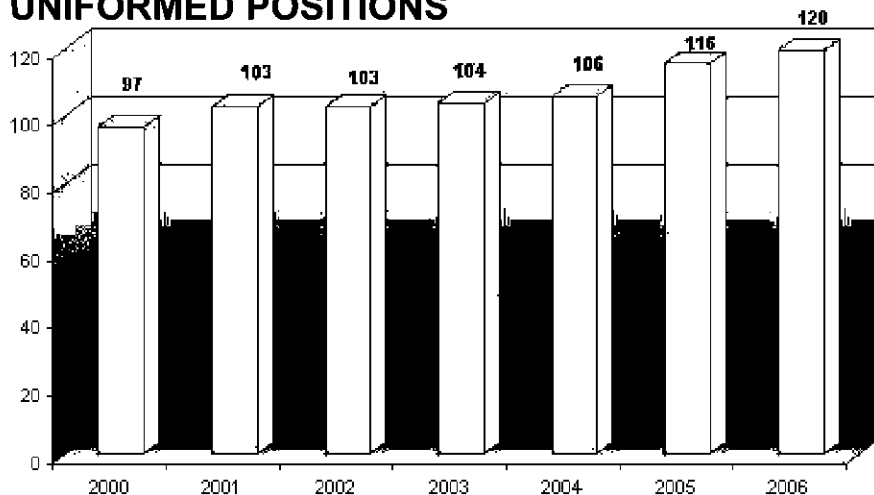
PERFORMANCE MEASURES

POLICE

The performance of the Police Department is measured by looking at six categories.

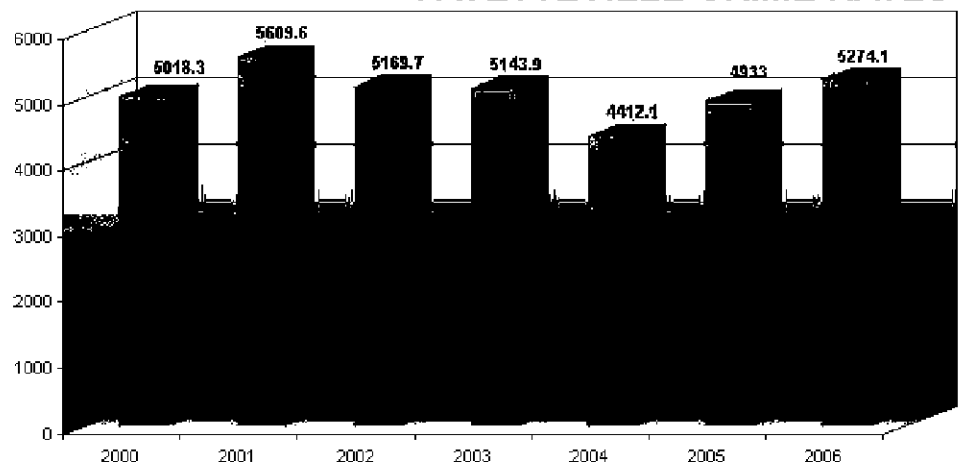
1. Population Served
2. Calls for Service
3. Traffic Accidents
4. Tickets Issued
5. Arrests Made
6. DWI Arrests

UNIFORMED POSITIONS

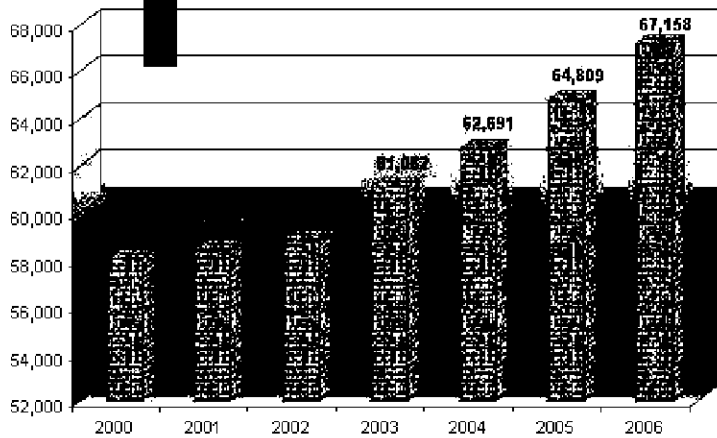


* Crime Rate is the number of crimes divided by population X 100,000.

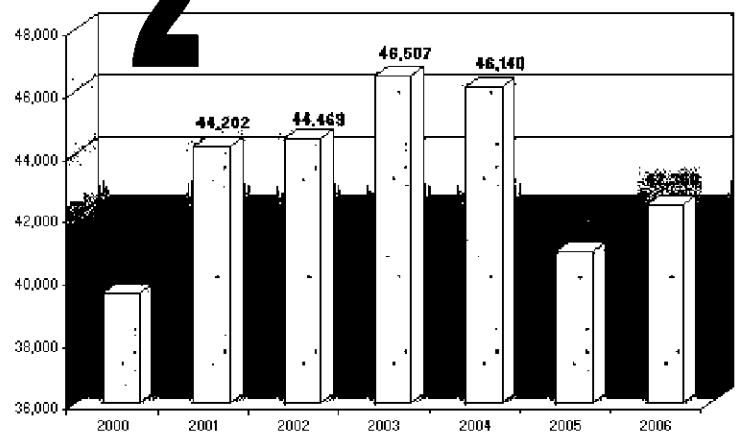
FAYETTEVILLE CRIME RATES



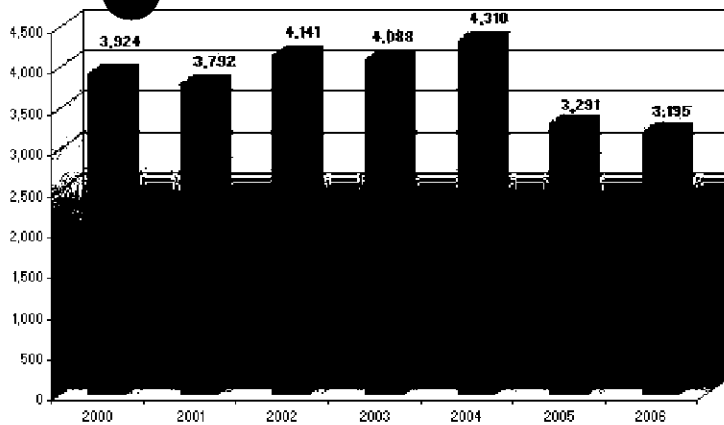
1 POPULATION SERVED



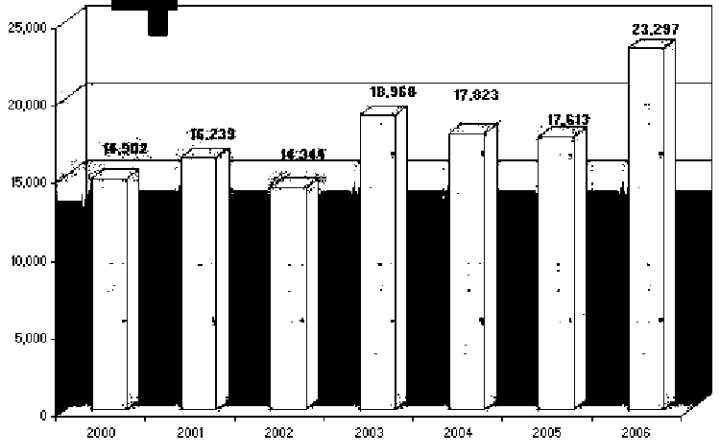
2 CALLS FOR SERVICE



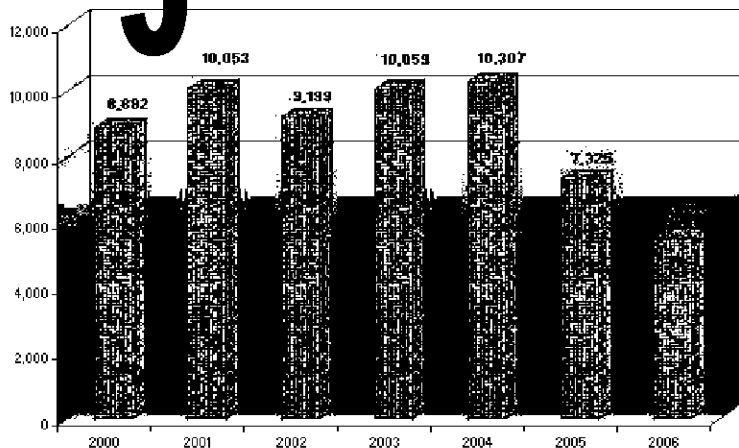
3 TRAFFIC ACCIDENTS



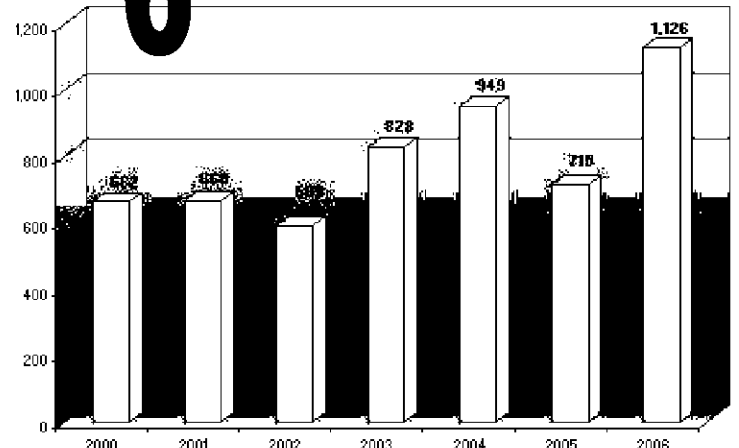
4 TICKETS ISSUED



5 ARRESTS MADE



6 DWI ARRESTS



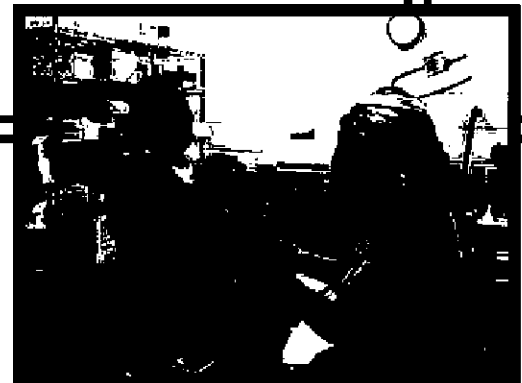
CENTRAL DISPATCH



Central Dispatch Performance Measures	Actual Year-to-Date 2005	Budgeted Year-to-Date 2006	Actual Year-to-Date 2006
Total Calls for Service	52,146	50,800	51,529
Police	43,261	42,000	42,360
Fire	6,398	6,200	6,457
Citywide	2,487	2,600	2,712
Police Self-Initiated Calls	80,474	84,000	88,594
Telephone Calls (Minus 9-1-1)	153,057	150,000	139,177
9-1-1 Calls	32,175	32,000	30,836
Code 0 (Zero officers available to respond to calls)	1,352	NA	1,041
Overtime/Comp Time Hours	1,673	1,250	2880/715
9-1-1 Salary Reimbursement	\$ 232,852	\$ 245,428	\$171,797
Average Minutes Police on a Call	20	20	22
Average Minutes Fire on a Call	16	16	17
Average 9-1-1 Calls per Day	87	85	85

ANIMAL SERVICES

Animal Services Performance Measures	Actual Year-to-Date 2005	Budgeted Year-to-Date 2006	Actual Year-to-Date 2006
Citizen Calls/Reports Taken	6,607	8,248	6,690
Officer Emergency After Hour Responses	856	560	848
City Licenses Sold	2,845	3,000	2,643
Warnings/Citations Issued	207	140	321
Animal Bite Investigations	79	76	63
Animal Cruelty Investigations	170	200	415
Animals Reclaimed by Owner	740	752	778
Stray Animals Picked Up			
Domestic	1,483	1,500	1,380
Wildlife	284	300	232
Livestock	39	52	55
Fayetteville Strays Sheltered	2,529	2,752	2,593
Fayetteville Surrenders Sheltered	566	700	678
Contracted Non-Fayetteville Animals Sheltered	1,091	1,252	1,518
Adopted Animals	1,555	1,314	1,770
Euthanized Animals	1,850	1,800	2,239
Cost per Animal/Five Days Shelter	\$75.00	\$75.00	\$75.00
Shelter Walk-In Customers	8,969	10,000	11,711
Adopted Animals Sterilized	1,203	1,400	1,662
Low Cost Spay/Neuters Performed	1,124	1,500	458
Veterinarian Emergency After Hour Responses	36	36	23



Fayetteville Police Department

100-A W. Rock Street
Fayetteville, AR 72701
479-587-3555

B.I. Added at Agenda Session 4/24/07

Fayetteville E911
House Numbering

City Council Meeting of May 1, 2007
Agenda Item Number B1

CITY COUNCIL AGENDA MEMO

To: Mayor and City Council
Thru: Paul Becker, Director of Operations
From: John Goddard, GIS Coordinator
Date: April 24, 2007

Subject: Ammendment to Proposed Resolution for Street Name Changes.

RECOMMENDATION

Staff recommends that Harmon South (south of Hwy 16) and Harmon Rd. (north of Hwy 16) to be renamed to 85th St.

BACKGROUND

A task force met on Monday April 23rd to make a recommendation to the City Council regarding the re-addressing of the West Side Annexation (Ord. 4888). In that meeting there was a unanimous consensus that Harmon South and Harmon Rd. should be renamed. There were two reasons brought forth for this: 1) The meme of referring to this Road with its "South" designation, and the concern that sections of it will now have both North and South designations. The fear is that if the name remained Harmon, it would continue to be referred to as "Harmon South". 2) We have a Harmon Ave on the University Campus.

It was also recommended that it be renamed 85th Ave to serve as a reference to the addressing Grid.

Note:

The task force consisted of Emergency Service Personnel (Police, Fire, and Dispatch) from both the City of Fayetteville and Washington County.

Task Force Members:

Tony Johnson	Fire Chief
Greg Tabor	Police Chief
Bud Thompson	Assitant Fire Chief
Chris Lynch	Assitant Fire Chief
Kathy Stocker	E911 Dispatch Manager
Ellura Denton	Lead Dispatcher
John Gibson	Assitant County Judge
John Luther	Washington County Emergency Operations
Daryll Pemberton	Washington County Emergency Operations

From: John Goddard
To: Williams, Kit
Date: 5/3/2007 1:37 PM
Subject: Resolution 82-07 Street Name Changes
Attachments: Proposed Amendment for Changing Harmon to 85th St.pdf

CC: Smith, Sondra
Kit,

It is important that we site both Harmon South Rd and Harmon Rd for changing to 85th Ave (see attached). I checked the STONEHENGE spelling, it's correct.

Thanks!

John Goddard
GIS Coordinator
City of Fayetteville, Arkansas

jgoddard@ci.fayetteville.ar.us
Phone: 479-575-8219

CITY COUNCIL AGENDA MEMO

To: Mayor and City Council
Thru: Paul Becker, Director of Operations
From: John Goddard, GIS Coordinator
Date: April 24, 2007

Subject: Ammendment to Proposed Resolution for Street Name Changes.

RECOMMENDATION

Staff recommends that Harmon South (south of Hwy 16) and Harmon Rd. (north of Hwy 16) to be renamed to 85th Ave.

BACKGROUND

A task force met on Monday April 23rd to make a recommendation to the City Council regarding the re-addressing of the West Side Annexation (Ord. 4888). In that meeting there was a unanimous consensus that Harmon South and Harmon Rd. should be renamed. There were two reasons brought forth for this: 1) The meme of referring to this Road with its "South" designation, and the concern that sections of it will now have both North and South designations. The fear is that if the name remained Harmon, it would continue to be referred to as "Harmon South". 2) We have a Harmon Ave on the University Campus.

It was also recommended that it be renamed 85th Ave to serve as a reference to the addressing Grid.

Note:

The task force consisted of Emergency Service Personnel (Police, Fire, and Dispatch) from both the City of Fayetteville and Washington County.

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John Gibson	Assitant County Judge
John Luther	Washington County Emergency Operations
Daryll Pemberton	Washington County Emergency Operations

B.3. Roll-Off Service, Inc.
Handed out at Council Meeting
5/1/07

Roll-Off Service, Inc. Audit Report

AUDIT PURPOSE:

An audit was performed by the City of Fayetteville (City) to determine if the City is receiving proper payment from Roll-Off Service (Hauler) in accordance with the terms of the contract dated March 2, 2004. According to the contract, the Hauler agrees to pay a monthly fee of 10% of the gross revenues received for open top trash bin services within the corporate limits of the City.

PROCEDURE #1:

The Hauler was informed that an audit would be performed according to the terms of the contract. The Hauler Accounts Receivable Clerk was interviewed regarding the fees remitted to the City for the month of September. A blind listing of payments received from customers within the City, which is a document required by the contract, was requested. It was determined that the listing did not exist. The Hauler was asked to provide a list of the customers within the City who were included with September's payment, but the Hauler was also unable to provide an accurate list.

As a substitute for the contractual documents, the daily deposit slips for the month of September were obtained, and a sample of invoices was chosen from the receipts on the deposit slips. The invoices were reviewed to determine if the gross revenue should have been included in the contract to the City.

RESULTS:

For the month of September, the City received a fee of \$536.06 from the Hauler, which represents gross revenues of \$5,360.61. The results of the sample showed that gross revenues to the City were understated by at least \$2,760.12. The Hauler underpaid the City by \$276.01, the 10% fee on the gross revenues. Because this represented more than a 50% difference from what the City was paid for the month of September, the cost of the audit, \$1,309.20, is payable by the Hauler to the City.

PROCEDURE #2:

Due to the large difference found in the sample, all payments greater than \$65.00 on the September daily deposit slips were listed to be reviewed for correct payment to the City.

RESULTS:

The auditor and Hauler owner reviewed the invoices for September 1 through September 16, 2004. The review revealed additional gross revenue of \$6,166.67 subject to the fee. The Hauler owner reviewed the invoices for September 17 through 30, 2004, without allowing the auditor to participate. The Hauler review revealed additional gross revenue of \$1,123.09 subject to the fee.

REMEDIES:

Gross revenues reported to the City were understated by at least \$10,049.88 in the month of September 2004, which represents a fee due the City of \$1,004.99. According to the

contract, a 2% penalty is assessed per month on payments received after the due date, which would be \$80.38 for September's unpaid balance due.

Due to the magnitude of the discrepancies discovered, the City has a contractual right for an audit of all months of the contract period, with audit costs paid by the Hauler. To provide an independent and objective review of fees payable to the City, it would be in the best interests of both parties to have the audit performed by a mutually agreeable Certified Public Accounting firm. It is expected that this type of audit would be very costly to the Hauler based on the condition of the Haulers' records as documented above.

~~The City also expects this type of audit could be disruptive to the Hauler's on-going efforts to conduct business. Therefore, in the interest of not wanting to appear punitive, the City is willing to apply the audit results for September 1 through 16, the period the City was able to audit, to the other months of the contract period, in lieu of a full audit.~~

By applying the average daily gross revenues from September 1 through 16 to all days of the contract period through 2004, the City is due an additional \$14,565.00. Interest foregone on the monthly unpaid fees to the City at a 2004 blended interest rate of 4.5% totals \$297.33.

B.4. Links at Jayettville Appeal
 Handed out at Council Meeting 5/11/07

WELLSPRING/LINKS COMPARISON

<u>ITEM OF COMPARISON</u>	<u>WELLSPRING</u>	<u>LINKS</u>
ACREAGE	152.23	152.23
TOTAL DWELLING UNITS	1175	1220-1258
DENSITY	7.72 du/ac	8.0 du/ac
DETACHED DWELLING UNITS	150	74
ATTACHED DWELLING UNITS	1025	1185
BUILDING TYPES	6	7
COMMERCIAL SF	548,000 sf	120,888 sf
GREENSPACE/PARKLAND/ TREE PRESERVATION	40ac	103 ac. (49 golf, 56 tree preservation, parks and general open space.)
GREENSPACE	26%	68%
Without golf	26%	37%
EST. VEHICLE TRIPS	19,709 vpd	14,141 vpd

B.4.
 The Links at Fayetteville
 Appeal
 Handed out at Council
 Meeting 5/1/07

LINKS AT FAYETTEVILLE TAX IMPACT

ENTITY	TAX RATE	COLLECTED	
Washington County - General	4.7	\$ 64,860.00	
Washington County - Roads	0.22	\$ 3,036.00	
TOTAL			\$ 67,896.00
Fayetteville - Schools	25	\$ 345,000.00	
Fayetteville - Schools Debt Service	18.8	\$ 259,440.00	
TOTAL			\$ 604,440.00
Fayetteville City - General	1.3	\$ 17,940.00	
Fayetteville City - Police	0.4	\$ 5,520.00	
Fayetteville City - Fire	0.4	\$ 5,520.00	
Fayetteville City - Roads	0.88	\$ 12,144.00	
Fayetteville City - Library	1	\$ 13,800.00	
TOTAL			\$54,924.00
GRAND TOTAL	52.7	\$727,260.00	
TOTAL ANNUAL SALES TAX IMPACT OF LINKS AT FAYETTEVILLE (Using IMPLAN 2004)		\$532,332.50	
ANNUAL SALES TAX FOR FAYETTEVILLE			\$ 118,296.00
TOTAL ANNUAL SALES & PROPERTY TAX IMPACT		\$ 1,259,592.50	
FAYETTEVILLE ANNUAL IMPACT (Property Tax plus 2% Sales Tax)			\$173,220.00

Estimated Fees to City of Fayetteville

Links at Fayetteville

1 Building Permit Fees

51 Custom / Classic Buildings	3,700.00	=	188,700.00
16 Churchill Buildings	7,400.00	=	118,400.00
4 Multi-Use Buildings	10,600.00	=	42,400.00
71 Townhouse Units	436.00	=	30,956.00
74 Single Family Homes	620.00	=	45,880.00
Total Building Permit Fees			426,336.00

2 Sewer / Water Impact Fees

612 Custom / Classic Units	812.00	=	496,944.00
352 Churchill Units	812.00	=	285,824.00
76 Multi-Use Units	812.00	=	61,712.00
71 Townhouse Units	1,143.00	=	81,153.00
74 Single Family Homes	1,143.00	=	84,582.00
Total Sewer / Water Impact Fees			1,010,215.00

3 Police / Fire Impact Fees

612 Custom / Classic Units	312.00	=	190,944.00
352 Churchill Units	312.00	=	109,824.00
76 Multi-Use Units	312.00	=	23,712.00
71 Townhouse Units	431.00	=	30,601.00
74 Single Family Homes	431.00	=	31,894.00
Total Police Fire Impact Fees			386,975.00

4 Park Fees (Some of these fees to be offset by 17.3 acres park land dedication)

612 Custom / Classic Units	658.00	=	402,696.00
352 Churchill Units	658.00	=	231,616.00
76 Multi-Use Units	658.00	=	50,008.00
71 Townhouse Units	658.00	=	46,718.00
74 Single Family Homes	658.00	=	48,692.00
Total Park Fees			779,730.00

Estimated Total Fees Paid to City of Fayetteville \$2,603,256.00

Proposed Subcontractor List

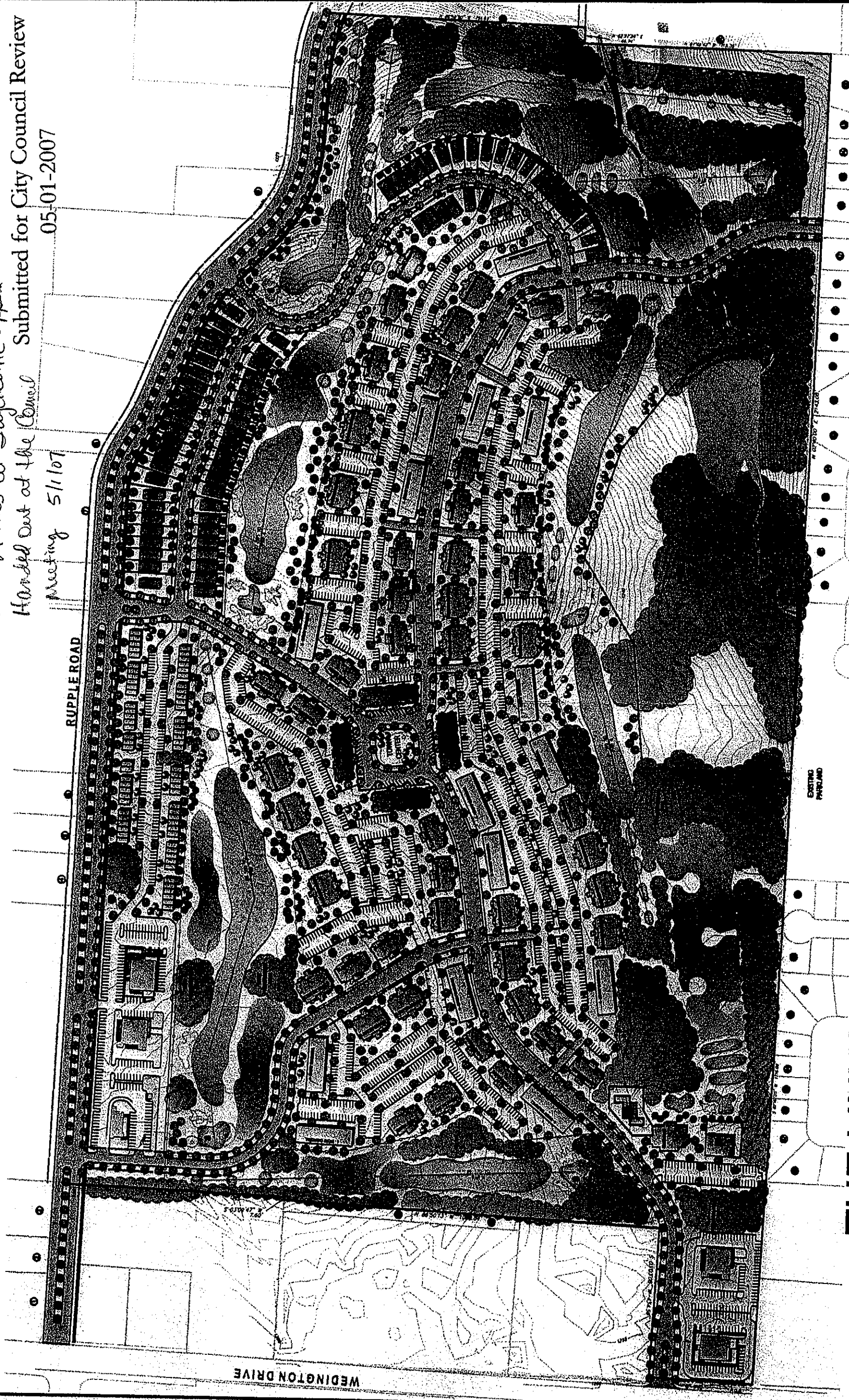
Links at Fayetteville

1220 Units

Area of Work	Company Name	Owner / Representative	Employees Involved in Project	Total Estimated Sales Tax
1 General Contractor	Lindsey Construction	Jim Lindsey	30	150,000.00
2 Utilities	Fochtman Enterprises	Earl Fochtman	52	130,250.00
3 Concrete Finishing	Westlin Concrete	John Westlin	20	13,500.00
4 Concrete Materials	Tune Concrete	Dennis Tune	70	333,000.00
5 Pretreatment	AB TriState	Ross Odom	25	8,000.00
6 GypCrete	Gypsum Floors	Dan Pinner	28	20,700.00
7 Stairs / Columns	Westark Steel	Don Staley	22	60,000.00
8 Framing	Hines Construction	Tom Hines	80	12,200.00
9 Lumber Materials	National Home Centers / Ridout	D Newman / W Ridout	55	515,750.00
10 Trusses Materials	LATCO	Dick Latta	65	120,250.00
11 Carpentry Trim	ARHK Trim	Harold Randolph	20	8,000.00
12 Plumbing	FYV Mechanical	Bill Kisor	45	162,000.00
13 HVAC	FYV Mechanical	Bill Kisor	30	67,710.00
14 Electrical	Northwest Electric	Delano Cotton	22	145,000.00
15 Roofing	Pick It Construction	Nathan Ogden	34	53,400.00
16 Masonry	Bond Masonry	Jimmy Bond	70	18,500.00
17 Brick Materials	Acme Brick	Jerry Jones	15	105,000.00
18 Insulation	Burns Insulation	Ann Burns	15	34,000.00
19 Drywall	JR Ball Contracting Group	JR Ball	110	280,000.00
20 Painting	JR Ball Contracting Group	JR Ball	18	-
21 Paint Materials	Spectrum Paint	Ralph Smithpeters	10	42,000.00
22 Appliances	GE Direct	Chris Burnley	12	166,500.00
23 Cabinets	Kitchen Distributors	Dave Albert	72	90,200.00
24 Carpet	National Home Centers	Darrell Swopes	20	108,200.00
25 Gutters	Burns Insulation	Ann Burns	4	12,200.00
26 Mini Blinds Materials	Draperly Maunufacturers Inc.	Max Myers	6	11,800.00
27 Mirror Materials	Dotson Glass	Ray Dotson	4	11,300.00
28 Handrails	Wilson Contracting	Rod Wilson	12	22,570.00
29 Street Improvements	Sweetser Construction	Billy Sweetser	50	138,750.00
30 Dryvit	Synthetic Design	Mark Diehl	12	7,600.00
31 Shower Doors Materials	Alumax	Jimmy Parker	8	12,400.00
32 Fuel Supplier	Fuels and Supplies	John Johnson	6	23,125.00
33 Rental Equipment	Riggs Tractor		14	62,000.00
			1056	\$ 2,945,905.00

* This does not include sales tax revenue from subs employees buying gas, food, lodging, etc.

0.4- Links at Fayetteville Upper NEVISIONS
Handed Out at the Council Meeting 5/1/07
Submitted for City Council Review 05-01-2007



THE LINKS @ FAYETTEVILLE

FAYETTEVILLE, ARKANSAS

Crutcher, Todd, Sparks & Associates, Inc.
Landscaping, Site Planning, Surveying
301 944-3345 FAX 301 944-8704 www.crutcher.com

Engineers & Surveyors



Research Support and Sponsored Programs
Office of the Director
120 Ozark Hall
Fayetteville, Arkansas 72701

(479) 575-3845
(479) 575-3846 (FAX)
E-mail: rsspinfo@uark.edu
<http://www.uark.edu/admin/rsspinfo/>

April 26, 2007

Mr. Paul Becker
Financial and Internal Services Director
City of Fayetteville
113 West Mountain
Fayetteville, AR 72701

Dear Mr. Becker:

Attached is a proposal entitled "2007 Fayetteville Citizen's Survey" submitted by the Board of Trustees of the University of Arkansas on behalf of Dr. Molly Longstreth of the Survey Research Center.

All financial and/or contractual negotiations regarding this project should be conducted with this office. If questions arise concerning the technical aspects of the proposal, please contact Dr. Longstreth at (479) 575-4222. The University appreciates the interest and support of the City of Fayetteville.

Sincerely,

Patricia Turner
Research Administrator
Pre-Award Services

pkt
Enclosure(s)
cc: M. Longstreth

Office of Research Support & Sponsored Programs
120 Ozark Hall, Fayetteville, AR 72701

Phone: (479) 575-3845 Fax: (479) 575-3846 Email: rsspinfo@uark.edu



2007 Fayetteville Citizen's Survey

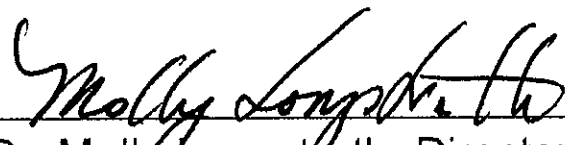
A Proposal Submitted to
City of Fayetteville

Prepared by
Survey Research Center

Period of Performance: February 1, 2007 - December 31, 2007

Amount Requested: \$23,972.00

Submitted by
Board of Trustees



Dr. Molly Longstreth, Director
Survey Research Center



Rosemary Ruff, Director
Research Support & Sponsored Programs



123 Hotz Hall • Fayetteville, Arkansas 72701-1201 • 479.575.4222 • 479.575.2474 (FAX) • src@uark.edu

Survey Research Center

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

April 23, 2007

Paul Becker, Finance and Internal Services Director
Susan Thomas, Public Information and Policy Advisor, Project Director
Kevin Springer, Budget Manager

This is a proposal to survey the citizens of Fayetteville, Arkansas for the City of Fayetteville.

Research Design

Telephone survey

The Survey Research Center (SRC) would conduct a telephone survey of citizens of Fayetteville, Arkansas for the numbers of completed interviews needed to assure a desired estimated sampling error. If the budget allows, additional Fayetteville households would be screened in order to augment the number of surveys completed by African American and Hispanic/Latino households. Estimates in Table 1 are offered for interviews approximately 17 minutes in length. A pre-survey letter would be sent to all sample members for whom an address is available in advance of the telephone survey. In addition, the data would be analyzed with at least one bivariate analysis so as to indicate with more confidence phenomena of interest. Data will be compared with previous years' results to identify trends in citizen interest in various issues as well.

Questionnaire Design & Field Testing

The SRC would work with officials of the City of Fayetteville to revise a questionnaire that addresses the City's objectives for the survey. The 2007 questionnaire would draw on the instrument that the City of Fayetteville used to survey its citizens in 2001, 2003 and 2005. With City officials, the SRC would develop very few additional and/or alternative questions to solicit opinions on issues germane to the current objectives. The 2003 survey took 17.3 minutes on average to administer and the 2005 survey took 23.6 minutes, on average. For the 2007 survey, questions would be limited to those which could feasibly be included in a 17-minute survey.

SRC staff would critique 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 University of Arkansas' (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 would be surveyed.

New and alternative questions would be critiqued by SRC staff. Experienced interviewers

would administer it to each other and critique it. The SRC would subsequently 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 calling, 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 letters would be printed on City of Fayetteville letterhead and mailed in City envelopes.

Please note that the letters would be sent to approximately one-fourth of the sample members. In the 2003 survey, 68 percent of the respondents asked about the letter were cognizant of having received it, although only about 50 percent of the sample members were mailed letters. The remaining sample would be called only.

The effectiveness of the research design depends partially on personalizing the mailings. Therefore, the SRC would print the envelopes, rather than using labels, and affix stamps rather than using a machine stamp. Furthermore it is expected that electronic signatures of the mayor and city council members would be printed on the letters, if they agree to this strategy.

It is the SRC's preference that the City, in conjunction with the SRC, prepare a press release or set of press releases so as to inform the sizable fraction of residents who would not receive pre-interview letters of the survey and its purposes.

Sample

The SRC would complete surveys of at least 379 citizens of Fayetteville. The estimated sampling error associated with this number of surveys is ± 5 percent if a simple random sample is drawn. A random sample of telephone numbers generated for the City of Fayetteville would be purchased. The longer the survey, the more sample needed.

In order to garner the desired number of completed interviews, each telephone number would be called as many as six times. The SRC follows methods that are demonstrated to improve response rates. Subject to the client's preferences, the SRC guarantees to carefully follow the agreed-upon research design. As optimistic as the SRC are about response rates, however, they cannot be guaranteed. Only adults (people age 18 or older) would be interviewed. To enable the results to be generalized to individuals rather than households, these estimates include costs of randomly selecting respondents within the household. Bilingual interviewers would interview Hispanic/Latino respondents, if needed. All interviewers are trained to forward Spanish-speaking respondents to the bilingual interviewers.

Oversampling Minority Ethnicity Populations

While the budget estimates do not include costs of oversampling, this technique could be used if it is found that the project is underbudget. Therefore, the following information is primarily meant to be informative in case, funds were to become available. 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, proportionately more households from these two groups would be surveyed. To obtain an estimated sampling error of ± 20 percent, approximately 46 people need to be surveyed. This would provide 23 African American and 23 Latino/Hispanic completed responses. Without the additional screening, it is estimated that about 11 African American and 12 Hispanic/Latino residents would complete the survey. In order to obtain surveys from the additional 11 Hispanic/Latino and 12 African American households the SRC would screen households at numerous additional telephone numbers.

If oversampling were used, these numbers would be screened only. Any household members who identify themselves as African American or Hispanic/Latino would be interviewed until the desired number of completed interview is obtained. Please note, however, these estimates guarantee only that the SRC would call all of these numbers at least six times, if appropriate. The SRC cannot guarantee that 23 surveys would be completed by African American and 23 by Hispanic/Latino Fayetteville residents however diligent the effort.

If used at all, oversampling to complete additional surveys with African American and Hispanic/Latino households would only be performed within the limits of the budgeted calling hours.

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.

Time Line

A tentative time line is shown in Table 2. Because the survey is being revised rather than drafted anew, the initial time period could be shortened significantly. The time line is drafted so as to account for a review via a democratic process, however. Data collection is scheduled to begin in late August to follow the opening of the University of Arkansas and return to school of students of the Fayetteville Public Schools. The later calling period is much more efficient because it is easier

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&q_r_name=DEC_2000_SF1_U_DP1&_lang=en.

to reach respondents. Furthermore, students and their families are much more likely to be heard from because they have returned to the community from vacations and other activities.

Table 1 Proposed Time Line for the 2007 Fayetteville Citizen's Survey

	Telephone Survey	
	Telephone survey, with initial letter	
	Weeks	Dates in 2007
Revise questionnaire	5	February 21 – May 31
Submit questionnaire and letter for IRB review	2	June 1- June 21
Program telephone interviewing system and test	3	June 10 - June 22
Conduct field tests and review responses	1.5	June 25 - June 27
Request Council Members' and Mayor's signatures	2	June 21 - July 5
Address, print and sign letters and mail	1	July 9 - July 10
Conduct interviews	3	August 26 – September 10
Clean and analyze data and write report	5	September 11 – October 15
Revisions and final report	2	October 16 – November 12

Deliverables

Communication about progress would be made to the project director 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 electronically in Excel. A short Technical Report and graphic presentation would be written and presented to City officials as desired. In addition, a slightly more in-depth report indicating changes over time would also be written. These would include revisions of charts or figures and up to six or so bivariate analyses. Please note that the latter pertains to tables rather than variables.

BUDGET - University of Arkansas

Proposed to (Sponsor):	City of Fayetteville						
Proposed Project Dates:	February 1, 2007 - Dec 31, 2007						
UA Lead Investigator:	Dr. Molly Longstreth (Survey Research Center)						

	Base	Salary Appointment	Type	% Effort	for PERSON-MONTHS	
					Calendar	Other
SALARIES & WAGES						
Project Director - Longstreth	63,171	12	2.50%			\$1,579
Assist Director	38,000	12	0.00%			\$0
Research Assistant 1 @	27,974	12	0.75%			\$210
Research Assistant 2 @	27,629	12	2.50%			\$691
Research Assistant 3 @	21,447	12	15.00%			\$3,217
Hourly Employees - estimate	8.29	Hourly	885			\$7,337
Total S&W						\$13,034

FRINGE BENEFITS

Institutional Rate:

Longstreth (non-classified personnel)	26.0%		\$411
Research Assistants (classified personnel)	26.0%		\$1,071
Hourly Employees	7.8%		\$572
Total FB			\$2,054

Total Salaries + Benefits**\$15,088****OTHER DIRECT COSTS**

Toll charges and Line Charges	\$245
Sample	\$1,355
Supplies	\$20
Postage	\$730
Printing	\$318

Subtotal Other Direct Costs**\$2,669****TOTAL DIRECT COSTS*****\$17,757**

Subtotal Modified Total Direct Costs (MTDC)

\$17,757

F & A COST (MTDC subtotal x RATE):

35.0%

\$6,215**TOTAL PROJECT COST****\$23,972**

Budget and Justification
University of Arkansas, Survey Research Center (SRC)
February, 1 2007 – December 31, 2007

City of Fayetteville
Paul Becker, Finance and Internal Services Director
Questions Submitted for
2007 Fayetteville Citizen's Survey

A. Salaries and Wages for time committed to this project:

Dr. Molly Longstreth, Principal Investigator (PI) \$ 1,579

The PI will be responsible for the overall program management, supervision, and reporting.

Research Assistants (2), 12-month, 1.0 appointment in the SRC:

The RAs will assist with all aspects of the project.

Karen Gillow 210

Noel Sharif 691

Kimberly Gillow 3,217

Hourly Employee Wages @ \$8.29/hr x estimated 885 hours. 7,337

Fringe Benefits at University of Arkansas rates:

Non-Classified 26% of salary \$ 411

Classified Staff (Research Assistants) 26% of salary 1,071

Hourly Employees: 7.0% of wages 572

Other Direct Costs

Sample 1,355

Toll Charges are estimated based on prior experience. 245

Materials & Supplies 20

Printing 318

Postage 730

F & A Costs 6,215

Total Costs \$23,972

Aldermen

Mayor Dan Coody

City Attorney Kit Williams

City Clerk Sondra Smith



Ward 1 Position 1 – Adella Gray
Ward 1 Position 2 – Brenda Thiel
Ward 2 Position 1 – Kyle B. Cook
Ward 2 Position 2 – Nancy Allen
Ward 3 Position 1 – Robert K. Rhoads
Ward 3 Position 2 – Robert Ferrell
Ward 4 Position 1 – Shirley Lucas
Ward 4 Position 2 – Lioneld Jordan

**Tentative Agenda
City of Fayetteville Arkansas
City Council Meeting
May 1, 2007**

A meeting of the Fayetteville City Council will be held on May 1, 2007 at 6:00 PM in Room 219 of the City Administration Building located at 113 West Mountain Street, Fayetteville, Arkansas.

Call to Order

Roll Call

Pledge of Allegiance

New Police/Court Building Discussion - Greg Tabor – Agenda Session only.

A. CONSENT:

- 1. Bid #07-30 Heckathorn Construction Co:** A resolution approving a construction contract with Heckathorn Construction Co., Inc. in the amount of \$1,290,520.00 for construction of Fire Station #3; and approving a project contingency in the amount of \$170,000.00.
- 2. Don Spann Architects:** A resolution approving Change Order #1 to the contract with Don Spann Architects in the amount of \$70,000.00 for Fire Station #3 Architecture Services.
- 3. 2007 Department of Homeland Security Assistance to Firefighters Grant:** A resolution authorizing the Fayetteville Fire Department to apply for a 2007 Department of Homeland Security Assistance to Firefighters Grant in the amount of \$330,770.00 to purchase a Live Fire Mobile Training Unit.
- 4. TM3, LLC:** A resolution authorizing the Mayor to execute a contract with TM3, LLC to haul and dispose of solid waste within the city limits of Fayetteville.
- 5. TWM Waste Management:** A resolution authorizing the Mayor to execute a contract with TWM Waste Management to haul and dispose of solid waste within the city limits of Fayetteville.

6. **McClelland Consulting Engineers, Inc:** A resolution awarding an engineering contract to McClelland Consulting Engineers, Inc. in the amount of \$71,302.00 to perform a drainage study within the Upper Scull Creek Watershed between College Avenue and Mission Boulevard.
7. **Tomlinson Asphalt Company, Inc:** A resolution awarding a contract to Tomlinson Asphalt Company, Inc. in the amount of \$187,760.00 for traffic calming construction in the Wilson Park and Washington/Willow Neighborhoods as part of the Transportation Improvement Bond Program; and approving a project contingency in the amount of \$18,776.00.
8. **2007 Citizen Survey:** A resolution authorizing the Mayor to negotiate and execute a contract with the Survey Research Center (SRC) at the University of Arkansas in an amount not-to-exceed of \$25,000.00 to design and conduct the 2007 Citizen Survey; and approving a budget adjustment in the amount of \$25,000.00.

B. UNFINISHED BUSINESS:

1. **Fayetteville E911 House Numbering:** A resolution to change the names of several streets or roads within Fayetteville because of duplicate or confusing street names within annexed areas. *This resolution was tabled at the April 17, 2007 City Council meeting to the May 1, 2007 City Council meeting.*
2. **RZN 07-2504 (Sloan/Cobblestone):** An ordinance rezoning that property described in rezoning petition RZN 07-2504, for approximately 17.22 acres, located south of Salem Road and east of Crystal Springs Subdivision in the interior of the Cobblestone Subdivision from RSF-4, Residential Single-Family, 4 units per acre, to RSF-8, Residential Single-Family, 8 units per acre. *This ordinance was left on the Second Reading at the April 17, 2007 City Council meeting.*
3. **Roll Off Service, Inc:** A resolution denying renewal of the contract with Roll Off Service, Inc. to haul and dispose of solid waste within the city limits of Fayetteville. *This resolution was tabled at the April 17, 2007 City Council meeting to the May 1, 2007 City Council meeting.*
4. **The Links at Fayetteville Appeal:** An ordinance establishing a Residential Planned Zoning District titled R-PZD 07-2452, The Links at Fayetteville, located at the northeast corner of Wedington and Ruppel Road; containing approximately 152.23 acres; amending the official zoning map of the city of Fayetteville; and adopting the Associated Master Development Plan. *This ordinance was left on the Second Reading at the April 17, 2007 City Council meeting.*

C. NEW BUSINESS:

1. **Fayetteville Municipal Property Owners' Improvement District No. 18 - Woodbury:** An ordinance to establish and lay off Fayetteville Municipal Property Owners' Improvement District No. 18 – Woodbury.

2. **VAC 07-2522 (Johnson):** An ordinance approving VAC 07-2522 submitted by Bates and Associates for property located at the west side of Gregg Avenue, between 6th and Prairie Streets, vacating a 20' wide portion of un-constructed right-of-way, a total of 0.20 acres.
3. **ADM 07-2565 (North Point):** An ordinance approving ADM 07-2565, for property located at Lot 5 Block 1 of the North Point Subdivision, repealing and replacing Ordinance No. 4932 to allow for a lesser easement vacation than previously approved as indicated on the attached map and legal description.
4. **Walker Park Cell Tower:** A resolution to approve a twenty-five year lease with Callahan Tower Joint Venture for a small lot in Walker Park for a monopine cell tower at an annual rent of between \$12,000.00 and \$54,000.00, plus a \$20,000.00 contribution to the Walker Park Mural Project.

D. INFORMATIONAL:

City Council Tour: April 30, 2007

City of Fayetteville
Staff Review Form
City Council Agenda Items
or
Contracts

A. 1
Bid #07-30 Heckathorn
Construction Co.
Page 1 of 16

May 1, 2007

City Council Meeting Date

Tony Johnson

Submitted By

Fire

Division

Fire

Department

Action Required:

A resolution awarding Bid #07-30 and approving a contract with Heckathorn Construction Co, Inc. in the amount of \$1,290,520 for the construction of fire station #3 and approving a project contingency in the amount of \$170,000.

\$ 1,460,520.00

Cost of this request

\$ 1,611,024.00

Category / Project Budget

Fire Station #3 Construction

Program Category / Project Name

4470-9470-5804.00

Account Number

\$ 41,200.00

Funds Used to Date

Building Costs

Program / Project Category Name

05006.1

Project Number

\$ 1,569,824.00

Remaining Balance

Sales Tax Improvement

Fund Name

Budgeted Item

☒

Budget Adjustment Attached

☐

Department Director

4-17-07
Date

Previous Ordinance or Resolution #

Original Contract Date:

City Attorney

4/17/07
Date

Original Contract Number:

Finance and Internal Service Director

4-17-07
Date

Received in City Clerk's Office

ENTERED
4/17/07

Mayor

4/18/07
Date

Received in Mayor's Office

ENTERED
4/17/07

Comments:



City of Fayetteville Fire Department
303 W. Center St. Fayetteville, AR. 72701
Phone (479) 575-8365 Fax (479) 575-0471

A. 1
Bid #07-30 Heckathorn
Construction Co.
Page 2 of 16

Project Request

To: Mayor Coody
Fayetteville City Council

From: Tony Johnson, Fire Chief T.J.

Subject: Awarding of Bid for Fire Station #3

Date: April 16, 2007

Page: 1 of 2

Recommendation

I recommend that you accept and approve Heckathorn Construction Company's bid of \$1,290,520.00 for the construction of fire station #3 which will be located at 1050 S. Happy Hollow Road. In addition to their bid amount, I am requesting that you also approve \$170,000.00 for a project contingency. This will bring the grand total for the cost of the request to \$1,460,520.00.

Background

As a result of the *2003 Fire Station Concept and Deployment Plan*, a need was identified and the Council has provided funding for the new fire station which constitutes expanded service. We are in the process of phasing in the 12 new employees needed for this service expansion and have already purchased the new fire apparatus. By adding this station, equipment and personnel, the fire department will be able to provide an enhanced level of service by decreasing our response times. In addition, the existing properties in this immediate response area, as well as the proposed development for this quadrant, will benefit from this added service.

Discussion

The fire station #3 project is pursuant to our guiding principle of a *Financially Sustainable City Government Providing Top-Quality, Responsive Services* and it strengthens our *Reputation as a Safe Community*. Our fractal response goal of responding to 90 percent of our calls for service in six minutes or less is improved upon by this project.

Page 2 of 2
Fire Station #3 Project Request
April 16, 2007

Budget Impact

The budget for this project is provided by a construction bond (Resolution No. 18-06) for this structure and the new fire station #5 (Crossover and Old Wire Roads) project. This is a budgeted item included in the 2007 Capital Improvement Projects.

RESOLUTION NO. _____

A RESOLUTION APPROVING A CONSTRUCTION CONTRACT WITH HECKATHORN CONSTRUCTION CO., INC. IN THE AMOUNT OF \$1,290,520.00 FOR CONSTRUCTION OF FIRE STATION #3; AND APPROVING A PROJECT CONTINGENCY IN THE AMOUNT OF \$170,000.00.

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

Section 1. That the City Council of the City of Fayetteville, Arkansas hereby approves a contract with Heckathorn Construction Co. Inc. in the amount of \$1,290,520.00 for construction of Fire Station #3. A copy of the contract, marked Exhibit "A" is attached hereto, and made a part hereof.

Section 2. That the City Council of the City of Fayetteville, Arkansas hereby approves a project contingency in the amount of \$170,000.00.

PASSED and APPROVED this 1st day of May, 2007.

APPROVED:

ATTEST:

By: _____

DAN COODY, Mayor

By: _____

SONDRA E. SMITH, City Clerk/Treasurer

AIA® Document A101™ – 1997

Standard Form of Agreement Between Owner and Contractor *where the basis of payment is a STIPULATED SUM*

AGREEMENT made as of the Second day of May in the year of Two Thousand Seven
(In words, indicate day, month and year)

BETWEEN the City of Fayetteville:
(Name, address and other information)

City of Fayetteville Arkansas, Municipality
113 West Mountain St.
Fayetteville, AR 72701
Telephone Number: 479.575.8330

and the Contractor:
(Name, address and other information)

Heckathorn Construction Company, Inc., General Corporation
1880 Birch Avenue
Fayetteville, Arkansas 72703
Telephone Number: 479.442.5386
Fax Number: 479.442.7385

The Project is:
(Name and location)

Fayetteville Fire Station #3
1050 South Happy Hollow Road - Fayetteville, Arkansas

The Architect is:
(Name, address and other information)

SPANN Architecture Inc., Subchapter S Corporation
1108 West Poplar - Rogers Arkansas 72756

The City of Fayetteville and Contractor agree as follows.

ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

AIA Document A201-1997, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

This document has been approved and endorsed by The Associated General Contractors of America.

ARTICLE 1 THE CONTRACT DOCUMENTS

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents listed in this Agreement and Modifications issued after execution of this Agreement; these form the Contract, and are as fully a part of the Contract as if attached to this Agreement or repeated herein. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. An enumeration of the Contract Documents, other than Modifications, appears in Article 8.

ARTICLE 2 THE WORK OF THIS CONTRACT

The Contractor shall fully execute the Work described in the Contract Documents, except to the extent specifically indicated in the Contract Documents to be the responsibility of others.

ARTICLE 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ 3.1 The date of commencement of the Work shall be the date of this Agreement unless a different date is stated below or provision is made for the date to be fixed in a notice to proceed issued by the City of Fayetteville.

(Insert the date of commencement if it differs from the date of this Agreement or, if applicable, state that the date will be fixed in a notice to proceed.)

The commencement date will be fixed in a notice to proceed.

If, prior to the commencement of the Work, the City of Fayetteville requires time to file mortgages, mechanic's liens and other security interests, the City of Fayetteville's time requirement shall be as follows:

§ 3.2 The Contract Time shall be measured from the date of commencement.

§ 3.3 The Contractor shall achieve Substantial Completion of the entire Work not later than 270 days from the date of commencement, or as follows:

(Insert number of calendar days. Alternatively, a calendar date may be used when coordinated with the date of commencement. Unless stated elsewhere in the Contract Documents, insert any requirements for earlier Substantial Completion of certain portions of the Work.)

Portion of Work

Substantial Completion Date

, subject to adjustments of this Contract Time as provided in the Contract Documents.

(Insert provisions, if any, for liquidated damages relating to failure to complete on time or for bonus payments for early completion of the Work.)

Liquidated Damages as stated in clause 1.11 of SECTION 01100 SUMMARY of the specifications. The Contractor and the Contractor's surety shall be liable for and pay the City of Fayetteville the sums hereinafter stipulated as liquidated damages for each calendar day of delay until the Work is substantially complete: Two Hundred Seventy Five dollars (\$275.00).

ARTICLE 4 CONTRACT SUM

§ 4.1 The City of Fayetteville shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the Contract. The Contract Sum shall be One Million Two Hundred Ninety Thousand Five Hundred Twenty Dollars and Zero Cents (\$ 1,290,520.00), subject to additions and deductions as provided in the Contract Documents.

§ 4.2 The Contract Sum is based upon the following alternates, if any, which are described in the Contract Documents and are hereby accepted by the City of Fayetteville:

(State the numbers or other identification of accepted alternates. If decisions on other alternates are to be made by the City of Fayetteville subsequent to the execution of this Agreement, attach a schedule of such other alternates showing the amount for each and the date when that amount expires)

§ 4.3 Unit prices, if any, are as follows:

Description	Units	Price (\$ 0.00)
Undercut & Backfill	Cubic Yard	\$18.50
24 " Drilled Pier Foundation complete	Lineal Foot +/-	\$15.50
30 " Drilled Pier Foundation complete	Lineal Foot +/-	\$18.50
24" Drilled Pier Casing	Lineal Foot +/-	\$3.25
30" Drilled Pier Casing	Lineal Foot +/-	\$3.75
Rock Excavation (removal & disposal)	Cubic Yard	\$125.00
Geothermal Well 300 feet deep	Each +/-	\$2,400.00
Trenching Safety Systems	N/A	\$300.00

ARTICLE 5 PAYMENTS

§ 5.1 PROGRESS PAYMENTS

§ 5.1.1 Based upon Applications for Payment submitted to the Architect by the Contractor and Certificates for Payment issued by the Architect, the City of Fayetteville shall make progress payments on account of the Contract Sum to the Contractor as provided below and elsewhere in the Contract Documents.

§ 5.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows:

§ 5.1.3 Provided that an Application for Payment is received by the Architect not later than the Thirtieth day of a month, the City of Fayetteville shall make payment to the Contractor not later than the Thirtieth day of the following month. If an Application for Payment is received by the Architect after the application date fixed above, payment shall be made by the City of Fayetteville not later than Thirty (30) days after the Architect receives the Application for Payment.

§ 5.1.4 Each Application for Payment shall be based on the most recent schedule of values submitted by the Contractor in accordance with the Contract Documents. The schedule of values shall allocate the entire Contract Sum among the various portions of the Work. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment.

§ 5.1.5 Applications for Payment shall indicate the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment.

§ 5.1.6 Subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

- .1 Take that portion of the Contract Sum properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Work by the share of the Contract Sum allocated to that portion of the Work in the schedule of values, less retainage of Ten percent (10.00%). Pending final determination of cost to the City of Fayetteville of changes in the Work, amounts not in dispute shall be included as provided in Section 7.3.8 of AIA Document A201-1997;
- .2 Add that portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction (or, if approved in advance by the City of Fayetteville, suitably stored off the site at a location agreed upon in writing), less retainage of Ten percent (10.00%);

- .3 Subtract the aggregate of previous payments made by the City of Fayetteville; and
- .4 Subtract amounts, if any, for which the Architect has withheld or nullified a Certificate for Payment as provided in Section 9.5 of AIA Document A201-1997.

§ 5.1.7 The progress payment amount determined in accordance with Section 5.1.6 shall be further modified under the following circumstances:

- .1 Add, upon Substantial Completion of the Work, a sum sufficient to increase the total payments to the full amount of the Contract Sum, less such amounts as the Architect shall determine for incomplete Work, retainage applicable to such work and unsettled claims; and
(Section 9.8.5 of AIA Document A201-1997 requires release of applicable retainage upon Substantial Completion of Work with consent of surety, if any.)
- .2 Add, if final completion of the Work is thereafter materially delayed through no fault of the Contractor, any additional amounts payable in accordance with Section 9.10.3 of AIA Document A201-1997.

§ 5.1.8 Reduction or limitation of retainage, if any, shall be as follows:

(If it is intended, prior to Substantial Completion of the entire Work, to reduce or limit the retainage resulting from the percentages inserted in Sections 5.1.6.1 and 5.1.6.2 above, and this is not explained elsewhere in the Contract Documents, insert here provisions for such reduction or limitation.)

Any reduction in retainage amount as provided by State Law or otherwise will only be made if the City of Fayetteville is in agreement that the Work has progressed with satisfactory (to the City of Fayetteville) workmanship and proper progress in execution of the work has been attained. Written consent of Surety to reduction in Retainage must be provided by the Contractor.

§ 5.1.9 Except with the City of Fayetteville's prior approval, the Contractor shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.

§ 5.2 FINAL PAYMENT

§ 5.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the City of Fayetteville to the Contractor when:

- .1 the Contractor has fully performed the Contract except for the Contractor's responsibility to correct Work as provided in Section 12.2.2 of AIA Document A201-1997, and to satisfy other requirements, if any, which extend beyond final payment; and
- .2 a final Certificate for Payment has been issued by the Architect.
- .3 the Contractor has completed all project "close-out" requirements as stated in the contract documents.

§ 5.2.2 The City of Fayetteville's final payment to the Contractor shall be made no later than 30 days after the issuance of the Architect's final Certificate for Payment, or as follows:

§ 5.2.3 No issuance of a Progress Payment, Final Payment Application or payment of such by the City of Fayetteville, nor partial nor entire occupancy of the Work by the City will release the Contractor, Sub-Contractors or others from the requirement to provide the Work in full accordance with the Contract Documents, or shall be construed as acceptance of any Work or materials not in accordance with this Agreement and the Contract Documents.

ARTICLE 6 TERMINATION OR SUSPENSION

§ 6.1 The Contract may be terminated by the City of Fayetteville or the Contractor as provided in Article 14 of AIA Document A201-1997.

§ 6.2 The Work may be suspended by the City of Fayetteville as provided in Article 14 of AIA Document A201-1997.

ARTICLE 7 MISCELLANEOUS PROVISIONS

§ 7.1 Where reference is made in this Agreement to a provision of AIA Document A201-1997 or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

§ 7.2 Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

(Insert rate of interest agreed upon, if any.)

None: The City of Fayetteville cannot pay interest.

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

§ 7.3 The City of Fayetteville's representative is:
(Name, address and other information)

Dr. Coy Hurd
113 West Mountain St.
Fayetteville, AR 72701

§ 7.4 The Contractor's representative is:
(Name, address and other information)

Don Heckathorn
1880 Birch Avenue
Fayetteville, Arkansas 72703

§ 7.5 Neither the City of Fayetteville's nor the Contractor's representative shall be changed without ten days written notice to the other party.

§ 7.6 Other provisions:

§ 7.6.1 Freedom of Information Act:

"Freedom of Information Act. 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, the (contractor) 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."

§ 7.6.2 City of Fayetteville:

References to the City of Fayetteville should be "City", "Fayetteville" or "City of Fayetteville". We should NOT be referred to as: "Lessor", "Owner" or any other generic term.

§ 7.6.3 Contractor:

References to those we contract with should be referred to by their name (which can be shortened) rather than a generic term such as: "Consultant", "Engineer", "Contractor", "Lessee", etc.

§ 7.6.4 Jurisdiction:

Legal jurisdiction to resolve any disputes must be Arkansas with Arkansas law applying to the case.

ARTICLE 8 ENUMERATION OF CONTRACT DOCUMENTS

§ 8.1 The Contract Documents, except for Modifications issued after execution of this Agreement are enumerated as follows:

§ 8.1.1 The Agreement is this executed 1997 edition of the Standard Form of Agreement Between City of Fayetteville and Contractor, AIA Document A101-1997.

§ 8.1.2 The General Conditions are the 1997 edition of the General Conditions of the Contract for Construction, AIA Document A201-1997.

§ 8.1.3 The Supplementary and other Conditions of the Contract are those contained in the Project Manual dated March 02, 2007, and are as follows

Document	Title	Pages
SUPPLEMENTS AND AMENDMENTS	Specification SECTION 00811	1-7

§ 8.1.4 The Specifications are those contained in the Project Manual dated as in Section 8.1.3, and are as follows:
(Either list the Specifications here or refer to an exhibit attached to this Agreement.)

Title of Specifications exhibit: Exhibit "A" Branch #3 Fire Station Specifications

(Rows deleted)

§ 8.1.5 The Drawings are as follows, and are dated March 02, 2007 unless a different date is shown below:
(Either list the Drawings here or refer to an exhibit attached to this Agreement.)

Title of Drawings exhibit: Exhibit "B" Fire Station #3 1050 Happy Hollow Road Fayetteville, Arkansas

(Rows deleted)

§ 8.1.6 The Addenda, if any, are as follows:

Number	Date	Pages
Addendum #1	3/16/2007	1 - 18
Addendum #2	3/20/2007	1 - 6 + new drawing sheets C3.1, C3.2, C3.3, C3.4 & C4.2 all dated 3/20/2007

Portions of Addenda relating to bidding requirements are not part of the Contract Documents unless the bidding requirements are also enumerated in this Article 8.

§ 8.1.7 Other documents, if any, forming part of the Contract Documents are as follows:
(List here any additional documents that are intended to form part of the Contract Documents. AIA Document A201-1997 provides that bidding requirements such as advertisement or invitation to bid, Instructions to Bidders, sample forms and the Contractor's bid are not part of the Contract Documents unless enumerated in this Agreement. They should be listed here only if intended to be part of the Contract Documents.)

Proposal of Heckathorn Construction Company Inc. for Lump Sum Contract Bid 07-30, Fire Station #3 Construction dated Thursday March 22, 2007, 2:00pm local time, pages 1 - 6.

This Agreement is entered into as of the day and year first written above and is executed in at least three original copies, of which one is to be delivered to the Contractor, one to the Architect for use in the administration of the Contract, and the remainder to the City of Fayetteville.

CITY OF FAYETTEVILLE (Signature)

Dan Coody, Mayor
(Printed name and title)



HECKATHORN CONSTRUCTION
COMPANY INC. (Signature)

Don Heckathorn, President
(Printed name and title)

Additions and Deletions Report for AIA® Document A101™ – 1997

This Additions and Deletions Report, as defined on page 1 of the associated document, reproduces below all text the author has added to the standard form AIA document in order to complete it, as well as any text the author may have added to or deleted from the original AIA text. Added text is shown underlined. Deleted text is indicated with a horizontal line through the original AIA text.

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 11:06:21 on 04/10/2007.

PAGE 1

AGREEMENT made as of the Second day of May in the year of Two Thousand Seven

...
BETWEEN the ~~Owner~~ City of Fayetteville:

...
City of Fayetteville Arkansas, Municipality
113 West Mountain St.
Fayetteville, AR 72701
Telephone Number: 479.575.8330

...
Heckathorn Construction Company, Inc., General Corporation
1880 Birch Avenue
Fayetteville, Arkansas 72703
Telephone Number: 479.442.5386
Fax Number: 479.442.7385

...
Fayetteville Fire Station #3
1050 South Happy Hollow Road - Fayetteville, Arkansas

...
SPANN Architecture Inc., Subchapter S Corporation
1108 West Poplar - Rogers Arkansas 72756

...
The ~~Owner~~ City of Fayetteville and Contractor agree as follows.

PAGE 2

§ 3.1 The date of commencement of the Work shall be the date of this Agreement unless a different date is stated below or provision is made for the date to be fixed in a notice to proceed issued by the ~~Owner~~ City of Fayetteville.

...
The commencement date will be fixed in a notice to proceed.

...
If, prior to the commencement of the Work, the ~~Owner~~ City of Fayetteville requires time to file mortgages, mechanic's liens and other security interests, the ~~Owner's~~ City of Fayetteville's time requirement shall be as follows:

...
§ 3.3 The Contractor shall achieve Substantial Completion of the entire Work not later than 270 days from the date of commencement, or as follows:

...
Liquidated Damages as stated in clause 1.11 of SECTION 01100 SUMMARY of the specifications. The Contractor and the Contractor's surety shall be liable for and pay the City of Fayetteville the sums hereinafter stipulated as liquidated damages for each calendar day of delay until the Work is substantially complete: Two Hundred Seventy Five dollars (\$275.00).

...

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User Notes:

(662103199)

§ 4.1 The Owner-City of Fayetteville shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the Contract. The Contract Sum shall be One Million Two Hundred Ninety Thousand Five Hundred Twenty Dollars and Zero Cents (\$ 1,290,520.00), subject to additions and deductions as provided in the Contract Documents.

§ 4.2 The Contract Sum is based upon the following alternates, if any, which are described in the Contract Documents and are hereby accepted by the Owner-City of Fayetteville:

(State the numbers or other identification of accepted alternates. If decisions on other alternates are to be made by the Owner-City of Fayetteville subsequent to the execution of this Agreement, attach a schedule of such other alternates showing the amount for each and the date when that amount expires)

<u>Undercut & Backfill</u>	<u>Cubic Yard</u>	<u>\$18.50</u>
<u>24 " Drilled Pier Foundation complete</u>	<u>Lineal Foot +/-</u>	<u>\$15.50</u>
<u>30 " Drilled Pier Foundation complete</u>	<u>Lineal Foot +/-</u>	<u>\$18.50</u>
<u>24" Drilled Pier Casing</u>	<u>Lineal Foot +/-</u>	<u>\$3.25</u>
<u>30" Drilled Pier Casing</u>	<u>Lineal Foot +/-</u>	<u>\$3.75</u>
<u>Rock Excavation (removal & disposal)</u>	<u>Cubic Yard</u>	<u>\$125.00</u>
<u>Geothermal Well 300 feet deep</u>	<u>Each +/-</u>	<u>\$2,400.00</u>
<u>Trenching Safety Systems</u>	<u>N/A</u>	<u>\$300.00</u>

§ 5.1.1 Based upon Applications for Payment submitted to the Architect by the Contractor and Certificates for Payment issued by the Architect, the Owner-City of Fayetteville shall make progress payments on account of the Contract Sum to the Contractor as provided below and elsewhere in the Contract Documents.

§ 5.1.3 Provided that an Application for Payment is received by the Architect not later than the Thirtieth day of a month, the Owner-City of Fayetteville shall make payment to the Contractor not later than the Thirtieth day of the following month. If an Application for Payment is received by the Architect after the application date fixed above, payment shall be made by the Owner-City of Fayetteville not later than Thirty (30) days after the Architect receives the Application for Payment.

.1 Take that portion of the Contract Sum properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Work by the share of the Contract Sum allocated to that portion of the Work in the schedule of values, less retainage of Ten percent (10.00%). Pending final determination of cost to the Owner-City of Fayetteville of changes in the Work, amounts not in dispute shall be included as provided in Section 7.3.8 of AIA Document A201-1997;

.2 Add that portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction (or, if approved in advance by the Owner-City of Fayetteville, suitably stored off the site at a location agreed upon in writing), less retainage of Ten percent (10.00%);

PAGE 4

.3 Subtract the aggregate of previous payments made by the Owner-City of Fayetteville; and

Any reduction in retainage amount as provided by State Law or otherwise will only be made if the City of Fayetteville is in agreement that the Work has progressed with satisfactory (to the City of Fayetteville) workmanship and proper progress in execution of the work has been attained. Written consent of Surety to reduction in Retainage must be provided by the Contractor.

§ 5.1.9 Except with the Owner's-City of Fayetteville's prior approval, the Contractor shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.

§ 5.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the ~~Owner~~ City of Fayetteville to the Contractor when:

...

.3 the Contractor has completed all project "close-out" requirements as stated in the contract documents.

...

§ 5.2.2 The ~~Owner's City of Fayetteville's~~ final payment to the Contractor shall be made no later than 30 days after the issuance of the Architect's final Certificate for Payment, or as follows:

...

§ 5.2.3 No issuance of a Progress Payment, Final Payment Application or payment of such by the City of Fayetteville, nor partial nor entire occupancy of the Work by the City will release the Contractor, Sub-Contractors or others from the requirement to provide the Work in full accordance with the Contract Documents, or shall be construed as acceptance of any Work or materials not in accordance with this Agreement and the Contract Documents.

...

§ 6.1 The Contract may be terminated by the ~~Owner~~ City of Fayetteville or the Contractor as provided in Article 14 of AIA Document A201-1997.

PAGE 5

§ 6.2 The Work may be suspended by the ~~Owner~~ City of Fayetteville as provided in Article 14 of AIA Document A201-1997.

...

~~()~~ None: The City of Fayetteville cannot pay interest.

...

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

...

§ 7.3 The ~~Owner's~~ City of Fayetteville's representative is:

...

Dr. Coy Hurd
113 West Mountain St.
Fayetteville, AR 72701

...

Don Heckathorn
1880 Birch Avenue
Fayetteville, Arkansas 72703

...

§ 7.5 Neither the ~~Owner's City of Fayetteville's~~ nor the Contractor's representative shall be changed without ten days written notice to the other party.

...

§ 7.6.1 Freedom of Information Act:

"Freedom of Information Act. 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, the (contractor) 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."

§ 7.6.2 City of Fayetteville:

References to the City of Fayetteville should be "City", "Fayetteville" or "City of Fayetteville". We should NOT be referred to as: "Lessor", "Owner" or any other generic term.

§ 7.6.3 Contractor:

References to those we contract with should be referred to by their name (which can be shortened) rather than a generic term such as: "Consultant", "Engineer", "Contractor", "Lessee", etc.

§ 7.6.4 Jurisdiction:

Legal jurisdiction to resolve any disputes must be Arkansas with Arkansas law applying to the case.

PAGE 6

§ 8.1 The Contract Documents, except for Modifications issued after execution of this ~~Agreement~~, Agreement are enumerated as follows:

...

§ 8.1.1 The Agreement is this executed 1997 edition of the Standard Form of Agreement Between ~~Owner~~ City of Fayetteville and Contractor, AIA Document A101-1997.

...

§ 8.1.3 The Supplementary and other Conditions of the Contract are those contained in the Project Manual dated March 02, 2007, and are as follows

...

<u>SUPPLEMENTS AND AMENDMENTS</u>	<u>Specification SECTION</u>	<u>1-7</u>
	<u>00811</u>	

...

Title of Specifications exhibit: Exhibit "A" Branch #3 Fire Station Specifications

<u>Section</u>	<u>Title</u>	<u>Pages</u>
----------------	--------------	--------------

§ 8.1.5 The Drawings are as follows, and are dated March 02, 2007 unless a different date is shown below:

...

Title of Drawings exhibit: Exhibit "B" Fire Station #3 1050 Happy Hollow Road Fayetteville, Arkansas

<u>Number</u>	<u>Title</u>	<u>Date</u>
...		
<u>Addendum #1</u>	<u>3/16/2007</u>	<u>1 - 18</u>
<u>Addendum #2</u>	<u>3/20/2007</u>	<u>1 - 6 + new drawing sheets</u>
		<u>C3.1, C3.2, C3.3, C3.4 &</u>
		<u>C4.2 all dated 3/20/2007</u>

...

Proposal of Heckathorn Construction Company Inc. for Lump Sum Contract Bid 07-30, Fire Station #3 Construction dated Thursday March 22, 2007, 2:00pm local time, pages 1 - 6.

PAGE 7

This Agreement is entered into as of the day and year first written above and is executed in at least three original copies, of which one is to be delivered to the Contractor, one to the Architect for use in the administration of the Contract, and the remainder to the ~~Owner~~ City of Fayetteville.

...

OWNER-CITY OF FAYETTEVILLE (Signature)

Dan Coody, Mayor

...

CONTRACTOR HECKATHORN
CONSTRUCTION COMPANY INC.
(Signature)

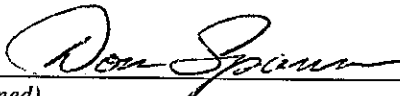
Don Heckathorn, President



Certification of Document's Authenticity

AIA® Document D401™ – 2003

I, Don Spann, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 11:06:21 on 04/10/2007 under Order No. 1000294666_1 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A101™ – 1997 - Standard Form of Agreement Between Owner and Contractor where the basis of payment is a STIPULATED SUM, as published by the AIA in its software, other than those additions and deletions shown in the associated Additions and Deletions Report.


(Signed)

PRESIDENT SPANN ARCHITECTURE INC.
(Title)

April 10, 2007
(Dated)

City of Fayetteville
Staff Review Form
City Council Agenda Items
or
Contracts

A. 2
Don Spann Architects
Page 1 of 46

May 1, 2007
City Council Meeting Date

Tony Johnson
Submitted By

Fire
Division

Fire
Department

Action Required:

A resolution approving a change order to purchase order 06-0001520 to Don Spann Architects in the amount of \$70,700.

\$ 70,700.00
Cost of this request

\$ 1,611,024.00
Category / Project Budget

Fire Station #3 Construction
Program Category / Project Name

4470-9470-5804.00
Account Number

\$ 41,200.00
Funds Used to Date

Building Costs
Program / Project Category Name

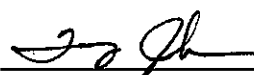
05006.1
Project Number

\$ 1,569,824.00
Remaining Balance

Sales Tax Improvement
Fund Name

Budgeted Item ☒

Budget Adjustment Attached ☐


Department Director 4-17-07
Date

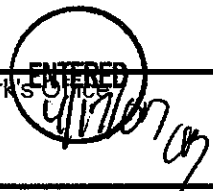
Previous Ordinance or Resolution #

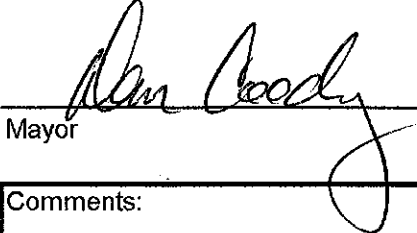
Original Contract Date:


City Attorney 4/17/07
Date

Original Contract Number:

Paul A. Bach
Finance and Internal Service Director 4-17-07
Date

Received in City Clerk's Office



Mayor 4/18/07
Date

Received in Mayor's Office


Comments:



City of Fayetteville Fire Department
303 W. Center St. Fayetteville, AR. 72701
Phone (479) 575-8365 Fax (479) 575-0471

Project Request

To: Mayor Coody
Fayetteville City Council

From: Tony Johnson, Fire Chief *TJ*

Subject: Change Order for Architectural Fees and Expenses

Date: April 16, 2007

Recommendation

I recommend that you accept and approve the change order for architectural fees, expenses and reimbursable for the new fire station #3 building project in the amount of \$70,700.00. Council approval of the request would bring the total amount for architectural fees, expenses and reimbursable to \$165,700.00.

Background

As a result of the 2003 Fire Station Concept and Deployment Plan, a need was identified and the Council has provided funding for the new fire station which constitutes expanded service. The additional architectural fee is needed because the initial price for service was based on an assumption. Since we have successfully completed the competitive bid process for the project, we now know the true market price for the fire station. It is for this reason that the architectural design and oversight portion of the cost has increased.

Discussion

The fire station #3 project is pursuant to our guiding principle of a *Financially Sustainable City Government Providing Top-Quality, Responsive Services* and it strengthens our reputation as a *Safe Community*. Our fractal response goal of responding to 90 percent of our calls for service in six minutes or less is improved upon by this project.

Budget Impact

The budget for this project is provided by a construction bond (Resolution No. 18-06) for this structure and the new fire station #5 (Crossover and Old Wire Roads) project. This is a budgeted item included in the 2007 Capital Improvements projects.

RESOLUTION NO. _____

A RESOLUTION APPROVING CHANGE ORDER #1 TO THE CONTRACT WITH DON SPANN ARCHITECTS IN THE AMOUNT OF \$70,000.00 FOR FIRE STATION #3 ARCHITECTURE SERVICES.

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 Change Order #1 to the Contract with Don Spann Architects in the amount of \$70,000.00 for Fire Station #3 Architecture Services. A copy of Change Order #1, marked Exhibit "A," is attached hereto and made a part hereof.

PASSED and APPROVED this 1st day of May, 2007.

APPROVED:

ATTEST:

By: _____
DAN COODY, Mayor

By: _____
SONDRA E. SMITH, City Clerk/Treasurer

RESOLUTION NO. 130-06

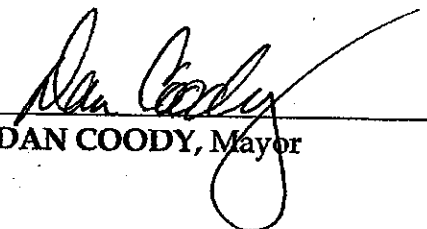
A RESOLUTION APPROVING A CONTRACT WITH DON SPANN ARCHITECTS IN AN AMOUNT NOT TO EXCEED \$105,300.00 FOR DESIGN AND OVERSIGHT OF THE REPLACEMENT OF FIRE STATION #3.

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

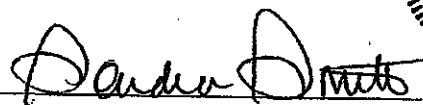
Section 1. That the City Council of the City of Fayetteville, Arkansas hereby approves a Contract with Don Spann Architects in an amount not to exceed \$105,300.00 for design and oversight of the replacement of Fire Station #3. A copy of the Contract, marked Exhibit "A," is attached hereto and made a part hereof.

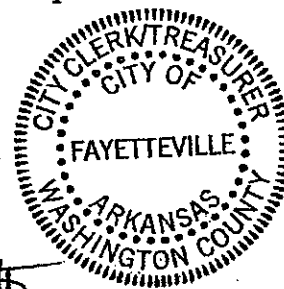
PASSED and APPROVED this 1st day of August, 2006.

APPROVED:

By: 
DAN COODY, Mayor

ATTEST:

By: 
SONDRA SMITH, City Clerk.



AIA® Document B151™ – 1997

Abbreviated Standard Form of Agreement Between Owner and Architect

AGREEMENT made as of the First day of August in the year Two Thousand Six
(In words, indicate day, month and year)

BETWEEN Don Spann AIA, Architect's client identified as the City of Fayetteville:
(Name, address and other information)

City of Fayetteville Arkansas, Municipality
113 West Mountain St.
Fayetteville, AR 72701
Telephone Number: 479.575.8330

and Don Spann AIA, Architect:
(Name, address and other information)

Don Spann AIA, Architect, Subchapter S Corporation
1108 West Poplar

For the following Project:
(Include detailed description of Project)

The project is based on remodeling and renovating the old Tyson – "Mexican Original" plant built at the southeast corner of the intersection of South Ray Avenue and Huntsville Road in Fayetteville, Arkansas. Adaptive re-use of the existing space will include:

1. 6,500 square foot Fire Station with 2 apparatus bays, living quarters, kitchen, bunk area, storage, maintenance area and office.
2. 1600 square foot Offices of the Fire Marshal
3. 3,090 square feet for Fire Education and Training including office space for three people, storage, reception, conference room, interrogation room and garage space that ties in with the Fire Station apparatus bay.

Total aggregate square footage for the facility including, accessory use space, circulation, walls and unusable area is approximately 12,000 square feet.

The City of Fayetteville and Don Spann AIA, Architect agree as follows.

ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

ARTICLE 1 DON SPANN AIA, ARCHITECT'S RESPONSIBILITIES

§ 1.1 The services performed by Don Spann AIA, Architect, Architect's employees and Don Spann AIA, Architect's consultants shall be as enumerated in Articles 2, 3 and 12.

§ 1.2 Don Spann AIA, Architect's services shall be performed as expeditiously as is consistent with professional skill and care and the orderly progress of the Project. Don Spann AIA, Architect shall submit for the City of Fayetteville's approval a schedule for the performance of Don Spann AIA, Architect's services which may be adjusted as the Project proceeds. This schedule shall include allowances for periods of time required for the City of Fayetteville's review and for approval of submissions by authorities having jurisdiction over the Project. Time limits established by this schedule approved by the City of Fayetteville shall not, except for reasonable cause, be exceeded by Don Spann AIA, Architect or City of Fayetteville.

§ 1.3 Don Spann AIA, Architect shall designate a representative authorized to act on behalf of Don Spann AIA, Architect with respect to the Project.

§ 1.4 The services covered by this Agreement are subject to the time limitations contained in Section 11.5.1.

(Paragraph deleted)

ARTICLE 2 SCOPE OF DON SPANN AIA, ARCHITECT'S BASIC SERVICES

§ 2.1 DEFINITION

Don Spann AIA, Architect's Basic Services consist of those described in Sections 2.2 through 2.6 and any other services identified in Article 12 as part of Basic Services, and include normal structural, mechanical and electrical engineering services.

§ 2.2 SCHEMATIC DESIGN PHASE

§ 2.2.1 Don Spann AIA, Architect shall review the program furnished by the City of Fayetteville to ascertain the requirements of the Project and shall arrive at a mutual understanding of such requirements with the City of Fayetteville.

§ 2.2.2 Don Spann AIA, Architect shall provide a preliminary evaluation of the City of Fayetteville's program, schedule and construction budget requirements, each in terms of the other, subject to the limitations set forth in Section 5.2.1.

§ 2.2.3 Don Spann AIA, Architect shall review with the City of Fayetteville alternative approaches to design and construction of the Project.

§ 2.2.4 Based on the mutually agreed-upon program, schedule and construction budget requirements, Don Spann AIA, Architect shall prepare, for approval by the City of Fayetteville, Schematic Design Documents consisting of drawings and other documents illustrating the scale and relationship of Project components.

§ 2.2.5 Don Spann AIA, Architect shall submit to the City of Fayetteville a preliminary estimate of Construction Cost based on current area, volume or similar conceptual estimating techniques.

§ 2.3 DESIGN DEVELOPMENT PHASE

§ 2.3.1 Based on the approved Schematic Design Documents and any adjustments authorized by the City of Fayetteville in the program, schedule or construction budget, Don Spann AIA, Architect shall prepare, for approval by the City of Fayetteville, Design Development Documents consisting of drawings and other documents to fix and describe the size and character of the Project as to architectural, structural, mechanical and electrical systems, materials and such other elements as may be appropriate.

§ 2.3.2 Don Spann AIA, Architect shall advise the City of Fayetteville of any adjustments to the preliminary estimate of Construction Cost.

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§ 2.4 CONSTRUCTION DOCUMENTS PHASE

§ 2.4.1 Based on the approved Design Development Documents and any further adjustments in the scope or quality of the Project or in the construction budget authorized by the City of Fayetteville, Don Spann AIA, Architect shall prepare, for approval by the City of Fayetteville, Construction Documents consisting of Drawings and Specifications setting forth in detail the requirements for the construction of the Project.

§ 2.4.2 Don Spann AIA, Architect shall assist the City of Fayetteville in the preparation of the necessary bidding information, bidding forms, the Conditions of the Contract, and the form of Agreement between the City of Fayetteville and Contractor.

§ 2.4.3 Don Spann AIA, Architect shall advise the City of Fayetteville of any adjustments to previous preliminary estimates of Construction Cost indicated by changes in requirements or general market conditions.

§ 2.4.4 Don Spann AIA, Architect shall assist the City of Fayetteville in connection with the City of Fayetteville's responsibility for filing documents required for the approval of governmental authorities having jurisdiction over the Project.

§ 2.5 BIDDING OR NEGOTIATION PHASE

Don Spann AIA, Architect, following the City of Fayetteville's approval of the Construction Documents and of the latest preliminary estimate of Construction Cost, shall assist the City of Fayetteville in obtaining bids or negotiated proposals and assist in awarding and preparing contracts for construction.

§ 2.6 CONSTRUCTION PHASE—ADMINISTRATION OF THE CONSTRUCTION CONTRACT

§ 2.6.1 Don Spann AIA, Architect's responsibility to provide Basic Services for the Construction Phase under this Agreement commences with the award of the initial Contract for Construction and terminates at the earlier of the issuance to the City of Fayetteville of the final Certificate for Payment or 60 days after the date of Substantial Completion of the Work.

§ 2.6.2 Don Spann AIA, Architect shall provide administration of the Contract for Construction as set forth below and in the edition of AIA Document A201, General Conditions of the Contract for Construction, current as of the date of this Agreement, unless otherwise provided in this Agreement. Modifications made to the General Conditions, when adopted as part of the Contract Documents, shall be enforceable under this Agreement only to the extent that they are consistent with this Agreement or approved in writing by Don Spann AIA, Architect.

§ 2.6.3 Duties, responsibilities and limitations of authority of Don Spann AIA, Architect under this Section 2.6 shall not be restricted, modified or extended without written agreement of the City of Fayetteville and Don Spann AIA, Architect with consent of the Contractor, which consent will not be unreasonably withheld.

§ 2.6.4 Don Spann AIA, Architect shall be a representative of and shall advise and consult with the City of Fayetteville during the administration of the Contract for Construction. Don Spann AIA, Architect shall have authority to act on behalf of the City of Fayetteville only to the extent provided in this Agreement unless otherwise modified by written amendment.

§ 2.6.5 Don Spann AIA, Architect, as a representative of the City of Fayetteville, shall visit the site at intervals appropriate to the stage of the Contractor's operations, or as otherwise agreed by the City of Fayetteville and Don Spann AIA, Architect in Article 12, (1) to become generally familiar with and to keep the City of Fayetteville informed about the progress and quality of the portion of the Work completed, (2) to endeavor to guard the City of Fayetteville against defects and deficiencies in the Work, and (3) to determine in general if the Work is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, Don Spann AIA, Architect shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. Don Spann AIA, Architect shall neither have control over or charge of, nor be responsible for, the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents.

§ 2.6.6 Don Spann AIA, Architect shall report to the City of Fayetteville known deviations from the Contract Documents and from the most recent construction schedule submitted by the Contractor. However, Don Spann AIA,

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Architect shall not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. Don Spann AIA, Architect shall be responsible for Don Spann AIA, Architect's negligent acts or omissions, but shall not have control over or charge of and shall not be responsible for acts or omissions of the Contractor, Subcontractors, or their agents or employees, or of any other persons or entities performing portions of the Work.

§ 2.6.7 Don Spann AIA, Architect shall at all times have access to the Work wherever it is in preparation or progress.

§ 2.6.8 Except as otherwise provided in this Agreement or when direct communications have been specially authorized, the City of Fayetteville shall endeavor to communicate with the Contractor through Don Spann AIA, Architect about matters arising out of or relating to the Contract Documents. Communications by and with Don Spann AIA, Architect's consultants shall be through Don Spann AIA, Architect.

§ 2.6.9 CERTIFICATES FOR PAYMENT

§ 2.6.9.1 Don Spann AIA, Architect shall review and certify the amounts due the Contractor and shall issue certificates in such amounts.

§ 2.6.9.2 Don Spann AIA, Architect's certification for payment shall constitute a representation to the City of Fayetteville, based on Don Spann AIA, Architect's evaluation of the Work as provided in Section 2.6.5 and on the data comprising the Contractor's Application for Payment, that the Work has progressed to the point indicated and that, to the best of Don Spann AIA, Architect's knowledge, information and belief, the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject (1) to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, (2) to results of subsequent tests and inspections, (3) to correction of minor deviations from the Contract Documents prior to completion, and (4) to specific qualifications expressed by Don Spann AIA, Architect.

§ 2.6.9.3 The issuance of a Certificate for Payment shall not be a representation that Don Spann AIA, Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the City of Fayetteville to substantiate the Contractor's right to payment, or (4) ascertained how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§ 2.6.10 Don Spann AIA, Architect shall have authority to reject Work that does not conform to the Contract Documents. Whenever Don Spann AIA, Architect considers it necessary or advisable, Don Spann AIA, Architect shall have authority to require inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not such Work is fabricated, installed or completed. However, neither this authority of Don Spann AIA, Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of Don Spann AIA, Architect to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees or other persons or entities performing portions of the Work.

§ 2.6.11 Don Spann AIA, Architect shall review and approve or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. Don Spann AIA, Architect's action shall be taken with such reasonable promptness as to cause no delay in the Work or in the activities of the City of Fayetteville, Contractor or separate contractors, while allowing sufficient time in Don Spann AIA, Architect's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. Don Spann AIA, Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by Don Spann AIA, Architect, of any construction means, methods, techniques, sequences or procedures. Don Spann AIA, Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 2.6.12 If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of the Contractor by the Contract Documents, Don Spann AIA, Architect shall specify appropriate performance and design criteria that such services must satisfy. Shop Drawings and other

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submittals related to the Work designed or certified by the design professional retained by the Contractor shall bear such professional's written approval when submitted to Don Spann AIA, Architect. Don Spann AIA, Architect shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals.

§ 2.6.13 Don Spann AIA, Architect shall prepare Change Orders and Construction Change Directives, with supporting documentation and data if deemed necessary by Don Spann AIA, Architect as provided in Sections 3.1.1 and 3.3.3, for the City of Fayetteville's approval and execution in accordance with the Contract Documents, and may authorize minor changes in the Work not involving an adjustment in the Contract Sum or an extension of the Contract Time which are consistent with the intent of the Contract Documents.

§ 2.6.14 Don Spann AIA, Architect shall conduct inspections to determine the date or dates of Substantial Completion and the date of final completion, shall receive from the Contractor and forward to the City of Fayetteville, for the City of Fayetteville's review and records, written warranties and related documents required by the Contract Documents and assembled by the Contractor, and shall issue a final Certificate for Payment based upon a final inspection indicating the Work complies with the requirements of the Contract Documents.

§ 2.6.15 Don Spann AIA, Architect shall interpret and decide matters concerning performance of the City of Fayetteville and Contractor under, and requirements of, the Contract Documents on written request of either the City of Fayetteville or Contractor. Don Spann AIA, Architect's response to such requests shall be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

§ 2.6.16 Interpretations and decisions of Don Spann AIA, Architect shall be consistent with the intent of and reasonably inferable from the Contract Documents and shall be in writing or in the form of drawings. When making such interpretations and initial decisions, Don Spann AIA, Architect shall endeavor to secure faithful performance by both City of Fayetteville and Contractor, shall not show partiality to either, and shall not be liable for results of interpretations or decisions so rendered in good faith.

§ 2.6.17 Don Spann AIA, Architect shall render initial decisions on claims, disputes or other matters in question between the City of Fayetteville and Contractor as provided in the Contract Documents. However, Don Spann AIA, Architect's decisions on matters relating to aesthetic effect shall be final if consistent with the intent expressed in the Contract Documents.

ARTICLE 3 ADDITIONAL SERVICES

§ 3.1 GENERAL

§ 3.1.1 The services described in this Article 3 are not included in Basic Services unless so identified in Article 12, and they shall be paid for by the City of Fayetteville as provided in this Agreement, in addition to the compensation for Basic Services. The services described under Sections 3.2 and 3.4 shall only be provided if authorized or confirmed in writing by the City of Fayetteville. If services described under Contingent Additional Services in Section 3.3 are required due to circumstances beyond Don Spann AIA, Architect's control, Don Spann AIA, Architect shall notify the City of Fayetteville prior to commencing such services. If the City of Fayetteville deems that such services described under Section 3.3 are not required, the City of Fayetteville shall give prompt written notice to Don Spann AIA, Architect. If the City of Fayetteville indicates in writing that all or part of such Contingent Additional Services are not required, Don Spann AIA, Architect shall have no obligation to provide those services.

§ 3.2 PROJECT REPRESENTATION BEYOND BASIC SERVICES

§ 3.2.1 If more extensive representation at the site than is described in Section 2.6.5 is required, Don Spann AIA, Architect shall provide one or more Project Representatives to assist in carrying out such additional on-site responsibilities.

§ 3.2.2 Project Representatives shall be selected, employed and directed by Don Spann AIA, Architect, and Don Spann AIA, Architect shall be compensated therefor as agreed by the City of Fayetteville and Don Spann AIA, Architect. The duties, responsibilities and limitations of authority of Project Representatives shall be as described in the edition of AIA Document B352 current as of the date of this Agreement, unless otherwise agreed.

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§ 3.2.3 Through the presence at the site of such Project Representatives, Don Spann AIA, Architect shall endeavor to provide further protection for the City of Fayetteville against defects and deficiencies in the Work, but the furnishing of such project representation shall not modify the rights, responsibilities or obligations of Don Spann AIA, Architect as described elsewhere in this Agreement.

§ 3.3 CONTINGENT ADDITIONAL SERVICES

§ 3.3.1 Making revisions in drawings, specifications or other documents when such revisions are:

- .1 inconsistent with approvals or instructions previously given by the City of Fayetteville, including revisions made necessary by adjustments in the City of Fayetteville's program or Project budget;
- .2 required by the enactment or revision of codes, laws or regulations subsequent to the preparation of such documents; or
- .3 due to changes required as a result of the City of Fayetteville's failure to render decisions in a timely manner.

§ 3.3.2 Providing services required because of significant changes in the Project including, but not limited to, size, quality, complexity, the City of Fayetteville's schedule, or the method of bidding or negotiating and contracting for construction, except for services required under Section 5.2.5.

§ 3.3.3 Preparing Drawings, Specifications and other documentation and supporting data, evaluating Contractor's proposals, and providing other services in connection with Change Orders and Construction Change Directives.

§ 3.3.4 Providing services in connection with evaluating substitutions proposed by the Contractor and making subsequent revisions to Drawings, Specifications and other documentation resulting therefrom.

§ 3.3.5 Providing consultation concerning replacement of Work damaged by fire or other cause during construction, and furnishing services required in connection with the replacement of such Work.

§ 3.3.6 Providing services made necessary by the default of the Contractor, by major defects or deficiencies in the Work of the Contractor, or by failure of performance of either the City of Fayetteville or Contractor under the Contract for Construction.

§ 3.3.7 Providing services in evaluating an extensive number of claims submitted by the Contractor or others in connection with the Work.

§ 3.3.8 Providing services in connection with a public hearing, a dispute resolution proceeding or a legal proceeding except where Don Spann AIA, Architect is party thereto.

§ 3.3.9 Preparing documents for alternate, separate or sequential bids or providing services in connection with bidding, negotiation or construction prior to the completion of the Construction Documents Phase.

§ 3.4 OPTIONAL ADDITIONAL SERVICES

§ 3.4.1 Providing analyses of the City of Fayetteville's needs and programming the requirements of the Project.

§ 3.4.2 Providing financial feasibility or other special studies.

§ 3.4.3 Providing planning surveys, site evaluations or comparative studies of prospective sites.

§ 3.4.4 Providing special surveys, environmental studies and submissions required for approvals of governmental authorities or others having jurisdiction over the Project.

§ 3.4.5 Providing services relative to future facilities, systems and equipment.

§ 3.4.6 Providing services to investigate existing conditions or facilities or to make measured drawings thereof.

§ 3.4.7 Providing services to verify the accuracy of drawings or other information furnished by the City of Fayetteville.

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§ 3.4.8 Providing coordination of construction performed by separate contractors or by the City of Fayetteville's own forces and coordination of services required in connection with construction performed and equipment supplied by the City of Fayetteville.

§ 3.4.9 Providing services in connection with the work of a construction manager or separate consultants retained by the City of Fayetteville.

§ 3.4.10 Providing detailed estimates of Construction Cost.

§ 3.4.11 Providing detailed quantity surveys or inventories of material, equipment and labor.

§ 3.4.12 Providing analyses of owning and operating costs.

§ 3.4.13 Providing interior design and other similar services required for or in connection with the selection, procurement or installation of furniture, furnishings and related equipment.

§ 3.4.14 Providing services for planning tenant or rental spaces.

§ 3.4.15 Making investigations; inventories of materials or equipment, or valuations and detailed appraisals of existing facilities.

§ 3.4.16 Preparing a set of reproducible record drawings showing significant changes in the Work made during construction based on marked-up prints, drawings and other data furnished by the Contractor to Don Spann AIA, Architect.

§ 3.4.17 Providing assistance in the utilization of equipment or systems such as testing, adjusting and balancing, preparation of operation and maintenance manuals, training personnel for operation and maintenance, and consultation during operation.

§ 3.4.18 Providing services after issuance to the City of Fayetteville of the final Certificate for Payment, or in the absence of a final Certificate for Payment, more than 60 days after the date of Substantial Completion of the Work.

§ 3.4.19 Providing services of consultants for other than architectural, structural, mechanical and electrical engineering portions of the Project provided as a part of Basic Services.

§ 3.4.20 Providing any other services not otherwise included in this Agreement or not customarily furnished in accordance with generally accepted architectural practice.

ARTICLE 4 CITY OF FAYETTEVILLE'S RESPONSIBILITIES

§ 4.1 The City of Fayetteville shall provide full information in a timely manner regarding requirements for and limitations on the Project, including a written program which shall set forth the City of Fayetteville's objectives, schedule, constraints and criteria, including space requirements and relationships, flexibility, expandability, special equipment, systems and site requirements. The City of Fayetteville shall furnish to Don Spann AIA, Architect, within 15 days after receipt of a written request, information necessary and relevant for Don Spann AIA, Architect to evaluate, give notice of or enforce lien rights.

§ 4.2 The City of Fayetteville shall establish and periodically update an overall budget for the Project, including the Construction Cost, the City of Fayetteville's other costs and reasonable contingencies related to all of these costs.

§ 4.3 The City of Fayetteville shall designate a representative authorized to act on the City of Fayetteville's behalf with respect to the Project. The City of Fayetteville or such designated representative shall render decisions in a timely manner pertaining to documents submitted by Don Spann AIA, Architect in order to avoid unreasonable delay in the orderly and sequential progress of Don Spann AIA, Architect's services.

§ 4.4 The City of Fayetteville shall furnish surveys to describe physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures;

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adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.

§ 4.6 The City of Fayetteville shall furnish the services of consultants other than those designated in Section 4.5 when such services are requested by Don Spann AIA, Architect and are reasonably required by the scope of the Project.

§ 4.7 The City of Fayetteville shall furnish structural, mechanical, and chemical tests; tests for air and water pollution; tests for hazardous materials; and other laboratory and environmental tests, inspections and reports required by law or the Contract Documents.

§ 4.8 The City of Fayetteville shall furnish all legal, accounting and insurance services that may be necessary at any time for the Project to meet the City of Fayetteville's needs and interests. Such services shall include auditing services the City of Fayetteville may require to verify the Contractor's Applications for Payment or to ascertain how or for what purposes the Contractor has used the money paid by or on behalf of the City of Fayetteville.

§ 4.9 The services, information, surveys and reports required by Sections 4.4 through 4.8 shall be furnished at the City of Fayetteville's expense, and Don Spann AIA, Architect shall be entitled to rely upon the accuracy and completeness thereof.

§ 4.10 The City of Fayetteville shall provide prompt written notice to Don Spann AIA, Architect if the City of Fayetteville becomes aware of any fault or defect in the Project, including any errors, omissions or inconsistencies in Don Spann AIA, Architect's Instruments of Service.

ARTICLE 5 CONSTRUCTION COST

§ 5.1 DEFINITION

§ 5.1.1 The Construction Cost shall be the total cost or, to the extent the Project is not completed, the estimated cost to the City of Fayetteville of all elements of the Project designed or specified by Don Spann AIA, Architect.

§ 5.1.2 The Construction Cost shall include the cost at current market rates of labor and materials furnished by the City of Fayetteville and equipment designed, specified, selected or specially provided for by Don Spann AIA, Architect, including the costs of management or supervision of construction or installation provided by a separate construction manager or contractor, plus a reasonable allowance for their overhead and profit. In addition, a reasonable allowance for contingencies shall be included for market conditions at the time of bidding and for changes in the Work.

§ 5.1.3 Construction Cost does not include the compensation of Don Spann AIA, Architect and Don Spann AIA, Architect's consultants, the costs of the land, rights-of-way and financing or other costs that are the responsibility of the City of Fayetteville as provided in Article 4.

§ 5.2 RESPONSIBILITY FOR CONSTRUCTION COST

§ 5.2.1 Evaluations of the City of Fayetteville's Project budget, the preliminary estimate of Construction Cost and detailed estimates of Construction Cost, if any, prepared by Don Spann AIA, Architect, represent Don Spann AIA, Architect's judgment as a design professional familiar with the construction industry. It is recognized, however, that neither Don Spann AIA, Architect nor the City of Fayetteville has control over the cost of labor, materials or equipment, over the Contractor's methods of determining bid prices, or over competitive bidding, market or negotiating conditions. Accordingly, Don Spann AIA, Don Spann AIA, Architect cannot and does not warrant or represent that bids or negotiated prices will not vary from the City of Fayetteville's Project budget or from any estimate of Construction Cost or evaluation prepared or agreed to by Don Spann AIA, Architect.

§ 5.2.2 No fixed limit of Construction Cost shall be established as a condition of this Agreement by the furnishing, proposal or establishment of a Project budget, unless such fixed limit has been agreed upon in writing and signed by the parties hereto. If such a fixed limit has been established, Don Spann AIA, Architect shall be permitted to include contingencies for design, bidding and price escalation, to determine what materials, equipment, component systems

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and types of construction are to be included in the Contract Documents, to make reasonable adjustments in the scope of the Project and to include in the Contract Documents alternate bids as may be necessary to adjust the Construction Cost to the fixed limit. Fixed limits, if any, shall be increased in the amount of an increase in the Contract Sum occurring after execution of the Contract for Construction.

§ 5.2.3 If the Bidding or Negotiation Phase has not commenced within 90 days after Don Spann AIA, Architect submits the Construction Documents to the City of Fayetteville, any Project budget or fixed limit of Construction Cost shall be adjusted to reflect changes in the general level of prices in the construction industry.

§ 5.2.4 If a fixed limit of Construction Cost (adjusted as provided in Section 5.2.3) is exceeded by the lowest bona fide bid or negotiated proposal, the City of Fayetteville shall:

- .1 give written approval of an increase in such fixed limit;
- .2 authorize rebidding or renegotiating of the Project within a reasonable time;
- .3 terminate in accordance with Section 8.5; or
- .4 cooperate in revising the Project scope and quality as required to reduce the Construction Cost.

§ 5.2.5 If the City of Fayetteville chooses to proceed under Section 5.2.4.4, Don Spann AIA, Architect, without additional compensation, shall modify the documents for which Don Spann AIA, Architect is responsible under this Agreement as necessary to comply with the fixed limit, if established as a condition of this Agreement. The modification of such documents without cost to the City of Fayetteville shall be the limit of Don Spann AIA, Architect's responsibility under this Section 5.2.5. Don Spann AIA, Architect shall be entitled to compensation in accordance with this Agreement for all services performed whether or not the Construction Phase is commenced.

ARTICLE 6 USE OF DON SPANN AIA, ARCHITECT'S INSTRUMENTS OF SERVICE

§ 6.1 Drawings, specifications and other documents, including those in electronic form, prepared by Don Spann AIA, Architect and Don Spann AIA, Architect's consultants are Instruments of Service for use solely with respect to this Project. Don Spann AIA, Architect and Don Spann AIA, Architect's consultants shall be deemed the authors and City of Fayetteville's of their respective Instruments of Service and shall retain all common law, statutory and other reserved rights, including copyrights.

§ 6.2 Upon execution of this Agreement, Don Spann AIA, Architect grants to the City of Fayetteville a nonexclusive license to reproduce Don Spann AIA, Architect's Instruments of Service solely for purposes of constructing, using and maintaining the Project, provided that the City of Fayetteville shall comply with all obligations, including prompt payment of all sums when due, under this Agreement. Don Spann AIA, Architect shall obtain similar nonexclusive licenses from Don Spann AIA, Architect's consultants consistent with this Agreement. Any termination of this Agreement prior to completion of the Project shall terminate this license. Upon such termination, the City of Fayetteville shall refrain from making further reproductions of Instruments of Service and shall return to Don Spann AIA, Architect within seven days of termination all originals and reproductions in the City of Fayetteville's possession or control. If and upon the date Don Spann AIA, Architect is adjudged in default of this Agreement, the foregoing license shall be deemed terminated and replaced by a second, nonexclusive license permitting the City of Fayetteville to authorize other similarly credentialed design professionals to reproduce and, where permitted by law, to make changes, corrections or additions to the Instruments of Service solely for purposes of completing, using and maintaining the Project.

§ 6.3 Except for the licenses granted in Section 6.2, no other license or right shall be deemed granted or implied under this Agreement. The City of Fayetteville shall not assign, delegate, sublicense, pledge or otherwise transfer any license granted herein to another party without the prior written agreement of Don Spann AIA, Architect. However, the City of Fayetteville shall be permitted to authorize the Contractor, Subcontractors, Sub-subcontractors and material or equipment suppliers to reproduce applicable portions of the Instruments of Service appropriate to and for use in their execution of the Work by license granted in Section 6.2. Submission or distribution of Instruments of Service to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the reserved rights of Don Spann AIA, Architect and Don Spann AIA, Architect's consultants. The City of Fayetteville shall not use the Instruments of Service for future additions or alterations to this Project or for other projects, unless the City of Fayetteville obtains the prior written agreement of Don Spann AIA, Architect and Don Spann AIA, Architect's consultants. Any unauthorized use of the Instruments of Service shall be at the City of Fayetteville's sole risk and without liability to Don Spann AIA, Architect and Don Spann AIA, Architect's consultants.

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§ 6.4 Prior to Don Spann AIA, Architect providing to the City of Fayetteville any Instruments of Service in electronic form or the City of Fayetteville providing to Don Spann AIA, Architect any electronic data for incorporation into the Instruments of Service, the City of Fayetteville and Don Spann AIA, Architect shall by separate written agreement set forth the specific conditions governing the format of such Instruments of Service or electronic data, including any special limitations or licenses not otherwise provided in this Agreement.

ARTICLE 7 DISPUTE RESOLUTION

(Paragraphs deleted)

§ 7.3 CLAIMS FOR CONSEQUENTIAL DAMAGES

Don Spann AIA, Architect and City of Fayetteville waive consequential damages for claims, disputes or other matters in question arising out of or relating to this Agreement. This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 8.

ARTICLE 8 TERMINATION OR SUSPENSION

§ 8.1 If the City of Fayetteville fails to make payments to Don Spann AIA, Architect in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at Don Spann AIA, Architect's option, cause for suspension of performance of services under this Agreement. If Don Spann AIA, Architect elects to suspend services, prior to suspension of services, Don Spann AIA, Architect shall give seven days' written notice to the City of Fayetteville. In the event of a suspension of services, Don Spann AIA, Architect shall have no liability to the City of Fayetteville for delay or damage caused the City of Fayetteville because of such suspension of services. Before resuming services, Don Spann AIA, Architect shall be paid all sums due prior to suspension and any expenses incurred in the interruption and resumption of Don Spann AIA, Architect's services. Don Spann AIA, Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 8.2 If the Project is suspended by the City of Fayetteville for more than 30 consecutive days, Don Spann AIA, Architect shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, Don Spann AIA, Architect shall be compensated for expenses incurred in the interruption and resumption of Don Spann AIA, Architect's services. Don Spann AIA, Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 8.3 If the Project is suspended or Don Spann AIA, Architect's services are suspended for more than 90 consecutive days, Don Spann AIA, Architect may terminate this Agreement by giving not less than seven days' written notice.

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

§ 8.5 This Agreement may be terminated by the City of Fayetteville upon not less than seven days' written notice to Don Spann AIA, Architect for the City of Fayetteville's convenience and without cause.

§ 8.6 In the event of termination not the fault of Don Spann AIA, Architect, Don Spann AIA, Architect shall be compensated for services performed prior to termination, together with Reimbursable Expenses then due and all Termination Expenses as defined in Section 8.7.

§ 8.7 Termination Expenses are in addition to compensation for the services of the Agreement and include expenses directly attributable to termination for which Don Spann AIA, Architect is not otherwise compensated, plus an amount for Don Spann AIA, Architect's anticipated profit on the value of the services not performed by Don Spann AIA, Architect.

ARTICLE 9 MISCELLANEOUS PROVISIONS

§ 9.1 This Agreement shall be governed by the law of the principal place of business of Don Spann AIA, Architect, unless otherwise provided in Article 12.

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§ 9.2 Terms in this Agreement shall have the same meaning as those in the edition of AIA Document A201, General Conditions of the Contract for Construction, current as of the date of this Agreement.

§ 9.3 Causes of action between the parties to this Agreement pertaining to acts or failures to act shall be deemed to have accrued and the applicable statutes of limitations shall commence to run not later than either the date of Substantial Completion for acts or failures to act occurring prior to Substantial Completion or the date of issuance of the final Certificate for Payment for acts or failures to act occurring after Substantial Completion. In no event shall such statutes of limitations commence to run any later than the date when Don Spann AIA, Architect's services are substantially completed.

§ 9.4 To the extent damages are covered by property insurance during construction, the City of Fayetteville and Don Spann AIA, Architect waive all rights against each other and against the contractors, consultants, agents and employees of the other for damages, except such rights as they may have to the proceeds of such insurance as set forth in the edition of AIA Document A201, General Conditions of the Contract for Construction, current as of the date of this Agreement. The City of Fayetteville or Don Spann AIA, Architect, as appropriate, shall require of the contractors, consultants, agents and employees of any of them similar waivers in favor of the other parties enumerated herein.

§ 9.5 The City of Fayetteville and Don Spann AIA, Architect, respectively, bind themselves, their partners, successors, assigns and legal representatives to the other party to this Agreement and to the partners, successors, assigns and legal representatives of such other party with respect to all covenants of this Agreement. Neither the City of Fayetteville nor Don Spann AIA, Architect shall assign this Agreement without the written consent of the other, except that the City of Fayetteville may assign this Agreement to an institutional lender providing financing for the Project. In such event, the lender shall assume the City of Fayetteville's rights and obligations under this Agreement. Don Spann AIA, Architect shall execute all consents reasonably required to facilitate such assignment.

§ 9.6 This Agreement represents the entire and integrated agreement between the City of Fayetteville and Don Spann AIA, Architect and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both City of Fayetteville and Don Spann AIA, Architect.

§ 9.7 Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the City of Fayetteville or Don Spann AIA, Architect.

§ 9.8 Unless otherwise provided in this Agreement, Don Spann AIA, Architect and Don Spann AIA, Architect's consultants shall have no responsibility for the discovery, presence, handling, removal or disposal of or exposure of persons to hazardous materials or toxic substances in any form at the Project site.

§ 9.9 Don Spann AIA, Architect shall have the right to include photographic or artistic representations of the design of the Project among Don Spann AIA, Architect's promotional and professional materials. Don Spann AIA, Architect shall be given reasonable access to the completed Project to make such representations. However, Don Spann AIA, Architect's materials shall not include the City of Fayetteville's confidential or proprietary information if the City of Fayetteville has previously advised Don Spann AIA, Architect in writing of the specific information considered by the City of Fayetteville to be confidential or proprietary. The City of Fayetteville shall provide professional credit for Don Spann AIA, Architect in the City of Fayetteville's promotional materials for the Project.

§ 9.10 If the City of Fayetteville requests Don Spann AIA, Architect to execute certificates, the proposed language of such certificates shall be submitted to Don Spann AIA, Architect for review at least 14 days prior to the requested dates of execution. Don Spann AIA, Architect shall not be required to execute certificates that would require knowledge, services or responsibilities beyond the scope of this Agreement.

ARTICLE 10 PAYMENTS TO DON SPANN AIA, ARCHITECT

§ 10.1 DIRECT PERSONNEL EXPENSE

Direct Personnel Expense is defined as the direct salaries of Don Spann AIA, Architect's personnel engaged on the Project and the portion of the cost of their mandatory and customary contributions and benefits related thereto, such as employment taxes and other statutory employee benefits, insurance, sick leave, holidays, vacations, employee retirement plans and similar contributions.

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§ 10.2 REIMBURSABLE EXPENSES

§ 10.2.1 Reimbursable Expenses are in addition to compensation for Basic and Additional Services and include expenses incurred by Don Spann AIA, Architect and Don Spann AIA, Architect's employees and consultants directly related to the Project, as identified in the following Clauses:

- .1 transportation in connection with the Project, authorized out-of-town travel and subsistence, and electronic communications;
- .2 fees paid for securing approval of authorities having jurisdiction over the Project;
- .3 reproductions, plots, standard form documents, postage, handling and delivery of Instruments of Service;
- .4 expense of overtime work requiring higher than regular rates if authorized in advance by the City of Fayetteville;
- .5 renderings, models and mock-ups requested by the City of Fayetteville;
- .6 expense of professional liability insurance dedicated exclusively to this Project or the expense of additional insurance coverage or limits requested by the City of Fayetteville in excess of that normally carried by Don Spann AIA, Architect and Don Spann AIA, Architect's consultants;
- .7 reimbursable expenses as designated in Article 12;
- .8 other similar direct Project-related expenditures.

§ 10.3 PAYMENTS ON ACCOUNT OF BASIC SERVICES

§ 10.3.1 An initial payment as set forth in Section 11.1 is the minimum payment under this Agreement.

§ 10.3.2 Subsequent payments for Basic Services shall be made monthly and, where applicable, shall be in proportion to services performed within each phase of service, on the basis set forth in Section 11.2.2.

§ 10.3.3 If and to the extent that the time initially established in Section 11.5.1 of this Agreement is exceeded or extended through no fault of Don Spann AIA, Architect, compensation for any services rendered during the additional period of time shall be computed in the manner set forth in Section 11.3.2.

§ 10.3.4 When compensation is based on a percentage of Construction Cost and any portions of the Project are deleted or otherwise not constructed, compensation for those portions of the Project shall be payable to the extent services are performed on those portions, in accordance with the schedule set forth in Section 11.2.2, based on (1) the lowest bona fide bid or negotiated proposal, or (2) if no such bid or proposal is received, the most recent preliminary estimate of Construction Cost or detailed estimate of Construction Cost for such portions of the Project.

§ 10.4 PAYMENTS ON ACCOUNT OF ADDITIONAL SERVICES

Payments on account of Don Spann AIA, Architect's Additional Services and for Reimbursable Expenses shall be made monthly upon presentation of Don Spann AIA, Architect's statement of services rendered or expenses incurred.

§ 10.5 PAYMENTS WITHHELD

No deductions shall be made from Don Spann AIA, Architect's compensation on account of penalty, liquidated damages or other sums withheld from payments to contractors, or on account of the cost of changes in the Work other than those for which Don Spann AIA, Architect has been adjudged to be liable.

§ 10.6 DON SPANN AIA, ARCHITECT'S ACCOUNTING RECORDS

Records of Reimbursable Expenses and expenses pertaining to Additional Services and services performed on the basis of hourly rates or a multiple of Direct Personnel Expense shall be available to the City of Fayetteville or the City of Fayetteville's authorized representative at mutually convenient times.

ARTICLE 11 BASIS OF COMPENSATION

The City of Fayetteville shall compensate Don Spann AIA, Architect as follows:

§ 11.2 BASIC COMPENSATION

§ 11.2.1 For Basic Services, as described in Article 2, and any other services included in Article 12 as part of Basic Services, Basic Compensation shall be computed as follows:

(Insert basis of compensation, including stipulated sums, multiples or percentages, and identify phases to which particular methods of compensation apply, if necessary.)

Eight per cent (8%) of the Cost of Construction (not to exceed 8% of \$2,000,000)

§ 11.2.2 Where compensation is based on a stipulated sum or percentage of Construction Cost, progress payments for Basic Services in each phase shall total the following percentages of the total Basic Compensation payable:
(Insert additional phases as appropriate.)

Schematic Design Phase:	fifteen	percent (	15	%)
Design Development Phase:	Twenty	percent (	20	%)
Construction Documents Phase:	forty	percent (	40	%)
Bidding or Negotiation Phase:	five	percent (	5	%)
Construction Phase:	twenty	percent (	20	%)
Total Basic Compensation	one hundred	percent (	100.00	%)

§ 11.3 COMPENSATION FOR ADDITIONAL SERVICES

§ 11.3.1 For Project Representation Beyond Basic Services, as described in Section 3.2, compensation shall be computed as follows:

Hourly costs based on attached rate schedule titled EXHIBIT "A"

§ 11.3.2 For Additional Services of Don Spann AIA, Architect, as described in Articles 3 and 12, other than (1) Additional Project Representation, as described in Section 3.2, and (2) services included in Article 12 as part of Basic Services, but excluding services of consultants, compensation shall be computed as follows:
(Insert basis of compensation, including rates and multiples of Direct Personnel Expense for Principals and employees, and identify Principals and classify employees, if required. Identify specific services to which particular methods of compensation apply, if necessary.)

Hourly costs based on attached rate schedule titled EXHIBIT "A"

§ 11.3.3 For Additional Services of Consultants, including additional structural, mechanical and electrical engineering services and those provided under Section 3.4.19 or identified in Article 12 as part of Additional Services, a multiple of one point zero two (1.20) times the amounts billed to Don Spann AIA, Architect for such services.
(Identify specific types of consultants in Article 12, if required.)

§ 11.4 REIMBURSABLE EXPENSES

For Reimbursable Expenses, as described in Section 10.2, and any other items included in Article 12 as Reimbursable Expenses, a multiple of one point zero one (1.10) times the expenses incurred by Don Spann AIA, Architect, Don Spann AIA, Architect's employees and consultants directly related to the Project.

§ 11.5 ADDITIONAL PROVISIONS

§ 11.5.1 If the Basic Services covered by this Agreement have not been completed within eighteen (18) months of the date hereof, through no fault of Don Spann AIA, Architect, extension of Don Spann AIA, Architect's services beyond that time shall be compensated as provided in Sections 10.3.3 and 11.3.2.

(Paragraphs deleted)

§ 11.5.3 The rates and multiples set forth for Additional Services shall be adjusted in accordance with the normal salary review practices of Don Spann AIA, Architect, subject to approval of the Fayetteville City Council.

ARTICLE 12 OTHER CONDITIONS OR SERVICES

(Insert descriptions of other services, identify Additional Services included within Basic Compensation and modifications to the payment and compensation terms included in this Agreement.)

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§ 12.1 CHANGES IN SCOPE OR PRICE

"Changes, modifications, or amendments in scope, price or fees to this agreement shall not be allowed without a prior formal agreement amendment approved by the Mayor and the City Council in advance of the change in scope cost or fees.

§ 12.2 FREEDOM OF INFORMATION ACT

Contracts and documents produced under this agreement are subject to the requirements prescribed in the Arkansas Freedom of Information Act. If a Freedom of Information Act request is presented to the City of Fayetteville, Don Spann AIA Architect 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. Costs of reproduces resulting from any authorized request shall be a reimbursable cost subject to the conditions of Article § 11.4 of this agreement

§ 12.3 JURISDICTION

Legal jurisdiction to resolve any disputes shall be the State of Arkansas with Arkansas Law applying to the case.

§ 12.4 CONSULTANTS

At the request of the City of Fayetteville the services of specific consultants are hereby added to Don Spann AIA, Architect's basic services. These services shall be based upon an approved proposal by the City of Fayetteville with the conditions of Article 11.3.3 applying to these costs. Specific Consultant disciplines will include the following:

Civil Engineering
Landscape Architecture
Geotechnical Engineer

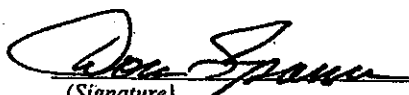
This Agreement entered into as of the day and year first written above.

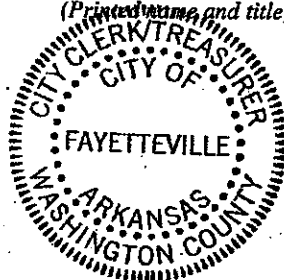
CITY OF FAYETTEVILLE


(Signature)
Dan Coody, Mayor
(Printed name and title)


(Signature)
Sondra Smith, City Clerk
(Printed name and title)

DON SPANN AIA, ARCHITECT


(Signature)
Don Spann, President
(Printed name and title)



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EXHIBIT "A"

Don Spann AIA, Architect

HOURLY RATES & REIMBURSABLE EXPENSES

Hourly Rates:

Principal	\$110.00 / hour
Staff Architect	\$80.00 / hour
Technician	\$55.00 / hour
Clerical	\$30.00 / hour

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User Notes:

(2608795819)

Additions and Deletions Report for AIA® Document B151™ – 1997

This Additions and Deletions Report, as defined on page 1 of the associated document, reproduces below all text the author has added to the standard form AIA document in order to complete it, as well as any text the author may have added to or deleted from the original AIA text. Added text is shown underlined. Deleted text is indicated with a horizontal line through the original AIA text.

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 10:40:20 on 07/12/2006.

PAGE 1

AGREEMENT made as of the First day of August in the year Two Thousand Six

...
BETWEEN the Don Spann AIA, Architect's client identified as the Owner-City of Fayetteville:

...
City of Fayetteville Arkansas, Municipality
113 West Mountain St.
Fayetteville, AR 72701
Telephone Number: 479.575.8330

...
and the Don Spann AIA, Architect:

...
Don Spann AIA, Architect, Subchapter S Corporation
1108 West Poplar
...

The project is based on remodeling and renovating the old Tyson – "Mexican Original" plant built at the southeast corner of the intersection of South Ray Avenue and Huntsville Road in Fayetteville, Arkansas. Adaptive re-use of the existing space will include:

1. 6,500 square foot Fire Station with 2 apparatus bays, living quarters, kitchen, bunk area, storage, maintenance area and office.
2. 1600 square foot Offices of the Fire Marshal
3. 3,090 square feet for Fire Education and Training including office space for three people, storage, reception, conference room, interrogation room and garage space that ties in with the Fire Station apparatus bay.

Total aggregate square footage for the facility including, accessory use space, circulation, walls and unusable area is approximately 12,000 square feet.

...
The Owner-City of Fayetteville and Don Spann AIA, Architect agree as follows.

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ARTICLE 1 – ARCHITECT'S RESPONSIBILITIESARTICLE 1 DON SPANN AIA, ARCHITECT'S RESPONSIBILITIES

§ 1.1 The services performed by the Don Spann AIA, Architect, Architect's employees and Don Spann AIA, Architect's consultants shall be as enumerated in Articles 2, 3 and 12.

...
§ 1.2 The Don Spann AIA, Architect's services shall be performed as expeditiously as is consistent with professional skill and care and the orderly progress of the Project. The Don Spann AIA, Architect shall submit for the Owner's City of Fayetteville's approval a schedule for the performance of the Don Spann AIA, Architect's services which may be adjusted as the Project proceeds. This schedule shall include allowances for periods of time required for the Owner's City of Fayetteville's review and for approval of submissions by authorities having jurisdiction over the

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User Notes:

(2608795819)

Project. Time limits established by this schedule approved by the Owner City of Fayetteville shall not, except for reasonable cause, be exceeded by the Don Spann AIA, Architect or Owner City of Fayetteville.

...
§ 1.3 The Don Spann AIA, Architect shall designate a representative authorized to act on behalf of the Don Spann AIA, Architect with respect to the Project.

...
ARTICLE 2 SCOPE OF ARCHITECT'S BASIC SERVICES

...
ARTICLE 2 SCOPE OF DON SPANN AIA, ARCHITECT'S BASIC SERVICES

...
The Don Spann AIA, Architect's Basic Services consist of those described in Sections 2.2 through 2.6 and any other services identified in Article 12 as part of Basic Services, and include normal structural, mechanical and electrical engineering services.

...
§ 2.2.1 The Don Spann AIA, Architect shall review the program furnished by the Owner City of Fayetteville to ascertain the requirements of the Project and shall arrive at a mutual understanding of such requirements with the Owner City of Fayetteville.

...
§ 2.2.2 The Don Spann AIA, Architect shall provide a preliminary evaluation of the Owner's City of Fayetteville's program, schedule and construction budget requirements, each in terms of the other, subject to the limitations set forth in Section 5.2.1.

...
§ 2.2.3 The Don Spann AIA, Architect shall review with the Owner City of Fayetteville alternative approaches to design and construction of the Project.

...
§ 2.2.4 Based on the mutually agreed-upon program, schedule and construction budget requirements, the Don Spann AIA, Architect shall prepare, for approval by the Owner City of Fayetteville, Schematic Design Documents consisting of drawings and other documents illustrating the scale and relationship of Project components.

...
§ 2.2.5 The Don Spann AIA, Architect shall submit to the Owner City of Fayetteville a preliminary estimate of Construction Cost based on current area, volume or similar conceptual estimating techniques.

...
§ 2.3.1 Based on the approved Schematic Design Documents and any adjustments authorized by the Owner City of Fayetteville in the program, schedule or construction budget, the Don Spann AIA, Architect shall prepare, for approval by the Owner City of Fayetteville, Design Development Documents consisting of drawings and other documents to fix and describe the size and character of the Project as to architectural, structural, mechanical and electrical systems, materials and such other elements as may be appropriate.

...
§ 2.3.2 The Don Spann AIA, Architect shall advise the Owner City of Fayetteville of any adjustments to the preliminary estimate of Construction Cost.

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...
§ 2.4.1 Based on the approved Design Development Documents and any further adjustments in the scope or quality of the Project or in the construction budget authorized by the Owner, the City of Fayetteville, Don Spann AIA, Architect shall prepare, for approval by the Owner City of Fayetteville, Construction Documents consisting of Drawings and Specifications setting forth in detail the requirements for the construction of the Project.

...
§ 2.4.2 The Don Spann AIA, Architect shall assist the Owner City of Fayetteville in the preparation of the necessary bidding information, bidding forms, the Conditions of the Contract, and the form of Agreement between the Owner City of Fayetteville and Contractor.

...
§ 2.4.3 The Don Spann AIA, Architect shall advise the Owner City of Fayetteville of any adjustments to previous preliminary estimates of Construction Cost indicated by changes in requirements or general market conditions.

§ 2.4.4 The Don Spann AIA, Architect shall assist the Owner-City of Fayetteville in connection with the Owner's City of Fayetteville's responsibility for filing documents required for the approval of governmental authorities having jurisdiction over the Project.

...
The Don Spann AIA, Architect, following the Owner's City of Fayetteville's approval of the Construction Documents and of the latest preliminary estimate of Construction Cost, shall assist the Owner-City of Fayetteville in obtaining bids or negotiated proposals and assist in awarding and preparing contracts for construction.

...
§ 2.6.1 The Don Spann AIA, Architect's responsibility to provide Basic Services for the Construction Phase under this Agreement commences with the award of the initial Contract for Construction and terminates at the earlier of the issuance to the Owner-City of Fayetteville of the final Certificate for Payment or 60 days after the date of Substantial Completion of the Work.

...
§ 2.6.2 The Don Spann AIA, Architect shall provide administration of the Contract for Construction as set forth below and in the edition of AIA Document A201, General Conditions of the Contract for Construction, current as of the date of this Agreement, unless otherwise provided in this Agreement. Modifications made to the General Conditions, when adopted as part of the Contract Documents, shall be enforceable under this Agreement only to the extent that they are consistent with this Agreement or approved in writing by the Don Spann AIA, Architect.

...
§ 2.6.3 Duties, responsibilities and limitations of authority of the Don Spann AIA, Architect under this Section 2.6 shall not be restricted, modified or extended without written agreement of the Owner-City of Fayetteville and Don Spann AIA, Architect with consent of the Contractor, which consent will not be unreasonably withheld.

...
§ 2.6.4 The Don Spann AIA, Architect shall be a representative of and shall advise and consult with the Owner-City of Fayetteville during the administration of the Contract for Construction. The Don Spann AIA, Architect shall have authority to act on behalf of the Owner-City of Fayetteville only to the extent provided in this Agreement unless otherwise modified by written amendment.

...
§ 2.6.5 The Don Spann AIA, Architect, as a representative of the Owner-City of Fayetteville, shall visit the site at intervals appropriate to the stage of the Contractor's operations, or as otherwise agreed by the Owner-City of Fayetteville and the Don Spann AIA, Architect in Article 12, (1) to become generally familiar with and to keep the Owner-City of Fayetteville informed about the progress and quality of the portion of the Work completed, (2) to endeavor to guard the Owner-City of Fayetteville against defects and deficiencies in the Work, and (3) to determine in general if the Work is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Don Spann AIA, Architect shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Don Spann AIA, Architect shall neither have control over or charge of, nor be responsible for, the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents.

...
§ 2.6.6 The Don Spann AIA, Architect shall report to the Owner-City of Fayetteville known deviations from the Contract Documents and from the most recent construction schedule submitted by the Contractor. However, the Don Spann AIA, Architect shall not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Don Spann AIA, Architect shall be responsible for the Don Spann AIA, Architect's negligent acts or omissions, but shall not have control over or charge of and shall not be responsible for acts or omissions of the Contractor, Subcontractors, or their agents or employees, or of any other persons or entities performing portions of the Work.

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§ 2.6.7 The Don Spann AIA, Architect shall at all times have access to the Work wherever it is in preparation or progress.

...
§ 2.6.8 Except as otherwise provided in this Agreement or when direct communications have been specially authorized, the Owner-City of Fayetteville shall endeavor to communicate with the Contractor through the Don Spann AIA, Architect about matters arising out of or relating to the Contract Documents. Communications by and with the Don Spann AIA, Architect's consultants shall be through the Don Spann AIA, Architect.

...
§ 2.6.9.1 The Don Spann AIA, Architect shall review and certify the amounts due the Contractor and shall issue certificates in such amounts.

...
§ 2.6.9.2 The Don Spann AIA, Architect's certification for payment shall constitute a representation to the Owner, City of Fayetteville, based on the Don Spann AIA, Architect's evaluation of the Work as provided in Section 2.6.5 and on the data comprising the Contractor's Application for Payment, that the Work has progressed to the point indicated and that, to the best of the Don Spann AIA, Architect's knowledge, information and belief, the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject (1) to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, (2) to results of subsequent tests and inspections, (3) to correction of minor deviations from the Contract Documents prior to completion, and (4) to specific qualifications expressed by the Don Spann AIA, Architect.

...
§ 2.6.9.3 The issuance of a Certificate for Payment shall not be a representation that the Don Spann AIA, Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner City of Fayetteville to substantiate the Contractor's right to payment, or (4) ascertained how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

...
§ 2.6.10 The Don Spann AIA, Architect shall have authority to reject Work that does not conform to the Contract Documents. Whenever the Don Spann AIA, Architect considers it necessary or advisable, the Don Spann AIA, Architect shall have authority to require inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Don Spann AIA, Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Don Spann AIA, Architect to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees or other persons or entities performing portions of the Work.

...
§ 2.6.11 The Don Spann AIA, Architect shall review and approve or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Don Spann AIA, Architect's action shall be taken with such reasonable promptness as to cause no delay in the Work or in the activities of the Owner, City of Fayetteville, Contractor or separate contractors, while allowing sufficient time in the Don Spann AIA, Architect's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Don Spann AIA, Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Don Spann AIA, Architect, of any construction means, methods, techniques, sequences or procedures. The Don Spann AIA, Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

...
§ 2.6.12 If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of the Contractor by the Contract Documents, the Don Spann AIA, Architect shall specify appropriate performance and design criteria that such services must satisfy. Shop Drawings and other submittals related to the Work designed or certified by the design professional retained by the Contractor shall bear such professional's written approval when submitted to the Don Spann AIA, Architect. The Don Spann AIA, Architect shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals.

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§ 2.6.13 The Don Spann AIA, Architect shall prepare Change Orders and Construction Change Directives, with supporting documentation and data if deemed necessary by the Don Spann AIA, Architect as provided in Sections 3.1.1 and 3.3.3, for the Owner's City of Fayetteville's approval and execution in accordance with the Contract

Documents, and may authorize minor changes in the Work not involving an adjustment in the Contract Sum or an extension of the Contract Time which are consistent with the intent of the Contract Documents.

...
§ 2.6.14 The Don Spann AIA, Architect shall conduct inspections to determine the date or dates of Substantial Completion and the date of final completion, shall receive from the Contractor and forward to the Owner, City of Fayetteville, for the Owner's City of Fayetteville's review and records, written warranties and related documents required by the Contract Documents and assembled by the Contractor, and shall issue a final Certificate for Payment based upon a final inspection indicating the Work complies with the requirements of the Contract Documents.

...
§ 2.6.15 The Don Spann AIA, Architect shall interpret and decide matters concerning performance of the Owner City of Fayetteville and Contractor under, and requirements of, the Contract Documents on written request of either the Owner City of Fayetteville or Contractor. The Don Spann AIA, Architect's response to such requests shall be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

...
§ 2.6.16 Interpretations and decisions of the Don Spann AIA, Architect shall be consistent with the intent of and reasonably inferable from the Contract Documents and shall be in writing or in the form of drawings. When making such interpretations and initial decisions, the Don Spann AIA, Architect shall endeavor to secure faithful performance by both Owner City of Fayetteville and Contractor, shall not show partiality to either, and shall not be liable for results of interpretations or decisions so rendered in good faith.

...
§ 2.6.17 The Don Spann AIA, Architect shall render initial decisions on claims, disputes or other matters in question between the Owner City of Fayetteville and Contractor as provided in the Contract Documents. However, the Don Spann AIA, Architect's decisions on matters relating to aesthetic effect shall be final if consistent with the intent expressed in the Contract Documents.

...
§ 2.6.18 The Architect's decisions on claims, disputes or other matters in question between the Owner and Contractor, except for those relating to aesthetic effect as provided in Section 2.6.17, shall be subject to mediation and arbitration as provided in this Agreement and in the Contract Documents.

...
§ 3.1.1 The services described in this Article 3 are not included in Basic Services unless so identified in Article 12, and they shall be paid for by the Owner City of Fayetteville as provided in this Agreement, in addition to the compensation for Basic Services. The services described under Sections 3.2 and 3.4 shall only be provided if authorized or confirmed in writing by the Owner City of Fayetteville. If services described under Contingent Additional Services in Section 3.3 are required due to circumstances beyond the Don Spann AIA, Architect's control, the Don Spann AIA, Architect shall notify the Owner City of Fayetteville prior to commencing such services. If the Owner City of Fayetteville deems that such services described under Section 3.3 are not required, the Owner City of Fayetteville shall give prompt written notice to the Don Spann AIA, Architect. If the Owner City of Fayetteville indicates in writing that all or part of such Contingent Additional Services are not required, the Don Spann AIA, Architect shall have no obligation to provide those services.

...
§ 3.2.1 If more extensive representation at the site than is described in Section 2.6.5 is required, the Don Spann AIA, Architect shall provide one or more Project Representatives to assist in carrying out such additional on-site responsibilities.

...
§ 3.2.2 Project Representatives shall be selected, employed and directed by the Don Spann AIA, Architect, and the Don Spann AIA, Architect shall be compensated therefor as agreed by the Owner City of Fayetteville and Don Spann AIA, Architect. The duties, responsibilities and limitations of authority of Project Representatives shall be as described in the edition of AIA Document B352 current as of the date of this Agreement, unless otherwise agreed.

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...
§ 3.2.3 Through the presence at the site of such Project Representatives, the Don Spann AIA, Architect shall endeavor to provide further protection for the Owner City of Fayetteville against defects and deficiencies in the Work, but the furnishing of such project representation shall not modify the rights, responsibilities or obligations of the Don Spann AIA, Architect as described elsewhere in this Agreement.

- 1 inconsistent with approvals or instructions previously given by the Owner-City of Fayetteville, including revisions made necessary by adjustments in the Owner's-City of Fayetteville's program or Project budget;
- 3 due to changes required as a result of the Owner's-City of Fayetteville's failure to render decisions in a timely manner.

§ 3.3.2 Providing services required because of significant changes in the Project including, but not limited to, size, quality, complexity, the Owner's-City of Fayetteville's schedule, or the method of bidding or negotiating and contracting for construction, except for services required under Section 5.2.5.

§ 3.3.6 Providing services made necessary by the default of the Contractor, by major defects or deficiencies in the Work of the Contractor, or by failure of performance of either the Owner-City of Fayetteville or Contractor under the Contract for Construction.

§ 3.3.8 Providing services in connection with a public hearing, a dispute resolution proceeding or a legal proceeding except where the Don Spann AIA, Architect is party thereto.

§ 3.4.1 Providing analyses of the Owner's-City of Fayetteville's needs and programming the requirements of the Project.

§ 3.4.7 Providing services to verify the accuracy of drawings or other information furnished by the Owner-City of Fayetteville.

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§ 3.4.8 Providing coordination of construction performed by separate contractors or by the Owner's-City of Fayetteville's own forces and coordination of services required in connection with construction performed and equipment supplied by the Owner-City of Fayetteville.

§ 3.4.9 Providing services in connection with the work of a construction manager or separate consultants retained by the Owner-City of Fayetteville.

§ 3.4.16 Preparing a set of reproducible record drawings showing significant changes in the Work made during construction based on marked-up prints, drawings and other data furnished by the Contractor to the Don Spann AIA, Architect.

§ 3.4.18 Providing services after issuance to the Owner-City of Fayetteville of the final Certificate for Payment, or in the absence of a final Certificate for Payment, more than 60 days after the date of Substantial Completion of the Work.

ARTICLE 4 - OWNER'S RESPONSIBILITIESARTICLE 4 CITY OF FAYETTEVILLE'S RESPONSIBILITIES

§ 4.1 The Owner-City of Fayetteville shall provide full information in a timely manner regarding requirements for and limitations on the Project, including a written program which shall set forth the Owner's-City of Fayetteville's objectives, schedule, constraints and criteria, including space requirements and relationships, flexibility, expandability, special equipment, systems and site requirements. The Owner-City of Fayetteville shall furnish to the Don Spann AIA, Architect, within 15 days after receipt of a written request, information necessary and relevant for the Don Spann AIA, Architect to evaluate, give notice of or enforce lien rights.

§ 4.2 The Owner-City of Fayetteville shall establish and periodically update an overall budget for the Project, including the Construction Cost, the Owner's-City of Fayetteville's other costs and reasonable contingencies related to all of these costs.

§ 4.3 The Owner-City of Fayetteville shall designate a representative authorized to act on the Owner's-City of Fayetteville's behalf with respect to the Project. The Owner-City of Fayetteville or such designated representative shall render decisions in a timely manner pertaining to documents submitted by the Don Spann AIA, Architect in order to avoid unreasonable delay in the orderly and sequential progress of the Don Spann AIA, Architect's services.

...
§ 4.4 The Owner-City of Fayetteville shall furnish surveys to describe physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; adjacent drainage; rights-of-way, restrictions, easements, encroachments; zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.

...
§ 4.5 The Owner shall furnish the services of geotechnical engineers when such services are requested by the Architect. Such services may include but are not limited to test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with reports and appropriate recommendations.

...
§ 4.6 The Owner-City of Fayetteville shall furnish the services of consultants other than those designated in Section 4.5 when such services are requested by the Don Spann AIA, Architect and are reasonably required by the scope of the Project.

...
§ 4.7 The Owner-City of Fayetteville shall furnish structural, mechanical, and chemical tests; tests for air and water pollution; tests for hazardous materials; and other laboratory and environmental tests, inspections and reports required by law or the Contract Documents.

...
§ 4.8 The Owner-City of Fayetteville shall furnish all legal, accounting and insurance services that may be necessary at any time for the Project to meet the Owner's-City of Fayetteville's needs and interests. Such services shall include auditing services the Owner-City of Fayetteville may require to verify the Contractor's Applications for Payment or to ascertain how or for what purposes the Contractor has used the money paid by or on behalf of the Owner-City of Fayetteville.

...
§ 4.9 The services, information, surveys and reports required by Sections 4.4 through 4.8 shall be furnished at the Owner's-City of Fayetteville's expense, and the Don Spann AIA, Architect shall be entitled to rely upon the accuracy and completeness thereof.

...
§ 4.10 The Owner-City of Fayetteville shall provide prompt written notice to the Don Spann AIA, Architect if the Owner-City of Fayetteville becomes aware of any fault or defect in the Project, including any errors, omissions or inconsistencies in the Don Spann AIA, Architect's Instruments of Service.

...
§ 5.1.1 The Construction Cost shall be the total cost or, to the extent the Project is not completed, the estimated cost to the Owner-City of Fayetteville of all elements of the Project designed or specified by the Don Spann AIA, Architect.

...
§ 5.1.2 The Construction Cost shall include the cost at current market rates of labor and materials furnished by the Owner-City of Fayetteville and equipment designed, specified, selected or specially provided for by the Don Spann AIA, Architect, including the costs of management or supervision of construction or installation provided by a separate construction manager or contractor, plus a reasonable allowance for their overhead and profit. In addition, a reasonable allowance for contingencies shall be included for market conditions at the time of bidding and for changes in the Work.

...
§ 5.1.3 Construction Cost does not include the compensation of the Don Spann AIA, Architect and the Don Spann AIA, Architect's consultants, the costs of the land, rights-of-way and financing or other costs that are the responsibility of the Owner-City of Fayetteville as provided in Article 4.

...
§ 5.2.1 Evaluations of the Owner's-City of Fayetteville's Project budget, the preliminary estimate of Construction Cost and detailed estimates of Construction Cost, if any, prepared by the Don Spann AIA, Architect, represent the Don Spann AIA, Architect's judgment as a design professional familiar with the construction industry. It is recognized, however, that neither the Don Spann AIA, Architect nor the Owner-City of Fayetteville has control over the cost of labor, materials or equipment, over the Contractor's methods of determining bid prices, or over

competitive bidding, market or negotiating conditions. Accordingly, the Don Spann AIA, Don Spann AIA, Architect cannot and does not warrant or represent that bids or negotiated prices will not vary from the Owner's City of Fayetteville's Project budget or from any estimate of Construction Cost or evaluation prepared or agreed to by the Don Spann AIA, Architect.

...
§ 5.2.2 No fixed limit of Construction Cost shall be established as a condition of this Agreement by the furnishing, proposal or establishment of a Project budget, unless such fixed limit has been agreed upon in writing and signed by the parties hereto. If such a fixed limit has been established, the Don Spann AIA, Architect shall be permitted to include contingencies for design, bidding and price escalation, to determine what materials, equipment, component systems and types of construction are to be included in the Contract Documents, to make reasonable adjustments in the scope of the Project and to include in the Contract Documents alternate bids as may be necessary to adjust the Construction Cost to the fixed limit. Fixed limits, if any, shall be increased in the amount of an increase in the Contract Sum occurring after execution of the Contract for Construction.

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§ 5.2.3 If the Bidding or Negotiation Phase has not commenced within 90 days after the Don Spann AIA, Architect submits the Construction Documents to the Owner, City of Fayetteville, any Project budget or fixed limit of Construction Cost shall be adjusted to reflect changes in the general level of prices in the construction industry.

...
§ 5.2.4 If a fixed limit of Construction Cost (adjusted as provided in Section 5.2.3) is exceeded by the lowest bona fide bid or negotiated proposal, the Owner City of Fayetteville shall:

...
§ 5.2.5 If the Owner City of Fayetteville chooses to proceed under Section 5.2.4.4, the Don Spann AIA, Architect, without additional compensation, shall modify the documents for which the Don Spann AIA, Architect is responsible under this Agreement as necessary to comply with the fixed limit, if established as a condition of this Agreement. The modification of such documents without cost to the Owner City of Fayetteville shall be the limit of the Don Spann AIA, Architect's responsibility under this Section 5.2.5. The Don Spann AIA, Architect shall be entitled to compensation in accordance with this Agreement for all services performed whether or not the Construction Phase is commenced.

ARTICLE 6 USE OF ARCHITECT'S INSTRUMENTS OF SERVICE ARTICLE 6 USE OF DON SPANN AIA, ARCHITECT'S INSTRUMENTS OF SERVICE

§ 6.1 Drawings, specifications and other documents, including those in electronic form, prepared by the Don Spann AIA, Architect and the Don Spann AIA, Architect's consultants are Instruments of Service for use solely with respect to this Project. The Don Spann AIA, Architect and the Don Spann AIA, Architect's consultants shall be deemed the authors and owners City of Fayetteville's of their respective Instruments of Service and shall retain all common law, statutory and other reserved rights, including copyrights.

...
§ 6.2 Upon execution of this Agreement, the Don Spann AIA, Architect grants to the Owner City of Fayetteville a nonexclusive license to reproduce the Don Spann AIA, Architect's Instruments of Service solely for purposes of constructing, using and maintaining the Project, provided that the Owner City of Fayetteville shall comply with all obligations, including prompt payment of all sums when due, under this Agreement. The Don Spann AIA, Architect shall obtain similar nonexclusive licenses from the Don Spann AIA, Architect's consultants consistent with this Agreement. Any termination of this Agreement prior to completion of the Project shall terminate this license. Upon such termination, the Owner City of Fayetteville shall refrain from making further reproductions of Instruments of Service and shall return to the Don Spann AIA, Architect within seven days of termination all originals and reproductions in the Owner's City of Fayetteville's possession or control. If and upon the date the Don Spann AIA, Architect is adjudged in default of this Agreement, the foregoing license shall be deemed terminated and replaced by a second, nonexclusive license permitting the Owner City of Fayetteville to authorize other similarly credentialed design professionals to reproduce and, where permitted by law, to make changes, corrections or additions to the Instruments of Service solely for purposes of completing, using and maintaining the Project.

...
§ 6.3 Except for the licenses granted in Section 6.2, no other license or right shall be deemed granted or implied under this Agreement. The Owner City of Fayetteville shall not assign, delegate, sublicense, pledge or otherwise transfer any license granted herein to another party without the prior written agreement of the Don Spann AIA, Architect. However, the Owner City of Fayetteville shall be permitted to authorize the Contractor, Subcontractors,

Sub-subcontractors and material or equipment suppliers to reproduce applicable portions of the Instruments of Service appropriate to and for use in their execution of the Work by license granted in Section 6.2. Submission or distribution of Instruments of Service to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the reserved rights of the Don Spann AIA, Architect and the Don Spann AIA, Architect's consultants. The Owner-City of Fayetteville shall not use the Instruments of Service for future additions or alterations to this Project or for other projects, unless the Owner-City of Fayetteville obtains the prior written agreement of the Don Spann AIA, Architect and the Don Spann AIA, Architect's consultants. Any unauthorized use of the Instruments of Service shall be at the Owner's-City of Fayetteville's sole risk and without liability to the Don Spann AIA, Architect and the Don Spann AIA, Architect's consultants.

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§ 6.4 Prior to the Don Spann AIA, Architect providing to the Owner-City of Fayetteville any Instruments of Service in electronic form or the Owner-City of Fayetteville providing to the Don Spann AIA, Architect any electronic data for incorporation into the Instruments of Service, the Owner-City of Fayetteville and the Don Spann AIA, Architect shall by separate written agreement set forth the specific conditions governing the format of such Instruments of Service or electronic data, including any special limitations or licenses not otherwise provided in this Agreement.

§ 7.1 MEDIATION

§ 7.1.1 Any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to mediation as a condition precedent to arbitration or the institution of legal or equitable proceedings by either party. If such matter relates to or is the subject of a lien arising out of the Architect's services, the Architect may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to resolution of the matter by mediation or by arbitration.

§ 7.1.2 The Owner and Architect shall endeavor to resolve claims, disputes and other matters in question between them by mediation which, unless the parties mutually agree otherwise, shall be in accordance with the Construction Industry Mediation Rules of the American Arbitration Association currently in effect. Request for mediation shall be filed in writing with the other party to this Agreement and with the American Arbitration Association. The request may be made concurrently with the filing of a demand for arbitration but, in such event, mediation shall proceed in advance of arbitration or legal or equitable proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order.

§ 7.1.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

§ 7.2 ARBITRATION

§ 7.2.1 Any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to arbitration. Prior to arbitration, the parties shall endeavor to resolve disputes by mediation in accordance with Section 7.1.

§ 7.2.2 Claims, disputes and other matters in question between the parties that are not resolved by mediation shall be decided by arbitration which, unless the parties mutually agree otherwise, shall be in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association currently in effect. The demand for arbitration shall be filed in writing with the other party to this Agreement and with the American Arbitration Association.

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

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

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

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

...
The Don Spann AIA, Architect and Owner-City of Fayetteville waive consequential damages for claims, disputes or other matters in question arising out of or relating to this Agreement. This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 8.

...
§ 8.1 If the Owner-City of Fayetteville fails to make payments to the Don Spann AIA, Architect in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at the Don Spann AIA, Architect's option, cause for suspension of performance of services under this Agreement. If the Don Spann AIA, Architect elects to suspend services, prior to suspension of services, the Don Spann AIA, Architect shall give seven days' written notice to the Owner-City of Fayetteville. In the event of a suspension of services, the Don Spann AIA, Architect shall have no liability to the Owner-City of Fayetteville for delay or damage caused the Owner-City of Fayetteville because of such suspension of services. Before resuming services, the Don Spann AIA, Architect shall be paid all sums due prior to suspension and any expenses incurred in the interruption and resumption of the Don Spann AIA, Architect's services. The Don Spann AIA, Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

...
§ 8.2 If the Project is suspended by the Owner-City of Fayetteville for more than 30 consecutive days, the Don Spann AIA, Architect shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, the Don Spann AIA, Architect shall be compensated for expenses incurred in the interruption and resumption of the Don Spann AIA, Architect's services. The Don Spann AIA, Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

...
§ 8.3 If the Project is suspended or the Don Spann AIA, Architect's services are suspended for more than 90 consecutive days, the Don Spann AIA, Architect may terminate this Agreement by giving not less than seven days' written notice.

...
§ 8.5 This Agreement may be terminated by the Owner-City of Fayetteville upon not less than seven days' written notice to the Don Spann AIA, Architect for the Owner's-City of Fayetteville's convenience and without cause.

...
§ 8.6 In the event of termination not the fault of the Don Spann AIA, Architect, the Don Spann AIA, Architect shall be compensated for services performed prior to termination, together with Reimbursable Expenses then due and all Termination Expenses as defined in Section 8.7.

...
§ 8.7 Termination Expenses are in addition to compensation for the services of the Agreement and include expenses directly attributable to termination for which the Don Spann AIA, Architect is not otherwise compensated, plus an amount for the Don Spann AIA, Architect's anticipated profit on the value of the services not performed by the Don Spann AIA, Architect.

...
§ 9.1 This Agreement shall be governed by the law of the principal place of business of the Don Spann AIA, Architect, unless otherwise provided in Article 12.

PAGE 11

§ 9.3 Causes of action between the parties to this Agreement pertaining to acts or failures to act shall be deemed to have accrued and the applicable statutes of limitations shall commence to run not later than either the date of Substantial Completion for acts or failures to act occurring prior to Substantial Completion or the date of issuance of the final Certificate for Payment for acts or failures to act occurring after Substantial Completion. In no event shall

such statutes of limitations commence to run any later than the date when the Don Spann AIA, Architect's services are substantially completed.

§ 9.4 To the extent damages are covered by property insurance during construction, the Owner-City of Fayetteville and Don Spann AIA, Architect waive all rights against each other and against the contractors, consultants, agents and employees of the other for damages, except such rights as they may have to the proceeds of such insurance as set forth in the edition of AIA Document A201, General Conditions of the Contract for Construction, current as of the date of this Agreement. The Owner-City of Fayetteville or the Don Spann AIA, Architect, as appropriate, shall require of the contractors, consultants, agents and employees of any of them similar waivers in favor of the other parties enumerated herein.

§ 9.5 The Owner-City of Fayetteville and Don Spann AIA, Architect, respectively, bind themselves, their partners, successors, assigns and legal representatives to the other party to this Agreement and to the partners, successors, assigns and legal representatives of such other party with respect to all covenants of this Agreement. Neither the Owner-City of Fayetteville nor the Don Spann AIA, Architect shall assign this Agreement without the written consent of the other, except that the Owner-City of Fayetteville may assign this Agreement to an institutional lender providing financing for the Project. In such event, the lender shall assume the Owner's City of Fayetteville's rights and obligations under this Agreement. The Don Spann AIA, Architect shall execute all consents reasonably required to facilitate such assignment.

§ 9.6 This Agreement represents the entire and integrated agreement between the Owner-City of Fayetteville and the Don Spann AIA, Architect and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner-City of Fayetteville and Don Spann AIA, Architect.

§ 9.7 Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the Owner-City of Fayetteville or Don Spann AIA, Architect.

§ 9.8 Unless otherwise provided in this Agreement, the Don Spann AIA, Architect and Don Spann AIA, Architect's consultants shall have no responsibility for the discovery, presence, handling, removal or disposal of or exposure of persons to hazardous materials or toxic substances in any form at the Project site.

§ 9.9 The Don Spann AIA, Architect shall have the right to include photographic or artistic representations of the design of the Project among the Don Spann AIA, Architect's promotional and professional materials. The Don Spann AIA, Architect shall be given reasonable access to the completed Project to make such representations. However, the Don Spann AIA, Architect's materials shall not include the Owner's City of Fayetteville's confidential or proprietary information if the Owner-City of Fayetteville has previously advised the Don Spann AIA, Architect in writing of the specific information considered by the Owner-City of Fayetteville to be confidential or proprietary. The Owner-City of Fayetteville shall provide professional credit for the Don Spann AIA, Architect in the Owner's City of Fayetteville's promotional materials for the Project.

§ 9.10 If the Owner-City of Fayetteville requests the Don Spann AIA, Architect to execute certificates, the proposed language of such certificates shall be submitted to the Don Spann AIA, Architect for review at least 14 days prior to the requested dates of execution. The Don Spann AIA, Architect shall not be required to execute certificates that would require knowledge, services or responsibilities beyond the scope of this Agreement.

ARTICLE 10 - PAYMENTS TO THE ARCHITECTARTICLE 10 PAYMENTS TO DON SPANN AIA, ARCHITECT

Direct Personnel Expense is defined as the direct salaries of the Don Spann AIA, Architect's personnel engaged on the Project and the portion of the cost of their mandatory and customary contributions and benefits related thereto, such as employment taxes and other statutory employee benefits, insurance, sick leave, holidays, vacations, employee retirement plans and similar contributions.

PAGE 12

§ 10.2.1 Reimbursable Expenses are in addition to compensation for Basic and Additional Services and include expenses incurred by the Don Spann AIA, Architect and Don Spann AIA, Architect's employees and consultants directly related to the Project, as identified in the following Clauses:

- 4 expense of overtime work requiring higher than regular rates if authorized in advance by the Owner, City of Fayetteville;
- 5 renderings, models and mock-ups requested by the Owner, City of Fayetteville;
- 6 expense of professional liability insurance dedicated exclusively to this Project or the expense of additional insurance coverage or limits requested by the Owner, City of Fayetteville in excess of that normally carried by the Don Spann AIA, Architect and the Don Spann AIA, Architect's consultants;

§ 10.3.3 If and to the extent that the time initially established in Section 11.5.1 of this Agreement is exceeded or extended through no fault of the Don Spann AIA, Architect, compensation for any services rendered during the additional period of time shall be computed in the manner set forth in Section 11.3.2.

Payments on account of the Don Spann AIA, Architect's Additional Services and for Reimbursable Expenses shall be made monthly upon presentation of the Don Spann AIA, Architect's statement of services rendered or expenses incurred.

No deductions shall be made from the Don Spann AIA, Architect's compensation on account of penalty, liquidated damages or other sums withheld from payments to contractors, or on account of the cost of changes in the Work other than those for which the Don Spann AIA, Architect has been adjudged to be liable.

§ 10.6 DON SPANN AIA, ARCHITECT'S ACCOUNTING RECORDS

Records of Reimbursable Expenses and expenses pertaining to Additional Services and services performed on the basis of hourly rates or a multiple of Direct Personnel Expense shall be available to the Owner, City of Fayetteville or the Owner's, City of Fayetteville's authorized representative at mutually convenient times.

The Owner, City of Fayetteville shall compensate the Don Spann AIA, Architect as follows:

§ 11.1 An Initial Payment of (\$ -) shall be made upon execution of this Agreement and credited to the Owner's account at final payment.

PAGE 13

Eight per cent (8%) of the Cost of Construction (not to exceed 8% of \$2,000,000)

Schematic Design Phase:	<u>fifteen</u>	percent (	<u>15</u>	%)
Design Development Phase:	<u>Twenty</u>	percent (	<u>20</u>	%)
Construction Documents Phase:	<u>forty</u>	percent (	<u>40</u>	%)
Bidding or Negotiation Phase:	<u>five</u>	percent (	<u>5</u>	%)
Construction Phase:	<u>twenty</u>	percent (	<u>20</u>	%)

Hourly costs based on attached rate schedule titled EXHIBIT "A"

§ 11.3.2 For Additional Services of the Don Spann AIA, Architect, as described in Articles 3 and 12, other than (1) Additional Project Representation, as described in Section 3.2, and (2) services included in Article 12 as part of Basic Services, but excluding services of consultants, compensation shall be computed as follows:

Hourly costs based on attached rate schedule titled EXHIBIT "A"

§ 11.3.3 For Additional Services of Consultants, including additional structural, mechanical and electrical engineering services and those provided under Section 3.4.19 or identified in Article 12 as part of Additional Services, a multiple of one point zero two (1.20) times the amounts billed to the Don Spann AIA, Architect for such services.

For Reimbursable Expenses, as described in Section 10.2, and any other items included in Article 12 as Reimbursable Expenses, a multiple of one point zero one (1.10) times the expenses incurred by the Don Spann AIA, Architect, the Don Spann AIA, Architect's employees and consultants directly related to the Project.

...
§ 11.5.1 If the Basic Services covered by this Agreement have not been completed within eighteen (18) months of the date hereof, through no fault of the Don Spann AIA, Architect, extension of the Don Spann AIA, Architect's services beyond that time shall be compensated as provided in Sections 10.3.3 and 11.3.2.

§ 11.5.2 Payments are due and payable () days from the date of the Architect's invoice. Amounts unpaid () days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Architect.
(Insert rate of interest agreed upon.)

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

...
§ 11.5.3 The rates and multiples set forth for Additional Services shall be adjusted in accordance with the normal salary review practices of Don Spann AIA, Architect, subject to approval of the Architect, Fayetteville City Council.

PAGE 14

§ 12.1 CHANGES IN SCOPE OR PRICE

"Changes, modifications, or amendments in scope, price or fees to this agreement shall not be allowed without a prior formal agreement amendment approved by the Mayor and the City Council in advance of the change in scope cost or fees.

§ 12.2 FREEDOM OF INFORMATION ACT

Contracts and documents produced under this agreement are subject to the requirements prescribed in the Arkansas Freedom of Information Act. If a Freedom of Information Act request is presented to the City of Fayetteville, Don Spann AIA Architect 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. Costs of reproduces resulting from any authorized request shall be a reimbursable cost subject to the conditions of Article § 11.4 of this agreement

§ 12.3 JURISDICTION

Legal jurisdiction to resolve any disputes shall be the State of Arkansas with Arkansas Law applying to the case.

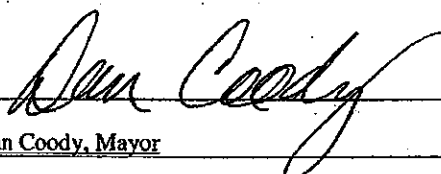
§ 12.4 CONSULTANTS

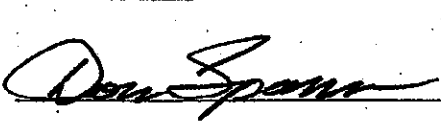
At the request of the City of Fayetteville the services of specific consultants are hereby added to Don Spann AIA, Architect's basic services. These services shall be based upon an approved proposal by the City of Fayetteville with the conditions of Article 11.3.3 applying to these costs. Specific Consultant disciplines will include the following:

Civil Engineering
Landscape Architecture
Geotechnical Engineer

...
OWNERCITY OF FAYETTEVILLE

DON SPANN AIA, ARCHITECT

...

...
Dan Coody, Mayor


...
Don Spann, President

(Signature)

Sondra Smith, City Clerk

(Printed name and title)

EXHIBIT "A"

Don Spann AIA, Architect

HOURLY RATES & REIMBURSABLE EXPENSES

Hourly Rates:

<u>Principal</u>	<u>\$110.00 / hour</u>
<u>Staff Architect</u>	<u>\$80.00 / hour</u>
<u>Technician</u>	<u>\$55.00 / hour</u>
<u>Clerical</u>	<u>\$30.00 / hour</u>

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User Notes:

(2608795819)

Certification of Document's Authenticity

AIA® Document D401™ – 2003

I, Don Spann, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 10:40:20 on 07/12/2006 under Order No. 1000228753_1 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document B151™ – 1997 - Abbreviated Standard Form of Agreement Between Owner and Architect, as published by the AIA in its software, other than those additions and deletions shown in the associated Additions and Deletions Report.


(Signed)

PRESIDENT
(Title)

7/12/06
(Dated)

8/1/06

130

Firewise Moulton
Grant

City of Fayetteville
Staff Review Form
City Council Agenda Items
or
Contracts

8/1/2006

City Council Meeting Date

Tony Johnson, Fire Chief
Submitted By

Fire

Division

Fire

Department

Action Required:

The action that is required is for the City Council to accept the contract with Don Spann Architects for the design and oversight of the replacement of Fire Station #3. This contract will be in the amount of eight percent of the construction contract (projected at \$80,000), plus civil and geotechnical work (projected at \$10,000), reimbursable (projected at \$5,000), and a contingency fund of \$10,300. The total authorization of the contract is \$105,300.

\$ 105,300.00

Cost of this request

\$842,000

Category / Project Budget

Fire Station Three Expansion

Program Category / Project Name

4470 9470 5804 00

Account Number

\$

Funds Used to Date

Building Construction

Program / Project Category Name

05006.1

Project Number

\$

842,000.00

Remaining Balance

Sales Tax Improvement

Fund Name

Budgeted Item

XX

Budget Adjustment Attached

Previous Ordinance or Resolution #

Department Director

7.14.06

Date

Original Contract Date:

City Attorney

7/17/06

Date

Original Contract Number:

Finance and Internal Service Director

7/18/06

Date

Received in City Clerk's Office

Mayor

7/18/06

Date

Received in Mayor's Office

Comments:



Fayetteville Fire Department

303 W. Center St. Fayetteville AR. 72701

Phone (479) 575-8365 Fax (479) 575-0471

MEMORANDUM

TO:

FROM: Tony Johnson, Fire Chief *Tony*

DATE: July 14, 2006

SUBJECT: Consideration of a contract with Don Spann Architects for the design and oversight of the replacement of Fire Station Three

Recommendation:

Staff recommends the City Council approve the attached contract with Don Spann Architects for the design and oversight of the replacement of Fire Station Three to be built at 1851 East Huntsville Road.

Background:

A fire station has been planned for some time to replace Fire Station Three. The City purchased 12.8 acres on Huntsville Road with this use in mind for part of the acreage. The Architect Selection Committee has chosen Don Spann Architects to design and oversee this work.

memo of July 14, page two

Discussion:

Negotiation with Mr. Spann has resulted in the following proposal which the staff is recommending for City Council's approval:

Eight percent of the construction contract for the design and oversight fee (projected to be \$80,000);

Civil and geotechnical work (projected to be \$10,000);

Reimbursable expenses (projected to be \$5,000).

Contingency: \$10,300.

The total authorization will be \$105,300.00

Budgetary Impact:

These funds have been budgeted for this purpose and reside in Account Number: 4470 9470 5804 00.

RESOLUTION NO. _____

A RESOLUTION APPROVING A CONTRACT WITH DON SPANN ARCHITECTS IN AN AMOUNT NOT TO EXCEED \$105,300.00 FOR DESIGN AND OVERSIGHT OF THE REPLACEMENT OF FIRE STATION #3.

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 Don Spann Architects in an amount not to exceed \$105,300.00 for design and oversight of the replacement of Fire Station #3. A copy of the Contract, marked Exhibit "A," is attached hereto and made a part hereof.

PASSED and APPROVED this 1st day of August, 2006.

APPROVED:

By: _____
DAN COODY, Mayor

ATTEST:

By: _____
SONDRA SMITH, City Clerk

DRAFT

DON SPANN AIA ARCHITECT

TRANSMITTAL

TO: COY HURD	FROM: DON SPANN
COMPANY: CITY OF FAYETTEVILLE	DATE: JULY 12, 2006
ADDRESS: 113 WEST MOUNTAIN ST.	PROJECT NUMBER: 0614
CITY/STATE: FAYETTEVILLE, AR 72701	PROJECT NAME: FAYETTEVILLE FIRE STATION #3

☐ URGENT ☐ FOR REVIEW ☐ PLEASE COMMENT ☒ AS REQUESTED ☒ FOR YOUR USE

SENDING:

2 copies signed Owner – Architect Agreement – “AIA Document B151 – 1997
Abbreviated Standard Form of Agreement Between Owner and Architect” for Fayetteville
Fire Station #3

NOTES/COMMENTS:

These agreements are for final review, approval and signature. Corrections have been made in accordance with the request of the Fayetteville City Attorney's Office and Fire Chief Tony Johnson.

We understand from our meeting yesterday with the Mayor, Chief Johnson and Councilwoman Thiel that this contract is subject to the following schedule:

Contract Complete _____ July 14, 2006
Contract to Agenda Session _____ July 25, 2006
Contract to Council Tour _____ July 31, 2006
Contract to Council for Approval _____ August 1, 2006

I understand that we are to be present at the Agenda Session and the Council Approval meeting. Please advise us as to the specific location and time for us to be present.

Thank you,



Don Spann AIA Architect

Cc: File

Spann Architecture, Inc.

April 13, 2007

Dr. Coy Hurd, Facilities Manager
City of Fayetteville
116 South Church Street
Fayetteville, Arkansas 72701

Re: Fire Station # 3 – Fee Revision per AIA B151 Standard Form of Agreement
between Architect and Owner

Dear Dr. Hurd,

Per the Standard Form of Agreement between Architect and Owner we are hereby
requesting the revision of fees per Sec 11.2.1 which established the fee to be 8% of
Construction Cost with a preliminary architectural fee as follows.

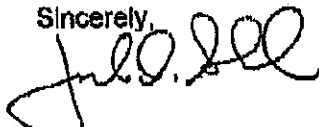
Budgeted Architectural Fee	\$80,000.00
<u>Budgeted Reimbursables (printing, Civil & Geo Tech)</u>	<u>\$15,000.00</u>
Total	\$95,000.00

We are requesting a change in the amount of Seventy Thousand Seven Hundred
Dollars (\$70,700) for a contract total of One Hundred and Sixty-Five Thousand and
Seven Hundred Dollars (\$165,700)

The breakdown of this contract total is as follows:

Architectural Fee	\$103,241.60
<u>Reimbursables (Civil & Geo Tech Eng. Printing, Add'l Svcs. Etc)</u>	<u>\$62,458.40</u>
Total	\$165,700.00

Sincerely,



Joseph D. Schork AIA

Cc: File

Change Order #1 To Contract
City of Fayetteville & Spann Architecture Inc.
Fire Station No. 3 Architecture Services

Item No.	Item Description	Unit	Estimated Quantity	Unit Price	Extended Price
1	Architectural Fee- Increase from percent of Budget Amount to Percent of Actual Construction Amount	Lot	1 Lot	\$8,241.00 23,241.60	\$8,241.00 23,241.60
2	Reimbursable (Civil & Geo Tech Engineering, Printing, Add'l Services, Etc.	Lot	1 Lot	\$62,458.40 47,458.40	\$62,458.40 47,458.40
Original Contract Amount					\$95,000.00
Net Increase (decrease) of the Change Order					\$ 70,700.00
Revised Contract Amount					\$165,700.00

WITNESS OUR HANDS THIS _____ DAY OF _____, 2007.

CITY OF FAYETTEVILLE,
FAYETTEVILLE, ARKANSAS

BY _____
MAYOR DAN COODY

ATTEST: CITY CLERK

SONDRA SMITH



SPANN ARCHITECTURE, INC.

BY JAMES DONALD SPANN, PRESIDENT
PRINTED NAME AND TITLE

ATTEST: COMPANY SECRETARY



BUSINESS ADDRESS: 1108 W. Poplar St., Rogers AR 72756

Change Order #1 To Contract
City of Fayetteville & Spann Architecture Inc.
Fire Station No. 3 Architecture Services

Item No.	Item Description	Estimated		Unit Price	Extended Price
		Unit	Quantity		
1	Architectural Fee- Increase from percent of Budget Amount to Percent of Actual Construction Amount	Lot	1 Lot	\$23,241.60	\$23,241.60
2	Reimbursable (Civil & Geo Tech Engineering, Printing, Add'l Services, Etc.	Lot	1 Lot	\$47,458.40	\$47,458.40
Original Contract Amount					\$95,000.00
Net Increase (decrease) of the Change Order					\$ 70,700.00
Revised Contract Amount					\$165,700.00

WITNESS OUR HANDS THIS _____ DAY OF _____, 2007.

**CITY OF FAYETTEVILLE,
FAYETTEVILLE, ARKANSAS**

BY _____
MAYOR DAN COODY

ATTEST: CITY CLERK

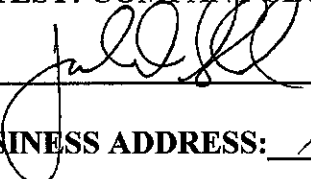
SONDRA SMITH



SPANN ARCHITECTURE, INC.

BY DON SPANN, PRESIDENT
PRINTED NAME AND TITLE

ATTEST: COMPANY SECRETARY



BUSINESS ADDRESS: 1108 WEST POPLAR STREET

ROGERS, AR 72756

**** CHANGE ORDER ****A. 2
Don Spann Architects
Page 44 of 46**PURCHASE ORDER**Each Package Must Be Marked
Exactly As Shown Here
City of Fayetteville, Arkansas**PURCHASE ORDER #****06-0001520-100****VENDOR NO. 12333****Spann Architecture Inc****1108 West Poplar St
Rogers AR 72756****DATE****2/12/07****FOB Fyv****TERMS****NET 30 DAY**

Qty.	Unit of Issue	Qty. Received	Description and Account Number	Unit Price	TOTALS
Contract #1047 Res #130-06					
1.00	EA	_____	a) Fee for Fire 3 4470.9470.5804.00	80000.00	80000.00
			05006 1		
1.00	EA	_____	b) Consultants 4470.9470.5804.00	10000.00	10000.00
			05006 1		
1.00	LOT	_____	c) Reimbursables 4470.9470.5804.00	5000.00	5000.00
			05006 1		

**SHIP TO: Building Maintenance
CITY OF FAYETTEVILLE
115 S CHURCH
FAYETTEVILLE AR 72701****Continued on Next Page**

DEPARTMENT VERIFICATION	BY	DATE
RECEIVED	_____	_____
DEPT HEAD APPROVAL	_____	_____
AMOUNT TO PAY	\$ _____	
A/P VERIFICATION	_____	_____
PURCHASING VERIFICATION	_____	_____
PRICE CHANGE VERIFICATION	_____	_____

RETURN CHECK TO _____
SEND COPY TO _____

ADDITIONAL APPROVAL
_____ CHECK # _____
_____ DOES NOT MEET PURCHASING POLICY
_____ CONTRACT PAYMENT
_____ OTHER
APPROVED BY _____

PROJECT # _____
THIS PAYMENT \$ _____
PREVIOUS PAYMENT(S) \$ _____
TOTAL PYMT(S) \$ _____
BALANCE \$ _____**DEPT COPY**



** CHANGE ORDER **

A. 2
Don Spann Architects
Page 45 of 46

PURCHASE ORDER

Each Package Must Be Marked
Exactly As Shown Here
City of Fayetteville, Arkansas

PURCHASE ORDER #

06-0001520-100

VENDOR NO. 12333

Spann Architecture Inc

1108 West Poplar St
Rogers AR 72756

DATE

2/12/07

FOB Fyv

TERMS

NET 30 DAY

Qty.	Unit of Issue	Qty. Received	Description and Account Number	Unit Price	TOTALS
Contract #1047 Res #130-06					
1.00	EA		d) 02/12/07 C/O #1 to correct a voided check that was deducted from line item (a) for \$4,000.00	4000.00	4000.00
			4470.9470.5804.00	05006	1

SHIP TO: Building Maintenance
CITY OF FAYETTEVILLE
115 S CHURCH
FAYETTEVILLE AR 72701

Hurd, Coy

Sales Tax Total: \$.00
Purchase Order Total: 99000.00

DEPARTMENT VERIFICATION BY DATE
RECEIVED _____
DEPT HEAD APPROVAL _____
AMOUNT TO PAY \$ _____
A/P VERIFICATION _____
PURCHASING VERIFICATION _____
PRICE CHANGE VERIFICATION _____
RETURN CHECK TO _____
SEND COPY TO _____

ADDITIONAL APPROVAL
CHECK # _____
DOES NOT MEET PURCHASING POLICY
CONTRACT PAYMENT
OTHER
APPROVED BY _____
PROJECT # _____
THIS PAYMENT \$ _____
PREVIOUS PAYMENT(S) \$ _____
TOTAL PYMT(S) \$ _____
BALANCE \$ _____

DEPT COPY

City of Fayetteville
Staff Review Form
City Council Agenda Items
or
Contracts

A. 3
2007 Department of Homeland Security
Assistance to Firefighters Grant
Page 1 of 66

May 1, 2007

City Council Meeting Date

Tony Johnson

Submitted By

Fire

Division

Fire

Department

Action Required:

A resolution granting the Fire Dept permission to apply for the 2007 Assistance To Firefighters grant in the amount of \$330,700.

\$ 66,140.00

Cost of this request

\$ -

Category / Project Budget

Mobile Fire Trainer

Program Category / Project Name

1010.0001.4308.00

Account Number

\$ -

Funds Used to Date

Act 833

Program / Project Category Name

\$ -

Remaining Balance

General Fund

Fund Name

Budgeted Item

☐

Budget Adjustment Attached

☐


Department Director

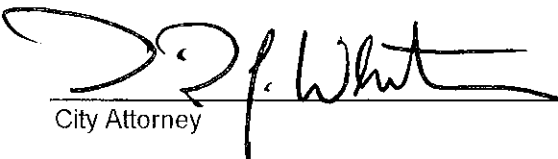
4.17.06

Date

Previous Ordinance or Resolution #

Original Contract Date:

Original Contract Number:


City Attorney

4/18/07
Date

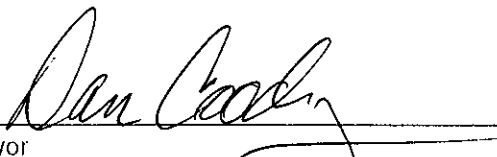

Finance and Internal Service Director

4-18-07

Date

Received in City Clerk's Office




Mayor

4/18/07
Date

Received in Mayor's Office



Comments:



City of Fayetteville Fire Department

303 W. Center St. Fayetteville, AR. 72701

Phone (479) 575-8365

Fax (479) 575-0471

To: Mayor Coody
Fayetteville City Council

From: Tony Johnson, Fire Chief *TJ*

Subject: Request to Make Grant Application

Date: April 17, 2007

Once again, the Department of Homeland Security/Federal Emergency Management Agency is making money available through its 2007 Assistance to Firefighters Grants program. The fire department has benefited from this offering in the past and we are requesting permission to apply for a \$330,700.00 training grant for equipment. If our request is selected for funding, we will need a ten percent match of \$66,140.00, which will come from the Act 833 money which is received annually from the State of Arkansas.

This years request is for a live fire mobile training unit which will be utilized under the direction of the Fayetteville Fire Department by our incumbent firefighters as well as the consortium of fire departments the comprise the Northwest Arkansas Fire Academy. The purchase of this training device is the most cost effective way to provide live fire training for the personnel of the Fayetteville Fire Department.

Attached, is a copy of the narrative that will be sent to the Department of Homeland Security/Federal Emergency Management Agency for their consideration.

RESOLUTION NO. _____

A RESOLUTION AUTHORIZING THE FAYETTEVILLE FIRE DEPARTMENT TO APPLY FOR A 2007 DEPARTMENT OF HOMELAND SECURITY ASSISTANCE TO FIREFIGHTERS GRANT IN THE AMOUNT OF \$330,700.00 TO PURCHASE A LIVE FIRE MOBILE TRAINING UNIT.

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 Fire Department to apply for a 2007 Department of Homeland Security Assistance To Firefighters Grant in the amount of \$330,700.00 to purchase a Live Fire Mobile Training Unit.

PASSED and **APPROVED** this 1st day of May, 2007.

APPROVED:

ATTEST:

By: _____
DAN COODY, Mayor

By: _____
SONDRA E. SMITH, City Clerk/Treasurer

City of Fayetteville 2007 Assistance to Firefighters Grant Program

Project Description:

The Fayetteville Fire Department (FFD) is requesting funds from the Training Activities section of the Fire Operations and Firefighter Safety Program that will provide a means to improve the training of multiple agencies and multiple jurisdictions to competently and safely respond to all hazards incidents. It is our assessment that there are inadequate training facilities available to prepare for these dramatic events.

The goal of this project is to provide the basic and advanced scenarios as required by NFPA 1001, 471, and 473; that would involve all first responder agencies including but not limited to fire, police, public works departments, and private contractors. In addition our Training Division is required by the Federal Aviation Administration (FAA) to provide training to our Aircraft Rescue Fire Fighters; we would be able to utilize this type of facility for rescue scenarios as well as Homeland Security training. Currently we are not able to offer this type of training in Northwest Arkansas.

Our Training Committee researched current trailers used in the industry today and determined that the Kidde ML-1000 Mobile Fire Trainer is the most appropriate for the needs and demands of the region it would serve. The Mobile Fire Trainer is a computer-controlled, propane gas-fueled training system that allows the basic NFPA 1001 skills (forcible entry, search and rescue, SCBA confidence, fire suppression, ventilation, R.I.T.) and other requirements to be taught in a safe and environmentally sound manner. The system replicates A, B and C type fires and produces environmentally sound smoke.



The Mobile FIRETRAINER® ML-1000 is Kidde's top-of-the-line mobile fire training burn trailer. The ML-1000 is a 48-ft long custom-built fire training trailer that allows convenient fire training to students in the basic NFPA 1001 firefighting skills as well as advanced firefighting drills.

There will be a one-time purchase of \$ 330,700.00, which includes tax and shipping from Montvale, New Jersey to Fayetteville, Arkansas. The Fayetteville Fire Department intends to administer this training program while making the training available to area agencies and to provide oversight for this training. We have the commitment, support and involvement of these agencies to make this program a success.

Training

Very few opportunities exist for live fire training in the area. Strict environmental and logistical controls prevent the usage of existing structures that may be scheduled for demolition, as live fire training buildings. In addition, despite thorough inspections, the safety of the structure and therefore the firefighters is severely compromised due to the unknowns about the condition of the load bearing portions of that structure and how they may react under even minimal flame and heat exposure. Fixed fire facilities are not only few and far between, but they are also exactly that: fixed. Very little can be done to vary the layout of the structures, and usually after one trip, firefighters have the layouts memorized and can develop feelings of overconfidence and complacency when faced with real incidents. This makes a dangerous situation even more dangerous, as firefighters that are inexperienced or have had few opportunities to be exposed to live fire on a fire ground, are the ones that are most likely to get injured or worse at incidents. This puts not only them in danger, but every firefighter at that incident as they may need rescue at any time. The training of area volunteers is also subject to availability to travel to these facilities, which also reduces the amount of time that firefighters are able to engage in live fire exercises.

The trailer mounted live fire training simulator we are proposing to purchase will not only make live fire training highly available, but also it will fight complacency by being able to change the layouts in numerous ways. The simulator will have the ability to have its interior reconfigured in mid-drill, as well as the additional tasks of wall breach, ceiling, roof joist, and pitched roof ventilation props, and a prop to assist in specialized Rapid Intervention Team trainings. The doors will be able to be forced without damage, as well as the entire process being environmentally friendly, using safe, non-toxic smoke and clean burning propane as the fuel source. The simulator will be able to provide realistic Class A, B, and C fire training as well as simulate electrical fires. The simulator will also be able to safely reproduce flashovers and rollovers in a controlled manner, both of which are conditions that are difficult to recognize when on an incident, and when not recognized have resulted in many line of duty injuries and fatalities. We feel that preventing both of these is worth any amount of money.

Benefits to our Region



The Fayetteville Fire Department responds regionally in conjunction with a variety of other larger and smaller departments to fire, rescue, and hazardous materials incidents. The department also provides support through our efforts on a regional HAZMAT team. Our community is home to a major university that routinely accommodates nationally televised sporting events that attract over 75,000 visitors to our city. Fayetteville also hosts events sponsored by Wal-Mart which attract thousands of vendors, celebrities and shareholders to the area annually. The addition of this equipment would provide an enhanced capability to deal with homeland security issues as well as our routine fire and rescue responses. Training for our 100 + Fire Fighters as well as neighboring departments is completed by a group of Training Officers in a 4 county area. These instructors work closely with the Arkansas Fire Academy to provide instruction for routine evolutions but also an 8 week Minimum Standards School that is IFSAC accredited and many other classes for our regional needs. The biggest hurdle for training Fire Fighters is a facility that will allow the use of live fire scenarios. We currently have to travel a great distance to use an approved Fire Training facility and we have only 4 in the whole State of Arkansas.

Financial Need

In our city, most of the funding for essential services comes from sales tax revenues. The Fire Department is in constant competition with the Police Department for the same resources. With the amount of growth experienced over the past few years, the needs in both departments far out pace the resources available. According to the US Census Bureau, in 2000 the population of Fayetteville was 58,000 up 15,000 from the 1990 census. The Northwest Arkansas Planning Commission has projected the population in 2006 to be 71,800. Over the past sixteen years, Fayetteville has experienced a 66% growth in population. By the year 2025, the population is expected to increase by an additional 40,000 people. In spite of the level of growth experienced, the Fire Department has only added two new stations since 1979. The fire department's budget has only experienced a 3.75% increase in 2006 from 2005. The budget for personnel services expenses for 2006 has increased by 4.7% from 2005. Actual spending has outpaced budgetary projections over the past few years due to an increase in the number of personnel and rising health care costs. This means that our department is seeing decreased funding for normal operating expenses even though the department is adding personnel and stations. For example, the department's budget for materials and supplies has decreased by 8% going from \$158,600 in 2005 to \$145,700 in 2006. The capital budget went from \$95,800 in 2005 to \$0 in 2006. Meeting the personnel cost burden has and will continue to be a challenge for the department. For this reason, funds are decreasing for normal operating expenses and non-existent for expansion

equipment. This kind of expense for a valuable communications system is far beyond our fiscal capabilities for the foreseeable future.

The City is in the process of building a new wastewater treatment facility and initiating much needed road improvements. These and other major projects have an enormous impact on the city's undedicated resources. It is unlikely that a dedicated revenue source such as property taxes will be assigned to the Fire Department for any type of managed growth.

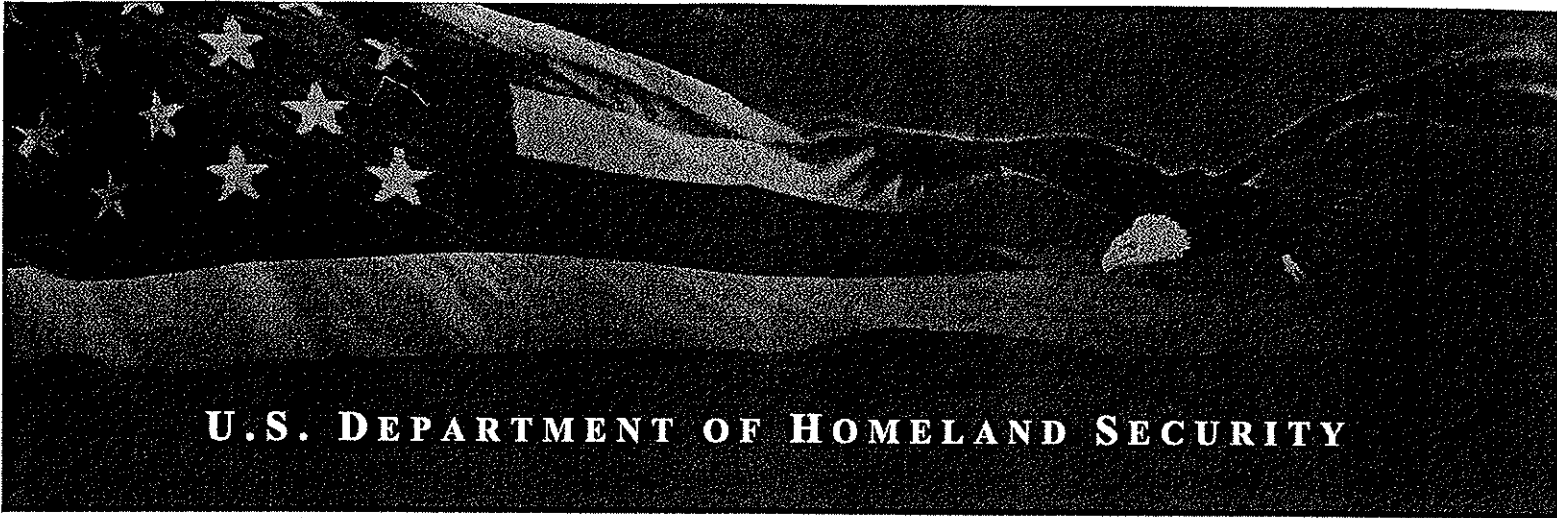
Other Relevant Information:

The Fayetteville Department has put forth a strong effort to enhance and improve our Homeland Security capabilities. We have elevated our mutual aid efforts with neighboring fire departments and other agencies. For example, we respond as BLS First Responders with our local paramedic EMS service and we now have a seamless/automatic response mutual aid agreement with one neighboring community. We allow our Hazardous Materials unit and our Technical Rescue Team (both with certified staffs) to respond across the region as needed by other communities. We are a member of Disaster Management Interoperability Services (DMIS) network. All personnel are NIMS certified. We conduct multi-jurisdictional and multi-agency disaster drills to develop the capacity to handle large-scale, mass casualty incidents. Our department has three of the four busiest companies in the entire state of Arkansas. Even though we are limited by certain financial constraints, we are managing to meet the service demands of our city. We are, however, stretching to provide the coverage for the emergency call volume we experience annually. This is reflected in our higher than national average call queuing.

This Assistance to Firefighters Grant Program would provide us with an extremely valuable tool to train not only our staff but Fire Fighters from across the region and assist with Minimum Standards School required evolutions.

We would appreciate any assistance that FEMA and the U.S. Fire Administration through the Department of Homeland Security can provide to the City of Fayetteville Fire Department, and we also want to thank those of you are who working so hard and diligently on this important effort.

Thank you.

A black and white photograph of the American flag, showing the stars and stripes, waving in the wind.

U.S. DEPARTMENT OF HOMELAND SECURITY

Fiscal Year 2007

Assistance to Firefighters Grants

Program and Application Guidance

March 2007



OFFICE OF GRANTS AND TRAINING

U.S. Department of Homeland Security – Assistance to Firefighters Grants

Key Changes in FY 2007

The Fiscal Year (FY) 2007 Assistance to Firefighters Grants (AFG) contains significant changes based upon input from the American fire service and other stakeholders. FY 2007 funding priorities are more closely aligned with the Department of Homeland Security's (DHS) risk-based funding. We also continue to deepen our commitment to regional projects in order to promote regional integration, interoperable communications, mutual aide agreements and equipment compatibility.

In prior years, applicants were limited to submitting one single application under either the Operations and Safety or Vehicle Acquisition program areas. However, in FY 2007, all eligible applicants may submit two separate applications, i.e., one application under Operations and Safety and a second application under Vehicle Acquisition.

Additionally, fire departments and nonaffiliated emergency medical service (EMS) organizations that provide first responder services to urban and suburban communities may request multiple vehicles on their Vehicle Acquisition application while departments servicing rural communities will still be restricted to a one vehicle per request. Finally, the restriction that precluded previous vehicle awardees from receiving a subsequent vehicle award has been removed. Previous AFG vehicle awardees may receive a FY 2007 AFG vehicle award.

The FY 2007 AFG will also allow eligible applicants to submit a third application for a regional project, in addition to their application(s) for operations and/or vehicles (up to 3 separate applications). The result is that one applicant could address more than one operational need, as well as address issues of interoperability during one grant year.

All FY 2007 AFG applicants must submit a justification for their project(s) that provides details regarding the project and the project's budget, the benefits to be derived from the project, the applicant's financial need, and how the project would affect the applicant's daily operations in protecting lives and property within their community. All applicants are encouraged to read the AFG Program Guidance document to fully understand the evaluation criteria and application process.

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Introduction

Assistance to Firefighters Grants (AFG) provides financial assistance directly to fire departments and nonaffiliated EMS organizations to enhance their abilities with respect to fire and fire-related hazards. Our primary goal is to help fire departments and nonaffiliated EMS organizations meet their firefighting and emergency response needs. AFG seeks to support organizations that lack the tools and resources necessary to more effectively protect the health and safety of the public and their emergency response personnel with respect to fire and all other hazards.

The purpose of this package is to provide: an overview of the AFG; the formal grant guidance; and, the application materials needed to apply for funding under this program. Also included is an explanation of DHS management requirements for implementation of a successful application.

Making an application for Federal funds under programs such as this can be quite complex and occasionally frustrating. Our job at DHS is to provide clear guidance and efficient application tools to assist applicants. Our customers are entitled to effective assistance during the application process, and transparent, disciplined management controls to support grant awards. We intend to be good stewards of precious Federal resources, and commonsense partners with our first-responder colleagues.

A. Federal Investment Strategy.

The AFG program is an important part of the Administration's larger, coordinated effort to strengthen homeland security preparedness, including the security of America's critical infrastructure. Of particular significance are the National Prepared Goal and its associated work products. The National Preparedness Goal is an all-hazards vision regarding the nation's four core preparedness objectives: prevent, protect, respond and recover from both terrorist attacks and catastrophic natural disasters.

The National Preparedness Goal defines a vision of what to accomplish and a set of tools to forge a unified national consensus about what to do and how to work together at all levels of government. First-responder participation is integral to the Goal's success. DHS expects its first-responder partners to be familiar with this national preparedness architecture and to incorporate elements of this architecture into their planning, operations and investments to the degree practical.

B. Overarching Funding Priorities.

The funding priorities for the FY07 AFG reflect the Department's overall investment strategy, in which three priorities are paramount: enhancing national capabilities, risk-

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based prioritizations, and interoperability. Each year, DHS brings together a panel of fire service professionals representing the nine major fire service organizations to recommend funding priorities and other implementation criteria for AFG. These nine organizations are:

- International Association of Fire Chiefs (IAFC)
- International Association of Firefighters (IAFF)
- National Volunteer Fire Council (NVFC)
- National Fire Protection Association (NFPA)
- National Association of State Fire Marshals (NASFM)
- International Association of Arson Investigators (IAAI)
- International Society of Fire Service Instructors (ISFSI)
- North American Fire Training Directors (NAFTD)
- Congressional Fire Services Institute (CFSI)

The criteria development panel is charged with making recommendations to DHS regarding the creation and/or modification of previously established AFG funding priorities, as well as developing criteria for awarding AFG grants and proposing any changes to grant administration. This document reflects the Department's implementation of the criteria development panel's recommendations with respect to the priorities, direction, and criteria for awarding AFG grants.

The AFG authorizing legislation requires DHS to take into account the benefit to be derived from the costs of the grant activity when considering each application for award. DHS has determined that risk-based funding achieves this benefit/cost consideration and that the frequency of use, as well as the level of population protected, are both measures of risk and indicators of the benefit that could be derived from an award. Therefore, for each activity below, DHS will provide a higher level of consideration to departments with significant levels of incidents and to departments that protect large populations relative to other applicants, regardless of the type of community served.

For the 2007 program year, the criteria development panel has recommended that DHS make a distinction between "new missions" and "new risks." A department takes on a new mission when it expands services into areas not previously offered, such as a fire department seeking funding to provide emergency medical services for the first time. A "new risk" presents itself when a department must address risks that have materialized in the department's area of responsibility, for example, the construction of a chemical plant. An organization taking on "new risks" will be afforded higher consideration than departments taking on a "new mission." However, applicants who's grant request succeeds in reaching the second level of competition, the peer review, can mitigate the impact of "New Missions" on the competitiveness of their application by providing evidence that the department will be able to support and sustain the new mission

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beyond the period of grant.

In order to focus on the overarching priorities, the Department identifies specific criteria as our highest priorities under each of the funding areas as set forth in Appendixes I & II of this guidance. No one funding area is considered a priority over the others; therefore, the list in Appendixes I & II are not in any particular order.

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Part I.
Available Funding and Eligible Applicants

This section describes departments and organizations that are eligible to apply for funding under the FY 2007 AFG, the total available funding in FY 2007, and how those funds are allocated. The authority for AFG is derived from the Federal Fire Protection and Control Act of 1974 (15 U.S.C. §§ 2229 et seq.), as amended. Congress reauthorized AFG and appropriated a total of \$547 million for the FY 2007 AFG. Funds appropriated for the FY 2007 AFG are available for obligation and award until September 30, 2008.

A. Available Funding.

Congress appropriated a total of \$547 million to carry out the activities of the FY 2007 AFG program. Congress directed DHS to administer these funds as indicated below.

- Up to 5 percent of appropriated funds (\$27.35 million) may be used for program administration.
- Up to 2 percent of appropriated funds (\$10.94 million) may be used for awards to nonaffiliated EMS organizations.
- No more than 25 percent of appropriated funds (\$136.75 million) may be used for vehicle awards.
- No less than 3.5 percent of funds (\$19.145 million) must be awarded for EMS equipment and training.
- No less than 5 percent of appropriated funds (\$27.35 million) must be made available to make grants for fire prevention activities (FP&S grants).
- No less than \$3 million must be awarded for foam and foam-related equipment.
- No less than 33 percent of AFG funds (\$180 million) must be awarded to combination organizations (organizations with both paid career and volunteer active duty firefighters).
- No less than 22 percent of AFG funds (\$120 million) must be awarded to all-volunteer organizations (organizations with no active duty paid career firefighters).

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Congress also limited award amounts based on population protected by the applicant, as indicated below.

- Applicants that serve a jurisdiction with a population of 500,000 people or less may not receive grant funds in excess of \$1 million in any program year.
- Applicants that serve a jurisdiction with more than 500,000, but not more than one million, people may not receive grant funds in excess of \$1.75 million in any program year.
- Applicants that serve a jurisdiction of more than one million people may not receive grant funds in excess of \$2.735 million in any program year.

The authorizing legislation allows for DHS to waive the funding limits for applicants that serve jurisdictions of less than one million people, but DHS will only exercise this discretion for applicants whose application for a regional project causes the applicant to exceed the legislative limits.

DHS will also continue to separate FP&S grants from the AFG, and will have a separate application period devoted solely to FP&S grants. The FP&S application period is planned for fall 2007. As in the past, the program will be open to fire departments.

In addition, Congress appropriated \$115 million for Staffing for Adequate Fire and Emergency Response (SAFER) grants in FY 2007. SAFER's goal is to help fire departments increase the number of frontline firefighters. When available, information about the FY 2007 SAFER grant program will be announced on the AFG website at www.firegrantsupport.com/safer/.

B. Eligible Applicants

Eligible applicants for AFG are limited to fire departments and nonaffiliated EMS organizations. Fire departments or nonaffiliated EMS organizations operating in any of the 50 States plus the District of Columbia, the Commonwealth of the Northern Mariana Islands, the Virgin Islands, Guam, American Samoa, and Puerto Rico are eligible for funding.

A "fire department" is defined as an agency or organization that has a formally recognized arrangement with a State, territory, local, or tribal authority (city, county, parish, fire district, township, town, or other governing body) to provide fire suppression to a population within a fixed geographical area on a first-due basis.

A "nonaffiliated EMS organization" is defined as a public or private nonprofit emergency medical services organization that provides direct emergency medical services,

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including medical transport, to a specific geographic area on a first-due basis but is not affiliated with a hospital and does not serve a geographic area where emergency medical services are adequately provided by a fire department.

In making the determination regarding “adequately provided,” DHS will conclude that any nonaffiliated EMS organization would be eligible if it is “adequately providing” direct emergency medical services at the time of application submission and is in good standing with the community, i.e., licensed and/or chartered to provide EMS services to the community. Rescue squads that provide direct emergency medical services, including medical transport, to the community they serve are eligible to apply as a nonaffiliated EMS organization.

By “affiliated” we mean receiving any kind of direct support from a hospital in the form of funding, facilities, staff, equipment, or apparatus. Contracting with a hospital on a fee-for-service basis would not constitute an “affiliation” in the context of AFG. Also, for the purposes of these grants, a “hospital” is defined as an organization, clinic, medical center, medical college or university, infirmary, surgery center, or any other institution, association, or foundation that provides medical, surgical, or psychiatric care and treatment for the sick or injured.

A municipality (such as a fire district) may submit an application on behalf of a fire or EMS organization when the organization, defined as a fire department or nonaffiliated EMS organization, lacks the legal status to do so, e.g., when the organization falls within the auspices of the municipality or district. The Alaska Village Initiative, a nonprofit organization incorporated in the State of Alaska, will also be considered eligible for purposes of receiving assistance under this program on behalf of any Alaska Native village.

For the 2007 program year, each eligible applicant may submit one application for each of the program areas, i.e., one application for the Vehicle Acquisition program area, one application for Operations and Safety program area, and one application for a regional project. However, if an eligible applicant submits multiple applications in a single program area (for example two regional project applications for which it is a host, or two Operations and Safety applications) we will deem all of the applications in that same program area to be ineligible.

For the purposes of these grants, we consider two or more separate fire departments or nonaffiliated EMS organizations that share facilities as being one organization. This determination is designed to avoid duplication of benefits. For example, it would not be cost-beneficial to purchase two firefighting vehicles for two fire departments that share a facility to serve the same community when so many other communities need new apparatus; nor would it be cost-beneficial to buy two sets of equipment for the same firefighters. We believe that two or more organizations that share facilities should be able to satisfy all of their operational needs with one program area application. Thus, if

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two or more organizations that share facilities each submit an application in the same program area, we will deem all of those program area applications as ineligible.

A fire department can apply for assistance for its EMS unit, provided the unit falls organizationally under the auspices of the fire department. Fire departments may NOT apply for assistance as a “nonaffiliated EMS organization” under the AFG program. Fire departments whose applications are submitted as a nonaffiliated EMS organization will have their application deemed ineligible. Likewise, a nonaffiliated EMS organization may NOT apply for assistance as a fire department. If a nonaffiliated EMS organization submits an application as a fire department, we will deem that application to be ineligible as well.

Non-Federal airport and/or port authority fire or EMS organizations are eligible only if they have a formally recognized arrangement with the local jurisdiction to provide fire suppression or emergency medical services on a first-due basis outside the confines of the airport or port facilities. Airport or port authority fire and EMS organizations whose sole responsibility is suppression of fires or EMS response on the airport grounds or port facilities are not eligible for funding under AFG.

B.1 – Ineligible Organizations

- Fire departments that are Federal, or contracted by the Federal Government, and are solely responsible under a formally recognized agreement for suppression of fires on Federal installations or land are ineligible for funding.
- Fire stations that are not independent entities, but are part of, controlled by, or under the day-to-day operational direction of a larger fire department or agency are not eligible for funding.
- Fire departments that are for-profit departments (i.e., do not have specific nonprofit status or are not municipally based) are not eligible for funding.
- Auxiliaries, fire service organizations or associations, and State/local agencies such as a forest service, fire marshals, hospitals, and training offices are not eligible for funding.
- Dive teams and search and rescue teams, or any similar organizations that do not provide medical transport, are not eligible for assistance as nonaffiliated EMS organizations.

Part II.

Evaluation Process

This section summarizes the multi-level review and evaluation process used to select applications for AFG funding.

A. Pre-Screening Process.

As explained earlier, funding priorities and criteria for evaluating AFG applications are established based on recommendations from the criteria development panel. We will rank all submitted applications based on the substance of the application relative to the established funding priorities for the type of community served. Answers to the application's activity-specific questions provide information used to determine each application's ranking relative to the stated priorities.

If you apply for more than one activity in your selected project, each activity will be scored separately. Then the scores will be prorated based on each individual activity's funding-level, compared to the total requested funding in your application. For example, under the Operations and Safety Activity, if you apply for \$9,000 in training and \$1,000 in equipment, the training portion of the proposal will represent 90 percent of the score and the equipment will represent 10 percent of the score. The number of activities included in the application will not affect the application - negatively or positively.

B. Peer Review Process.

Applications that best address the grant funding priorities (as outlined below) will score higher than applications that are inconsistent with the priorities. Applications scoring the highest will be determined to be within the "competitive range" and will undergo further evaluation through a peer review process. A panel of at least three technical evaluation specialists will evaluate each application in the competitive range using the project narrative, along with answers to the general questions and the activity-specific questions. During the panel review process, panelists will provide a subjective but qualitative judgment on the merits of each request.

Applications that include requests for equipment and/or training will be evaluated by the panelists relative to the critical infrastructure within the applicant's area of first-due response. Critical infrastructure includes any system or asset that, if attacked or impacted by a hazardous event, would result in catastrophic loss of life or catastrophic economic loss. Critical infrastructure includes the following: public water or power systems, major business centers, chemical facilities, nuclear power plants, major rail and highway bridges, petroleum and natural gas transmission pipelines or storage

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facilities, telecommunications facilities, or facilities that support large public gatherings such as sporting events or concerts. Panelists will assess such infrastructure and the hazards confronting the community, as explained in the narrative, to determine the benefits that will be realized from a grant to the applicant.

Panelists will evaluate and score the following project elements:

- 1) the clarity of your proposed project, including the project's budget detail;
- 2) the organization's financial need;
- 3) the benefits that would result from an award relative to the cost; and
- 4) the extent to which the grant would enhance daily operations, and/or how the grant will positively impact an organization's ability to protect life and property.

Each of these four elements carries equal weight when factored into the panelists' scores (i.e., one-fourth).

Each application will be judged on its own merits, not compared to other applications. The panelists will consider all expenses budgeted, including administrative and/or indirect costs, as part of the cost-benefit review. An applicant may demonstrate cost-benefit by describing, as applicable, how the grant award will accomplish the following:

- 1) enhance a regional approach, i.e., is consistent with current capabilities and requests of neighboring organizations or otherwise benefits other organizations in the region;
- 2) implement interoperable communications capabilities with other local, State, and Federal first responders and other organizations;
- 3) allow first responder organizations to respond to all hazards, including incidents involving seismic (earthquake), atmospheric (tornadoes, hurricanes), or technological (hazardous materials or nuclear) events, or incidents involving CBRNE, as well as fire prevention/suppression.

Panelists will review each application in its entirety and rate the application according to the established evaluation criteria.

Keep in mind that we will use the answers to the activity-specific questions when conducting our initial assessment. The answers to these questions are the primary basis for determining whether an application warrants further evaluation through peer review. Applicants whose answers indicate that their project is consistent with the established priorities (as outlined below) will have a better chance of reaching the

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competitive range and the second level peer review than those applicants whose projects do not reflect the established priorities. Applicants that falsify their applications or misrepresent their organizations in any material manner will have their applications deemed ineligible by the AFG Program Office and referred to the DHS OIG for further action, as appropriate.

C. State Technical Review.

Each State will provide the AFG Program Office with a representative to conduct a technical review of peer reviewed applications from the State that request CBRNE-related equipment or training or interoperable communications equipment. After the panel review process is complete, the designated State Homeland Security official will review the application to ensure that requests for communications systems conform to the State's interoperable communications plan. The State representative will also certify that such requests are consistent with the State Homeland Security Strategy and do not duplicate assistance already provided or imminent. If a State representative determines that an application is either inconsistent with the State strategy or duplicates the State's assistance, that portion of the AFG application will not be funded.

Part III.

Application Requirements

This section summarizes the process for applying for FY 2007 AFG grants.

A. Automated Grant Application.

The FY 2007 AFG application will be accessible from the AFG website (www.firegrantsupport.com), the U.S. Fire Administration's (USFA) website (www.usfa.fema.gov), and grants.gov website (www.grants.gov). We have designed the automated application with many built-in "help screens" and "drop-down menus" to assist applicants throughout the application process. The application can be saved and retrieved as many times as needed to complete it - up to the application deadline or the submittal of the application.

However, once you have submitted your application, you cannot change it. You will not be allowed to update your application to correct errors discovered after submission or to reflect changes in your organization's circumstances regardless of severity. You will be automatically notified via e-mail once we have received your application.

An applicant tutorial will be available on the Internet at www.firegrantsupport.com. The tutorial explains the grant program, helps applicants with the online grant application, provides tips for navigating the application screens, and summarizes FY 2007 program changes. The tutorial also provides a review of lessons learned during previous grant periods.

You may decide to hire or engage a grant writer to assist you in the application process. However, as the applicant, you are responsible for the any cost associated with using outside assistance as well as all information contained in your application. By submitting the application, you are certifying that all of the information contained therein is true and is an accurate reflection of your organization. Therefore, prior to submission, please review all work produced by grant writers, or other third parties, on your behalf. Applicants that falsify their applications or misrepresent their organizations in any material manner will have their applications deemed ineligible by the AFG Program Office and referred to the DHS Office of Inspector General (OIG) for further action, as appropriate.

Paper applications will be accepted, but are discouraged due to the inherent delays associated with processing them. Also, successful applicants who submitted paper applications must continue to manage their grants via paper, including payment requests, requests for modifications, reporting, etc., whereas applicants who applied online can perform all of these functions online. In addition, paper applications do not

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provide the built-in help that is available to online applicants. Finally, there is no assurance that your paper application is complete when submitted. If you do not have access to the Internet, contact us directly (1-866-274-0960) to request a paper copy of the application via regular mail. We will not send paper applications via overnight delivery, fax, or e-mail.

The only eligible paper application is the application that we send you. Do not use any paper application that you did not receive directly from us. Do not print the screens from this year's online application and submit them as a paper application. Do not use a previous year's application. Any paper application that is not in the correct format will be deemed ineligible.

Applications for the 2007 AFG will be accepted starting on March 29, 2007 at 8:00 a.m. EDT. Up-to-date application information will be posted on the AFG and USFA websites. Completed applications must be received by 5:00 p.m. EDT on May 4, 2007. Applications submitted by mail must be postmarked by May 1, 2007. Applications not submitted electronically must be mailed to:

Fire Grant Program Technical Assistance Center
U.S. Fire Administration, Room I-207
16825 South Seton Avenue
Emmitsburg, Maryland 21727-8998

We will not be responsible for applications mailed to any address other than the address listed above. Late, incomplete, or faxed applications will NOT be accepted. No electronically submitted applications other than those submitted online via the automated grant application system will be accepted.

B. Application Process.

Eligible applicants can apply for AFG funding online via the "e-grants" application. The system will allow an authorized representative of an applicant to log in and create a username and password for the applicant. The selection of the authorized representative is at the discretion of each applicant. If your organization submitted an application in previous years, we advise you to use the same username and password used for previous applications. If your organization is submitting more than one FY 2007 application, you must use the same username and password used for prior-year applications, as well as for each FY 2007 application.

B.1 – DUNS Number.

Effective October 1, 2003, all Federal grant applicants must contain a Dun & Bradstreet Data Universal Numbering System (DUNS) number. The DUNS number helps the Federal Government identify organizations that receive Federal funding and ensures

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consistent name and address data for electronic grant applications. Additional information about DUNS numbers can be found on the Dun & Bradstreet website at <http://fedgov.dnb.com/webform/>.

There is no charge to obtain a DUNS number, and it is the applicant's responsibility to obtain one. Extensions may not be granted for applicants who were unable to obtain a DUNS number prior to the end of the application period. Applicants are encouraged to apply for a DUNS number as soon as possible. Because it may take several weeks or more to obtain the number online, we recommend that applicants request a DUNS number by calling 1-866-705-5711. The DUNS number must be entered in a special data field on the AFG application.

B.2 – Project Period.

The project period for any award under AFG will be twelve months from the date of the award.

B.3 – Application Details.

As in previous years, the AFG application includes general questions about your organization and community, as well as questions specific to the proposed project. The answers to these questions will be used to evaluate your application and to determine whether your organization serves an urban, suburban, or rural community. Characteristics such as population, water supply, land use, number of stations, call volume, and number of inhabitable structures over four stories tall in the jurisdiction indicates the type of community served. For the purpose of AFG grants, a "story" is the habitable or occupiable space between a floor and a ceiling of a structure. We will allow you to self-declare the type of community you serve; however, we will also use these characteristics to assist us in determining the type of community you serve. If your declaration and our determination differ, you will be prompted to justify your declaration in the narrative section of the application.

The designation of community type is important because we have established different funding priorities in some of the activity areas, depending on the type of community served. These funding priorities are delineated in each program area below, if applicable. The community designation (i.e., urban, suburban, or rural) may also affect the ranking of your application, depending on the program area or activity for which you are applying. This is why you must justify your designation in the narrative of the application if your designation is different from ours.

After completing the general questions, you will be asked a series of activity-specific questions relative to the program area selected and the activities for which you plan to apply. Answer the questions for each of the activities that support your project. Lastly, you will be required to provide a written narrative describing the planned project. The

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narrative portion of the application should provide details of the activities for which you are seeking funding, including budget details for each activity. The narrative should also describe your organization's financial need and elaborate on the benefits your community and/or organization will gain from the expenditure of the grant funds. Applications should particularly note how the grant would enhance your department's ability to protect critical infrastructure. Finally, the narrative should explain the extent to which the grant would enhance your daily operations and/or how the grant will positively impact your ability to protect life and property.

We recommend that you type your narrative offline in any word processing software, such as Word, Word Perfect, or Notepad. Once the narrative is complete, you can copy it or "cut-and-paste" it from the word processing document into the narrative block of the application. Space for the narrative is limited and cannot exceed five pages. Any narrative beyond the five-page limit will be cut off by the electronic system and will not be a part of your application submission. Do **NOT** type the narrative using only capital letters. For more specific information regarding the application and the narrative section, we advise you to review the applicant tutorial on the AFG website (www.firegrantsupport.com).

B.4 – Project Development.

As in previous years, the AFG program allows applicants to formulate a very comprehensive grant proposal. Depending on the program area for which you apply, your grant proposal may include a number of related "activities" to address all of your needs within a programmatic or functional area. This approach provides you with the opportunity to develop a more comprehensive grant project that addresses a broader range of your organization's needs. Be advised that your application should include only activities that can be completed within a one-year (12-month) grant period.

In FY 2007, you may submit one application per application period in each of the program areas, i.e., one application under Operations and Safety, one under Vehicle Acquisition, and/or a separate application as a regional host. If multiple applications are submitted on behalf of one organization **within** one of these program areas, either intentionally or unintentionally, we will deem all of that organization's applications in that program area to be ineligible. For example, if any applicant submits two applications for Operations and Safety, both applications will be deemed ineligible.

When formulating your grant proposal(s), keep in mind the legislative funding limits (see Part I). If an applicant receives awards under both the Operations and Safety and Vehicle Acquisition areas, the total of both awards cannot exceed the legislatively established funding limit.

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a. Fire Department Projects.

Fire departments may submit applications for either or both of the following program areas. AFG awards are subject to the statutory funding limitations discussed above. Under Operations and Safety, you may include as many activities within the program area as necessary to meet your needs. However, you may submit **only one application per program area**. If multiple applications are submitted on behalf of one organization within one of these program areas, either intentionally or unintentionally, we will deem all of that organization's applications in that program area to be ineligible. The eligible program areas and associated activities for the FY 2007 AFG are listed below.

- **Firefighter Operations and Safety.** Eligible activities for fire departments under this program area are limited to training, equipment, Personal Protective Equipment (PPE), wellness and fitness, and modifications to fire stations and facilities. If an EMS unit falls organizationally under the auspices of a fire department, the fire department may submit requests for EMS training and equipment on behalf of their department's EMS unit under the appropriate functional area (i.e., training or equipment, respectively). However, a fire department should NOT apply as a nonaffiliated EMS organization, even if its application is solely for EMS equipment or training. Requests for equipment, PPE, and training to prepare for response to incidents involving CBRNE are eligible under the appropriate activities in this program area. Applicants should ensure that all projects applied for under AFG are consistent with national standards and address interoperable communications and equipment compatibility.
- **Firefighter Vehicle Acquisition.** Eligible apparatus available to fire departments under this program area include, but are not limited to, pumpers, brush trucks, tankers/tenders, rescue vehicles, ambulances, quints, aerials, foam units, and fireboats. Urban and suburban departments may apply for multiple vehicles on one application; however, urban and suburban applications will be limited to one vehicle per station in operation (at the time of the application). Rural fire departments may apply for only **one** vehicle per year. Applications from fire departments that serve rural communities and are requesting more than one vehicle will be deemed ineligible. For FY 2007, there is no restriction on vehicle requests based on previous AFG vehicle awards. Applicants who received vehicles under prior-year AFG programs are eligible to receive a vehicle grant in FY 2007. Activities related to a vehicle grant, such as driver/operator training and equipment for a vehicle should be included in the vehicle request, not as part of an Operations and Safety request.

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As stated above, for FY 2007 you may submit one application for assistance in each of these two program areas. Within your selected program area (Operations and Safety or Vehicles), you may develop a comprehensive project to address all of your needs by applying for as many of the eligible activities that you determine are necessary. For example, if you determine that your needs are in the Operations and Safety area, you could apply for any one of the activities under that program area, any combination of activities, or all of the activities listed within that area. If you need a vehicle, you must apply under the Vehicle Acquisition program area. You may not apply for any vehicle under the Operations and Safety program area. Any equipment or training requested in a vehicle application must be specifically relevant to the requested vehicle and consistent with applicable National Fire Protection Association (NFPA) standards (1901, 1002, etc.).

b. Nonaffiliated EMS Organizations.

Nonaffiliated EMS organizations are eligible to apply for assistance during the FY 2007 AFG application period. The nonaffiliated EMS portion of AFG mirrors what is available to fire departments. EMS applicants may apply for assistance under either the Operations and Safety program area or the Vehicle Acquisition program area, or both using separate applications. EMS awards are subject to the statutory funding limitations, as discussed in the Funding section of this guidance. The EMS Operations and Safety area provides a range of eligible activities that enables applicants to formulate a very comprehensive grant proposal to meet all operational needs. The EMS Vehicle Acquisition area allows applicants to apply for a vehicle to enhance emergency response capabilities and may include operator training, as necessary.

For the FY 2007 application period, you may submit **one application per program area**; however, you are limited to only **one** application in each of the two program areas listed below. If multiple applications are submitted for a program area on behalf of one organization, either intentionally or unintentionally, we will deem all applications from that organization in that program area to be ineligible. Your application should include only activities that can be completed within the one-year grant period. EMS program areas and associated activities eligible under the FY 2007 AFG are listed below.

- **EMS Operations and Safety.** Eligible activities available to nonaffiliated EMS organizations under this program area are limited to EMS training, EMS equipment, including PPE, wellness and fitness, and modifications to stations and facilities. Requests for equipment, PPE, and training to prepare for response to incidents involving CBRNE are eligible for funding under the appropriate activities in this program area. Applicants should ensure that all

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projects applied for under the grant program are consistent with national standards and address interoperable communications and equipment compatibility.

- **EMS Vehicle Acquisition.** Eligible apparatus available to nonaffiliated EMS organizations under this area include, but are not limited to, ambulances, transport units, and rescue squads. Small specialty access vehicles such as ATVs, snowmobiles, and gators are not considered vehicles; rather they are considered “equipment” and should be applied for under the EMS equipment activity under the EMS Operations and Safety program area. Urban and suburban organizations may apply for multiple EMS vehicles on one application; however, urban and suburban applications will be limited to one vehicle per station in operation (at the time of the application). Rural organizations may apply for only **one** vehicle per year. You may not include equipment for your EMS vehicle in your request; however, your request may include driver/operator training. Applications from EMS organizations that serve rural communities that request more than one vehicle will be deemed ineligible. Previous AFG vehicle grant recipients are eligible to receive a vehicle grant in FY 2007.

c. Regional Projects.

Any eligible applicant, whether a fire department or a nonaffiliated EMS organization, may act as a “host applicant” and apply for large-scale or regional projects on behalf of itself and any number of organizations in neighboring jurisdictions. A regional project is one in which multiple organizations serving more than one local jurisdiction benefit directly from the activities implemented with the grant funds. A county fire department applying for a countywide communications system is NOT a regional project because it does not benefit multiple “seats-of-government.” Regional projects are designed to facilitate interoperable communications and efficiency among the participating jurisdictions. As such, the only activities available for application under a regional project are training and equipment acquisition that positively affect interoperability. Purchase of turnouts, wellness and fitness, modification to facilities, and vehicle acquisition activities are not eligible as a regional project.

Regional projects require one eligible applicant to act as the “host” for the project. Regional applications may only include activities that are meant to address the identified regional risk. Regional applications cannot include any activities meant solely for the host applicant. In FY 2007, host applicants may apply for funding to address their own needs beyond the scope of the regional project in a separate application(s). ***This is a change from last year’s Program Guidance.*** The “host” will be responsible for fulfilling all grant requirements, such as reporting to National Fire Incident Reporting System (NFIRS), control of and

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accounting for the funds, and distribution and control of the property.

DHS has the discretion to waive the legislatively established funding limits under AFG. In order to encourage interest and participation in this critical strategy to address interoperability, DHS may exercise this discretion if the funding of a regional application is at risk of exceeding statutory funding caps, i.e., the funding of the regional request combined with other AFG awards would cause the host applicant to exceed the legislatively established funding limits.

In general, equipment purchased as a result of a regional project will be physically distributed to all the departments that are beneficiaries of the project. This physical distribution of the equipment to other first responder organizations is the single characteristic that distinguishes regional projects from non-regional requests that have an impact on a region via mutual aid. For example, a non-regional project would be an application for an air compressor or a hazardous materials (HAZMAT) response vehicle that would be awarded and physically located in the awardee's department, but shared with neighboring departments with which a mutual or automatic aid agreement exists.

Examples of viable regional projects would be a multi-jurisdictional communications system or standardization of breathing apparatus. As stated above, regional projects should be designed to address issues of interoperability among multiple jurisdictions.

In order to apply for a regional project, the applicant must:

- 1) be an eligible applicant, i.e., either a fire department or a nonaffiliated EMS organization (a county, county association, or city could not apply for a regional project), and
- 2) agree, if awarded, to be responsible for all aspects of the grant, including, but not limited to, accountability for the assets and all reporting requirements.

In the application, the host organization will be required to describe the characteristics of the entire region that will be affected by the project (i.e., the population of the affected region, not the applicant's first-due population). The applicant must provide detailed information in the project narrative describing the effect of the project and the need for the project. This includes a detailed description of the following:

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- the proposed project and the project budget;
- the financial need for the project;
- the benefits that would result;
- the extent to which the grant would enhance daily operations, and/or how the grant will positively impact the regional ability to protect life and property.

In addition, the applicant must include a list of all the participating organizations that will benefit from the regional project, if the project is approved. Fire departments or nonaffiliated EMS organizations that will benefit from a regional project may also apply for funding under the AFG, as long as they are not requesting the same items as the host applicant for the regional project. For example, if a host applicant applies for a multi-jurisdictional communications project, a participating organization that will receive some of the communications equipment can apply for other needs as long as it does not apply for duplicative communications equipment. Host applicants MAY NOT apply to address other needs beyond the regional project on the regional application; however, a host applicant may submit a request to meet its own, non-regional needs in a separate application.

When evaluating the benefits of any regional project, we will take into account the other partners that will be involved in the project, whether they are other fire departments, nonaffiliated EMS organizations, or other public service organizations. We will also take into consideration the extent to which the non-fire/EMS partners will contribute to the overall costs of the regional project.

Appendix 1

Funding Priorities and Allowable Expenses For Fire Departments

AFG funding priorities differ for fire departments and nonaffiliated EMS organizations. Please read the guidance document with this in mind and make sure you are researching the appropriate sections for your organization. Equipment requested under AFG must meet all mandatory regulatory requirements, as well as any national and/or DHS-adopted standards in order to be eligible for purchase with grant funds. The Responder Knowledge Base (RKB), which can be accessed at <http://www.rkb.mipt.org/>, includes relevant information on first responder standards and allows “guest users” to ask any questions they may have on applicable standards.

Equipment/technology requests should have the goal of solving interoperability or compatibility problems. Therefore, applicants should describe in their narrative sections how the purchase of equipment would comply with standards and/or facilitate solving interoperability or compatibility problems.

Fire Department Priorities.

The AFG authorizing legislation requires DHS to take into account the benefit to be derived from the costs of the grant activity when considering each application for award. DHS has determined that the frequency of use and the level of population protected are both a measure of benefit that could be derived from an award. Therefore, for each activity below, DHS will provide a higher level of consideration to departments with significant levels of incidents and to departments that protect large populations relative to other applicants, regardless of the type of community served. Departments with low call volume, or that serve small communities, will receive lower consideration.

Applications that include requests for CBRNE equipment or training will be evaluated by the peer review panelists relative to the critical infrastructure the applicant protects. Critical infrastructure includes any system or asset that, if attacked, would result in catastrophic loss of life or catastrophic economic loss. Critical infrastructure includes the following: public water and power systems, major business centers, chemical facilities, nuclear power plants, major rail and highway bridges, petroleum and/or natural gas transmission pipelines and storage facilities, telecommunications facilities, and facilities that support large public gatherings, such as sporting events or concerts.

Specific rating criteria and funding priorities for the AFG FY 2007 grant activities are provided below following the descriptions of this year’s eligible program areas. The

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rating criteria, in conjunction with the program area description, will provide you with an understanding of what information we are seeking about your proposed projects.

(1) Fire Operations and Firefighter Safety

Five different fundable activities are included in this program area: training, equipment, PPE, wellness and fitness, and modifications to facilities. You may apply for as many of the activities within this program area as you deem necessary. There are no bonuses or penalties for applying for only one activity or for multiple activities. Fire-based EMS training and equipment are available under the appropriate activity (i.e., training, equipment, etc.) in this program area.

a) Firefighter Training:

AFG grants are available to train firefighting personnel. Examples of training activities include, but are not limited to the following: Firefighter I and II certifications; First Responder EMS; driver/operator; fire officer; HAZMAT response; incident command; supervision and safety; CBRNE awareness, performance, planning and management; or train-the-trainer courses in any of these areas.

In implementing the fire service's recommendations concerning AFG, DHS has determined that the most benefit is derived from training that is instructor-led and hands-on that leads to a nationally sanctioned or State certification. Training requests that include web-based home study or distance learning, and the purchase of training materials, equipment, or props are a lower priority. Therefore, applications focused on national or State certification training, including train-the-trainer initiatives, will receive a higher competitive rating. Training that involves instructors, that require the students to demonstrate their grasp of knowledge of the training material via testing, and that is integral to a certification will receive a high competitive rating. Instructor-led training that does not lead to a certification, and any self-taught courses, are of lower benefit, and therefore will not be a high priority.

A high competitive advantage is provided to proposed training projects that benefit the highest percentage of applicable personnel within a fire department, or that will be open to other departments in the region. Training that brings the department into statutory or OSHA compliance or compliance with federally mandated initiatives (such as knowledge and understanding of the National Incident Management System and/or incident command systems) or training that would bring an applicant into compliance with national standards would provide the highest benefit, relative to training that is not required. Therefore, requests to meet federally mandated or national standard compliance would receive the highest consideration. Training that is meant to address a local risk is secondary to training that leads to departments meeting statutory compliance or compliance with national standards. Training that does not have statutory compliance, or meet a national standard, will receive a low competitive rating.

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Training designated to enhance multi-jurisdictional capabilities will receive a higher rating.

Due to the inherent differences among urban, suburban, and rural firefighting conventions, there are different priorities in the training activity for departments servicing the different types of communities. CBRNE awareness training, however, has a high benefit and will receive the highest consideration, regardless of the type of community served.

For departments serving rural communities, requests for basic, operational-level firefighting training, safety officer training, operational-level rescue, driver training, or first responder EMS, EMT-B, and EMT-I, (i.e., training in basic firefighting or EMS duties) has greater benefit than funding officer training, airport rescue, and firefighting (ARFF) or other specialized training. In rural communities, after basic training, officer training and ARFF will receive a lower cost-benefit rating. The lowest consideration will be provided to departments that serve rural communities but are seeking assistance for other specialized types of training, such as mass-casualty, HAZMAT, advance rescue and EMT, or inspector training.

With respect to AFG training priorities to departments serving urban or suburban communities, the criteria development panel recommended that any training requested by an urban or suburban department be given the highest level of consideration. When considering the relative merit of applications for training from departments serving urban and suburban communities, DHS will give higher priority to training proposals which improve coordination capabilities across first-responder disciplines (fire, EMS, and law enforcement), and jurisdictions (local, State, and Federal). Training, such as for the National Incident Management System (NIMS) and in the Incident Command System (ICS), related to coordinated incident response (e.g., weapons of mass destruction (WMD) awareness and incident operations, chemical or biological operations, or bomb threats), tactical emergency communications procedures, or similar types of inter-disciplinary, inter-jurisdictional training will receive the highest competitive rating.

For FY 2007, eligible uses of training funds include, but are not limited to, tuition, exam and course fees, certification and/or re-certification expenses, purchase of training curricula, training equipment (including training trailers and other mobile simulators), training props, and training services (such as instructors). Tow vehicles or other means of transport may be eligible as a transportation expense under this activity if adequately justified; however, we will limit transportation expenses to \$6,000 per year per application. Compensation to volunteer firefighters for wages lost because of attending training under this activity is an eligible expense if justified in the proposal. Overtime expenses paid to career firefighters to attend training, or overtime expenses paid to career firefighters to cover for colleagues while their colleagues are in training, are eligible expenses if justified in the proposal. Although compensation and

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overtime/backfill expenses are eligible, proposals that contain these costs may be scored less favorably than similar proposals without compensation expenses, due to the cost-benefit element in the evaluation process. Applicants are encouraged to take this into account when formulating their application budget as it may be better to have a more competitive application than to cover every last expense.

Ineligible activities in this area include:

- construction of facilities, such as classrooms, buildings, towers etc.
- firefighting equipment or PPE for use in training exercises, such as SCBA
- modular training units that are not trailer-mounted or are otherwise immobile
- site preparation to accommodate any training activity, facility, or prop
- purchase or lease of real estate
- remodeling that is not directly related to other grant activities

The necessary remodeling of an existing facility to accomplish training activities is allowable if the remodeling is minor in nature (e.g., limited to minor interior alterations costing less than \$10,000), justified in the proposal, and integral to the completion of the training activities. Remodeling expenses should be included in the application as an "Other" line-item expense and clearly explained in the narrative.

DHS funds the direct delivery of a variety of classes that can be requested through the State to meet first responders training needs. These classes are listed in the course catalog found at http://www.firstrespondertraining.gov/odp_webforms.

b) Firefighting Equipment Acquisition:

AFG funds are available for equipment, including fire suppression equipment, to enhance the safety or effectiveness of firefighting, rescue, and fire-based EMS functions. Grants also are available for equipment necessary for response to CBRNE incidents.

DHS has determined that the greatest benefits of AFG funding will be achieved to enable fire departments to purchase firefighting equipment (including rescue, EMS, and CBRNE) which supports a department's existing mission, or to replace used or obsolete firefighting equipment. Our second priority will be to fund departments seeking to expand their functional capabilities within their existing mission areas, or to appropriately equip themselves to meet a new risk. The lowest priority is funding equipment to increase a department's reserve supply, or to expand a department's services into new mission areas. However, applicants who's grant request succeeds in reaching the second level of competition, the peer review, can mitigate the impact of "New Missions" on the competitiveness of their application by providing evidence that the department will be able to support and sustain the new mission beyond the period of

grant.

For the FY 2007 AFG, the purchase of equipment that brings the department into compliance with nationally recommended standards (such as the NFPA) or statutory compliance (such as OSHA) will provide the highest benefit to the applicant and therefore will receive the highest consideration. The purchase of equipment that brings a department into voluntary compliance with OSHA standards will also receive a high competitive rating, but secondary to equipment that leads to a department's statutory compliance. Equipment that does not have an effect on statutory compliance or voluntary compliance with a national standard will receive a lower competitive rating. Applicants should designate which compliance standards would be achieved with this activity.

Training is of critical importance to any first responder organization. DHS believes that equipment is of no use if the operator is not trained to use it. As such, applicants that are not, or will not be, sufficiently trained to use the equipment requested under this program will be a very low funding priority.

AFG's purpose is to protect the health and safety of the public and firefighters from fire and fire-related hazards; therefore, equipment that has a direct effect on firefighters' health and safety will receive a high competitive rating over equipment that has no such effect. Equipment promoting interoperability with neighboring jurisdictions may receive additional consideration in the cost-benefit assessment if the application ranks within the competitive range.

Small boats (13 feet or less in length), all-terrain vehicles (ATVs), and appropriate trailers may be considered under this activity if properly justified in the narrative section of the application. Other vehicles are not eligible under this activity, but would be eligible under the Firefighting Vehicle Acquisition program area.

Eligible expenses include expenses necessary to acquire, assemble, and install the requested equipment. The cost of training department personnel on the use of the new equipment is eligible, but should be requested under the training activity. Compressor systems, cascade systems, or similar SCBA-refill systems are eligible expenditures in this area. Remodeling or renovations to an existing facility to accommodate equipment purchased with grant funds are allowable if justified in the narrative, and if the remodeling or renovation is minor in nature (i.e., limited to minor interior alterations costing less than \$10,000). Remodeling that is not directly related to other grant activities is not eligible. Traffic signal preemption systems are eligible. The costs of shipping equipment purchased under this program and applicable sales taxes are also eligible expenses.

Individual communications equipment (portable radios) and mobile communications equipment (including mobile repeaters) are eligible, but telephones and cell phones are

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not eligible. Under the AFG, DHS will limit funding for portable radios to the number of seated positions based on the applicant's firefighting vehicle fleet unless otherwise justified in the narrative, and only fund the number of mobile radios required to equip the vehicle inventory listed in the application. We will not fund mobile radios for personally owned vehicles, with the exception of the chief fire officer's personal vehicle if adequately justified in the application. Mobile data systems (MDTs) are eligible. Integrated communications systems such as base stations, computer-aided dispatch, fixed-site repeaters, wireless and broadband mobile data systems, are eligible under this activity. The purchase of any communications systems or equipment under this activity should have the intent or goal of solving interoperability problems, as applicable. Note that each State will have the opportunity to review requests for communications equipment, with respect to interoperability and the State Homeland Security Strategy. Any applicant seeking funding for eligible equipment should provide details in the narrative section of the application regarding their local plan to enable or enhance interoperable communications in the jurisdiction.

Equipment used in response to CBRNE incidents is also eligible. Equipment exclusively designed for use in CBRNE incidents is eligible this year and includes special monitoring equipment (biological, radioactive, etc.) and CBRNE-related pharmaceuticals for first responders, such as auto injectors.

Requests for EMS equipment are eligible under this equipment acquisition activity. Eligible expenses for EMS equipment in this activity may include, but are not limited to, defibrillators, basic and advanced life support equipment, universal precaution supplies (i.e., personal protective equipment), computers, and infectious disease control and decontamination systems.

Grant funds may NOT be used for the following items:

- construction of facilities, such as buildings, sheds, or towers to house communications equipment;
- warranties and maintenance agreements;
- sirens or other outdoor warning devices;
- telephones and cell phones;
- bomb disposal equipment and robots;
- vehicles (except as described above or through a vehicle grant award), personal watercraft, medications, and disposable or otherwise expendable

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supplies (such as gloves, syringes, and cervical collars);

- PPE, including clothing for structural and wildland fire suppression, such as “turnout gear” or “bunker gear” (including boots, pants, coats, gloves, hoods, goggles, vests, helmets, coveralls, and fire shelters), SCBAs, spare cylinders, and personal alert safety systems (See PPE Acquisition Activity below).

c) Firefighter Personal Protective Equipment (PPE):

AFG funds are available to acquire OSHA-required and other PPE for firefighting personnel. One purpose of AFG is to protect the health and safety of the public and of firefighters. To achieve this goal and maximize the benefit to the firefighting community, the FY 2007 AFG will give higher priority to funding applicants needing to purchase PPE for the first time than departments replacing obsolete or substandard equipment (e.g., equipment not meeting current NFPA and OSHA standards). For departments replacing equipment, the condition of the equipment to be replaced will be factored into the score with a higher priority given to replacing equipment that is damaged, torn, or contaminated over equipment that is worn but usable. For departments replacing old or damaged equipment, departments with the oldest equipment will get the highest priority, and departments with the newest equipment will get a low priority. Departments seeking to purchase PPE for a new mission will receive a low rating. However, if the Department's application is still successful in achieving the second stage of competitive review, the peer review, an application can improve its competitive standing if it demonstrates the applicant's ability to sustain the mission beyond the grant period. Departments seeking to purchase PPE to have as an extra reserve supply will receive the lowest priority.

In concurrence with the recommendations of the criteria development panel, we will give a high competitive rating in this activity to fire departments where a large percentage of their active firefighting staff does not have compliant PPE. Accordingly, DHS will assign a higher competitive rating in this category to fire departments where a larger number of active firefighting staff is without compliant PPE. We will also give a high competitive rating to departments who want to purchase enough PPE to equip 100 percent of their active firefighting staff.

DHS believes that training is of critical importance to any first responder organization. Applicants that are not, or will not be, sufficiently trained to use the equipment requested under this program will be a very low priority for funding.

Application requests for personal alert safety system (PASS) devices will only be considered if the equipment requested meets current national standards, i.e., integrated and/or automatic or auto-on PASS. This is because of the safety benefits automated PASS devices provide firefighters. Eligible PPE includes clothing for structural or wildland fire suppression, such as “turnout gear” or “bunker gear” (including boots,

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pants, coats, gloves, hoods, goggles, retro-reflective highway apparel, vests, helmets, coveralls, and fire shelters), SCBAs, spare cylinders, and PASS (within the limits noted above). We will limit funding for SCBAs to the number of seated positions based on the applicant's firefighting vehicle fleet, unless otherwise justified in the narrative. Each SCBA request will be limited to one spare cylinder, unless the applicant can adequately justify more than one spare per unit. Protective clothing for response to hazardous materials incidents and other specialized incidents is eligible under this activity. Protective clothing designed for EMS activities or for response to CBRNE incidents is also eligible in this activity. Eligible PPE for EMS activities includes PPE ensembles (coats and trousers) that afford universal precautions against exposure to infectious diseases, etc.

Ineligible expenditures include the following:

- three-quarter length rubber boots;
- bomb disposal suits;
- uniforms (formal/parade or station/duty) and uniform items (hats, badges, etc.);
- personal communications equipment such as radios and pagers (See Equipment Acquisition above).

d) Firefighter Wellness and Fitness:

For the FY 2007 AFG, fire department wellness/fitness activities must offer periodic health screenings, entry physical examinations, and immunizations. Applicants for grants in this activity must currently offer, or plan to use grant funds to provide **all three benefits** in order to receive consideration for funding for any other initiatives under this activity. High priority is also given to formal fitness and injury prevention projects. Lower priority is given to stress management, injury/illness rehabilitation, and employee assistance.

In accordance with the recommendations of the criteria development panel, the greatest benefit will be realized by supporting applications for new wellness and fitness programs. Therefore, higher competitive ratings will be given to applicants that lack wellness/fitness programs. Applicants that already provide the three requisite benefits and wish to expand their wellness and fitness program will receive lower consideration than departments that are seeking to initiate a wellness and fitness activity. Finally, because participation is critical to achieving any benefits from a wellness/fitness activity, we will give higher competitive ratings to departments whose wellness and fitness activities mandate participation and are open to all personnel.

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Eligible expenditures in the firefighter Wellness and Fitness activity include the following:

- procurement of medical services to ensure the firefighting personnel are physically able to carry out their duties;
- costs for personnel, physicals, physical fitness equipment (including shipping charges and sales tax as applicable), supplies, other related contract services (e.g., health-care consultants, trainers, and nutritionists) directly associated with the implementation of the proposed activity, and incentives (t-shirts or hats of nominal value, vouchers to local businesses, or time-off).

Ineligible expenditures include the following items:

- transportation expenses;
- fitness club memberships for firefighters or their families;
- cash incentives;
- purchase of medical equipment;
- construction of facilities to house a fitness activity, such as exercise or fitness rooms, showers, etc.;
- purchase of real estate.

Minor remodeling or renovations to an existing facility are allowable if justified in the narrative, if minor in nature (i.e., limited to minor interior alterations costing less than \$10,000), and integral to the completion of the wellness/fitness activity (see Appendix 3. Other Allowable Costs for more details). Remodeling that is not directly related to other grant activities is not eligible. Remodeling expenses should be included in the budget as an "Other" line-item expense and explained in the narrative.

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e) Modifications to Fire Stations and Facilities:

FY 2007 AFG grants may be used to modify fire stations and other facilities to protect the health and safety of firefighting personnel. Activities involving modifications to facilities are subject to all applicable environmental and historic preservation requirements. Applicants seeking assistance to modify their facilities may undergo additional screening. Specifically, DHS is required to ascertain to what degree the proposed modifications to fire stations or facilities might affect an applicant's structures relative to the National Environmental Policy Act, National Historic Preservation Act of 1966, and National Flood Insurance Program regulations. No project can proceed – except for project planning – prior to formal DHS approval. Noncompliance with this provision may jeopardize an applicant's award and subsequent funding.

Eligible projects under this activity must have a direct effect on the health and safety of firefighters. Therefore, eligible activities focus on improving firefighter safety in fire stations and other facilities.

Eligible initiatives in this area are limited to the following items:

- 1) installation of sprinkler systems;
- 2) vehicle exhaust extraction systems;
- 3) smoke and fire alarm notification systems;
- 4) emergency facility generators.

We will NOT fund any requests for modifications other than the initiatives listed above. Any vehicle exhaust extraction system funded under this activity should be either extensive enough to extract all toxic vapors and particulates emitted from internal combustion engines, and meet all applicable Federal, State, and local standards, or be part of a larger comprehensive system that does. Some exhaust extraction systems may meet standards for removal of certain carcinogens, but not others; therefore, it may be necessary to utilize more than one system or employ complementary systems to fully protect your firefighters.

More benefit would be derived from modifying fire stations than from modifying dispatch centers, fire-training facilities, or other fire department facilities. The frequency of use would have a direct bearing on the benefits to be derived from grant funds. In addition, the frequency and duration of a facility's occupancy have a direct relationship to the benefits to be realized from funding in this activity. As such, facilities occupied or otherwise in use, 24-hours-per-day, and 7-days-per-week will receive the highest competitive rating. Facilities used less than full time will receive lower consideration. Facilities used only occasionally, or on an irregular or part-time basis, will receive lowest

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consideration. Requests involving facilities that have sleeping quarters will receive a higher competitive rating.

Grant funds are to be used only to retrofit existing structures that do not have the eligible safety features or to upgrade facilities whose features are outdated. When requesting funds for modifications to facilities, older structures will receive the highest consideration for funding. Funds may not be used to supplement new construction.

There are no monetary limits on the individual initiatives under this activity, but no applicant can request more than \$100,000 per fire station under their authority. You may request funding for modifications for each station if you have multiple stations, up to the \$100,000 per station limit, as long as the entire request does not exceed the Federal share limit.

(2) Firefighting Vehicle Acquisition Program Area

AFG provides grants for new firefighting vehicles, used fire apparatus originally designed for firefighting, or refurbished apparatus originally designed for firefighting. Funds may also be used to refurbish a vehicle the department currently owns but only if it is a vehicle originally designed for firefighting. Converted vehicles not originally designed for firefighting are not eligible for refurbishment. New vehicles purchased with AFG funds must be compliant with NFPA 1901 or 1906 standards. Used apparatus must be compliant with NFPA 1901 or 1906 standards for the year the vehicle was manufactured. Refurbished apparatus must meet NFPA 1912 standards.

In FY 2007, applicants that serve urban or suburban communities may apply for more than one vehicle. However, awards will be limited to only one vehicle per station. Applicants serving rural communities are limited to one vehicle per application. If a rural applicant submits an application requesting more than one vehicle, we will deem the application ineligible. Applicants awarded vehicle grants under AFG in previous years ARE ELIGIBLE for another vehicle award in this program year. ***This is a change from the FY 2006 AFG.***

As in FY 2006, AFG awardees must obtain a bond if funds are advanced to a manufacturer, and include specific performance requirements and penalties for non-compliance with the requirements as part of the contract with the vehicle manufacturer. Extensions to a grant's period of performance may not be considered if the requisite bond is not included in the purchase contract.

Due to inherent differences among urban, suburban, and rural firefighting conventions, AFG has different priorities in the vehicle program area for departments that serve different types of communities. As stated above, applications from departments that serve urban and suburban communities may submit an application for multiple vehicles. The urban or suburban application may include requests for vehicles from any or all of

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the three priorities; however, applications that include lower priority vehicles will receive lower consideration. The following table lists the funding priorities for this program area by each type of community.

Firefighting Vehicle Program Priorities			
Priority	Urban Communities	Suburban Communities	Rural Communities
Priority One	Pumper Aerial Quint (Aerial < 76') Quint (Aerial > 76') Rescue	Pumper Aerial Quint (Aerial < 76') Quint (Aerial > 76') Brush/Attack	Pumper Brush/Attack Tanker/Tender Quint (Aerial < 76')
Priority Two	Command HAZMAT Light/Air Rehab	Command HAZMAT Rescue Tanker/Tender	HAZMAT Rescue Light/Air Aerial Quint (Aerial > 76')
Priority Three	Foam Truck ARFFV Brush/Attack Fire Boat Tanker/Tender Ambulance	Foam Truck ARFFV Rehab Light/Air Fire Boat Ambulance	Foam Truck ARFFV Command Rehab Fire Boat Ambulance

DHS will evaluate the marginal value derived from an additional vehicle of any given type on the basis of call volume. As a result, departments with fewer vehicles of a given type than other departments who service comparable call volumes are more likely to score competitively than departments with more vehicles of that type and comparable call volume unless the need for an additional vehicle of such type is made apparent in the application.

In 2007, applicants may submit requests for more than one vehicle. Applicants must supply sufficient justification for each vehicle contained in the request. For those applications with multiple vehicles, the panelists will be instructed to evaluate the marginal benefit to be derived from funding the additional vehicle(s) given the potential use and the population protected. DHS anticipates that the panels will only recommend an award for a multiple-vehicles application when the cost-benefit justification is adequately compelling.

DHS believes that a greater benefit will be derived from funding an additional vehicle(s) to departments that own fewer or no vehicles of the type requested. As such, DHS

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assigns a higher competitive rating in the apparatus category to fire departments that own fewer firefighting vehicles relative to other departments serving similar types of communities (i.e., urban, suburban and rural). DHS assesses all vehicles with similar functions when assessing the number of vehicles a department possesses within a particular type. For example, the “pumper” category includes: pumpers, engines, pumper/tankers (apparatus that carries a minimum of 300 gallons of water and has a pump with a capacity to pump a minimum of 750 gallons per minute), rescue-pumpers, quints (with aerials less than 76 feet in length), and urban interface vehicles (Type I). Apparatus that has water capacity in excess of 1,000 gallons and a pump with pumping capacity of less than 750 gallons per minute are considered to be a tanker/tender.

DHS assigns a higher competitive rating to departments possessing an aged fleet of firefighting vehicles. DHS will also assign a higher competitive rating to departments that respond to a high volume of incidents.

DHS will give lower priority to funding departments seeking apparatus with the goal to expand into new mission areas unless the applicant demonstrates that they will be able to support and sustain the new mission or service area beyond the grant program.

DHS will assign no competitive advantage to the purchase of standard model commercial vehicles relative to custom vehicles, or the purchase of used vehicles relative to new vehicles in the preliminary evaluation of applications. DHS has noted that, depending on the type and size of department, the peer review panelists often prefer low-cost vehicles when evaluating the cost-benefit section of the project narratives. DHS also reserves the right to consider current vehicle costs within the fire service vehicle manufacturing industry when determining the level of funding that will be offered to the potential grantee, particularly if those current costs indicate that the applicant's proposed purchase costs are excessive.

DHS will allow departments serving urban or suburban communities to apply for more than one vehicle. DHS, however, will allow departments serving rural communities to apply for only one vehicle. DHS will limit applications from suburban or urban departments to one vehicle per station as well as by the statutory funding limits. DHS will not limit applications because of a vehicle award from previous AFG program years, i.e., previous vehicle awardees are eligible for funding for additional vehicles in 2007.

As stated above, in 2007, applicants may submit requests for more than one vehicle. It will be incumbent upon the applicant to supply sufficient justification for each vehicle contained in the request. For those applications with multiple vehicles, the panelists will be instructed to evaluate the marginal benefit to be derived from funding the additional vehicle(s) given the potential use and the population protected. It is anticipated that the panels will only recommend an award for a multiple-vehicles application when the cost-benefit justification is adequately compelling.

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When assessing the number of vehicles a department has within a particular class, we will include all vehicles with similar functions. For example, in the “pumper” category, we will consider the following to be of similar function: any firefighting vehicle with pumping capacity of 750 gallons per minute (gpm) or more and water carrying capacity of at least 300 gallons, including rescue-pumpers, urban interface vehicles such as Type I, II or III, and quints (with aerials less than 76 feet in length). We consider tankers or water-tenders to be firefighting vehicles with a carrying capacity of 1,000 gallons or more and with pumping capacity of less than 750 gpm. A firefighting vehicle with a carrying capacity of more than 1,000 gallons and pumping capacity of more than 750 gpm will be considered to be a pumper under AFG.

As with other eligible AFG activities, one of the goals in the vehicle acquisition program is firefighter safety. Applicants seeking to replace or refurbish unsafe vehicles will receive the higher consideration than applicants seeking to replace vehicles with safety features. The highest consideration is provided to applicants wanting to replace vehicles that have been converted for use as firefighting vehicles, but were not originally designed for firefighting. However, replacement of an unsafe vehicle will still have to be justified in the narrative. Converted vehicles not used or intended to be used in emergency operations will not be favorably reviewed merely because they are converted. We will give high consideration to applicants with firefighting vehicles that had an “open-cab” configuration in their original design, as well as to vehicles that did not include seatbelts in their original design. Applicants wanting to benefit from this consideration must certify that the unsafe vehicle will be permanently removed from service if awarded a grant.

Departments that have formal automatic aid agreements with neighboring departments will receive additional consideration. Departments with formal mutual aid agreements will receive more consideration than departments without formal agreements, but not as much consideration as departments with automatic aid agreements.

Finally, due to the inherent safety benefits to be realized in departments using a comprehensive driver training program meeting NFPA standard 1002 or its equivalent, we will provide a competitive advantage to requests where the applicant has a comprehensive driver training program. Applicants seeking driver training with their vehicle request will receive a slightly lower competitive advantage than departments with such a program already in place. Applicants without a comprehensive driver training program, and who will not implement appropriate driver training in conjunction with their AFG award, or through other resources, will **NOT** be considered for a vehicle award.

No competitive advantage will be given to applicants seeking to purchase standard model commercial vehicles versus custom vehicles, or the purchase of used vehicles versus new vehicles in the preliminary application evaluation so long as the vehicles are (or were) originally designed for firefighting. Depending on the type and size of a

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department, the technical evaluation panelists often prefer low-cost vehicles when reviewing the cost-benefit section of the project narratives. Panelists may be provided with guidance for use in their evaluation of the reasonableness of vehicle costs. We also reserve the right to impose funding limits on requests for vehicles whose costs we deem excessive or otherwise not in the best interest of the program.

Eligible expenditures under this program include the cost of the vehicle and associated equipment necessary to conform to applicable national standards (NFPA 1901 or 1906). New, used, or refurbished vehicles are eligible; however, any used or refurbished vehicles must conform to the national standards that were in effect the year the vehicle was manufactured. An allowance for transportation to inspect a vehicle under consideration or during a vehicle's production would be eligible if reasonable and justified in the grant proposal. Any additional costs associated with the purchase and installation of a vehicle-mounted exhaust filtration system for any vehicle purchased with grant funds would also be eligible. The costs associated with driver-operator training may be eligible for any vehicle award if justified in the narrative.

Applicants will not be allowed to modify the scope of work of a vehicle award (i.e., change the type of vehicle to be purchased after the application is submitted). Vehicles contracted for or otherwise purchased prior to the end of the established application period are not eligible for funding. Aircraft, bulldozers, and construction-related equipment are not eligible for purchase with AFG funds.

Appendix 2

Funding Priorities and Allowable Expenses For Nonaffiliated EMS Organizations

AFG funding priorities differ for fire departments and nonaffiliated EMS organizations. Please read the guidance document with this in mind and make sure you are researching the appropriate sections for your organization. Equipment requested under AFG must meet all mandatory regulatory requirements, as well as any national and/or DHS-adopted standards in order to be eligible for purchase with grant funds. The Responder Knowledge Base (RKB), which can be accessed at <http://www.rkb.mipt.org/>, includes relevant information on first responder standards and allows “guest users” to ask any questions they may have on applicable standards.

Equipment/technology requests should have the goal of solving interoperability or compatibility problems. Therefore, applicants should describe in their narrative sections how the purchase of equipment would comply with standards and/or facilitate solving interoperability or compatibility problems.

Nonaffiliated EMS Organization Priorities.

AFG grants may be used to enhance emergency medical services provided by nonaffiliated EMS organizations. EMS funding is limited to no more than 2 percent of the AFG appropriation.

The criteria development panel recommended that it is more cost-effective to enhance or expand an existing EMS organization by providing training or equipment than it would be to create a new service. As such, communities that are attempting to initiate EMS services will receive the lowest competitive rating.

Specific rating criteria and funding priorities for AFG FY2007 grant activities are provided below following the descriptions of eligible program areas. The rating criteria, in conjunction with the program area description, will provide you with an understanding of what information we are seeking about your proposed projects.

(1) EMS Operations and Safety Program Area

Five different activities are available for funding under this program area: EMS training; EMS equipment; PPE; wellness and fitness; and modifications to facilities. Requests for equipment and training to prepare for response to incidents involving CBRNE are available under the applicable equipment and training activities. Applications that include requests for CBRNE equipment or training will be evaluated by the peer review panelists relative to the critical infrastructure the applicant protects. Critical infrastructure includes any system or asset that, if attacked, would result in catastrophic

loss of life or catastrophic economic loss. Critical infrastructure includes the following: public water and power systems, major business centers, chemical facilities, nuclear power plants, major rail and highway bridges, petroleum and/or natural gas transmission pipelines and storage facilities, telecommunications facilities, and facilities that support large public gatherings, such as sporting events or concerts.

Applicants should ensure that all projects applied for under the grant program are consistent with national standards and address the goals of interoperable communications and equipment compatibility.

DHS has determined that the frequency of use and the population protected are useful measures in determining the benefits of an award. Therefore, DHS will provide a higher level of consideration to organizations with a high call volume and to organizations that serve large populations.

If you opt to apply under the EMS Operations and Safety Program Area, you may request assistance for as many activities as you deem necessary. There are no bonuses or penalties for applying for only one activity or for multiple activities.

a) EMS Training:

AFG provides grants to train EMS personnel. Examples of training activities include, but are not limited to, first responder, EMT-Basic, EMT-Paramedic, HAZMAT Operations, or Rescue Operations.

A higher competitive rating will be given to nonaffiliated EMS organizations that are planning to upgrade services from first responder to EMT-B level. Because training is a prerequisite to the effective use of EMS equipment, organizations whose requests are more focused on training activities will receive a higher competitive rating than organizations whose requests are more focused on equipment. Our second priority is to elevate emergency responders' capabilities from EMT-B to EMT-I or higher. Organizations seeking training in rescue or HAZMAT operations will receive lower consideration than organizations seeking training for medical services. Our lowest priority is to fund first responder training.

Eligible uses of training funds include, but are not limited to:

- tuition, exam and course fees;
- certification or recertification expenses;
- purchase of training curricula, training equipment, training props, and training services (such as instructors);

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- attendance at formal training forums or conferences that provide continuing-education credits.

Compensation to volunteer emergency responders for wages lost because of attending training under this activity is an eligible expense if reasonable and justified in the grant proposal. Overtime expenses paid to emergency responders to enable them to attend training, or overtime expenses paid to emergency responders to cover for colleagues in training are eligible expenses if reasonable and justified in the grant proposal. Although compensation is an eligible expense, proposals containing this type of compensation expense may be ranked less favorably than similar proposals without compensation expenses due to the cost-benefit element in the evaluation process.

Ineligible activities in this area include the following:

- construction of facilities, such as classrooms, buildings, and towers;
- site-preparation to accommodate any training activity, facility, or prop;
- purchase or lease of real estate.

The necessary remodeling of an existing facility to accomplish training activities funded by the grant is allowable if the remodeling is minor in nature (e.g., limited to minor interior alterations costing less than \$10,000), justified in the proposal, and integral to the completion of the training activities funded by the grant. Remodeling that is not directly related to other grant activities is not eligible under this program (see Appendix 3. Other Allowable Costs). Remodeling expenses should be included in the application as an "Other" line-item expense and clearly explained in the narrative.

DHS funds the direct delivery of a variety of classes that can be requested through the State to meet first responders' training needs. These classes are listed in the course catalog found at http://www.firstrespondertraining.gov/odp_webforms.

b) EMS Equipment Acquisition:

Because training is a prerequisite to the effective use of EMS equipment, organizations whose requests are more focused on training activities will receive a higher competitive rating than organizations whose requests are more focused on equipment. Organizations that request training to the EMT-B level, along with basic support equipment, will receive a higher priority. Requests seeking assistance to purchase equipment to support advance-level EMS services are a secondary priority. Organizations seeking equipment for rescue or HAZMAT operations will receive lower consideration than organizations seeking equipment used to provide medical services. Our lowest priority is to fund first responder training. Items that are eligible for funding,

but a lower priority, include tents, shelters, generators, lights, and heating and cooling units.

For FY 2007, DHS will make a distinction between “new missions” and “new risks.” According to the criteria development panel, an organization takes on a new mission when it expands services into areas not previously offered, such as an EMS organization seeking funding to provide water rescue capability for the first time. A “new risk” is when an organization is forced to address risks that have materialized in the department’s area of responsibility; for example, construction of a plant that uses significant levels of chemicals could constitute a “new risk.”

Organizations upgrading their equipment for existing services will receive highest consideration. Organizations taking on “new risks” will be considered the second priority. Organizations taking on a “new mission” will receive a lower priority, due to the risk that an applicant will not be able to financially support and sustain the new mission beyond the grant performance period. The lowest priority is funding equipment to increase an applicant’s available supply (reserve equipment) or to expand an applicant’s services into new mission areas. Finally, equipment that will bring an organization into compliance with State or Federal regulations will receive higher consideration than equipment that has no statutory basis.

Eligible expenses for equipment acquisition include basic and advanced life support equipment to support EMT-B through EMT-P, with higher priority given to organizations requesting equipment to support service at the EMT-B level. Examples of eligible items available under this section include, but are not limited to the following:

- basic life-support (BLS) equipment;
- advanced life-support (ALS) equipment;
- rescue tools;
- small specialty access vehicles (all-terrain vehicles, rescue boats under 13 feet, gators, snow mobiles, etc.);
- communications equipment (mobile and portable radios);
- HAZMAT and decontamination equipment;
- computers;
- automated external defibrillators (AEDs);
- infectious disease control and decontamination systems.

Protective clothing is NOT eligible under this equipment category, but is available under the PPE Activity below.

For FY 2007, individual communications equipment (portable radios) and/or mobile communications equipment (including mobile repeaters) are eligible, but telephones, cell phones, satellite phones, and sirens or other outdoor warning devices are not eligible. We will only fund the number of mobile radios required to equip the vehicle inventory listed in the application. We will not fund mobile radios for personally owned vehicles under EMS. Mobile data systems are eligible. Integrated communications systems such as base stations, computer-aided dispatch, fixed-site repeaters, and wireless and broadband mobile data systems are eligible under this activity. The purchase of any communications systems or equipment under this activity should have the intent or goal of solving interoperability problems. Each State will have the opportunity to review requests for communication systems to ensure compliance with statewide interoperable communications plans and the State Homeland Security Strategy. Applicants seeking funding for EMS equipment should provide details in application's narrative section regarding their local plan to enable jurisdiction-wide interoperable communications.

Any equipment requested under this section, particularly decontamination and HAZMAT equipment, is fundable to the current level of your capabilities (i.e., we will not fund level-A equipment for organizations only trained to the HAZMAT operation level, unless the application also includes a request for training compatible with the equipment request). Vehicles (such as ambulances), personal watercraft, equipment used for firefighting, medications, disposable or otherwise expendable supplies (such as gloves, syringes, and cervical collars), body armor, uniforms, and new construction such as communications towers or facilities are not eligible for AFG EMS equipment. The costs of shipping equipment purchased under this program and applicable sales taxes are also eligible expenses. However, warranties and maintenance agreements are NOT eligible.

c) EMS Personal Protective Equipment (PPE) Acquisition:

AFG makes grants to acquire PPE for active EMS first responder personnel, particularly PPE required by OSHA. One of AFG's goals is to protect the health and safety of the public and first responders. To achieve this goal and to maximize the benefit to the EMS community, in FY2007 AFG will prioritize funding for organizations needing to purchase PPE for the first time. We also will give very high consideration to organizations replacing obsolete or substandard equipment. In these cases, the condition of the equipment to be replaced will be factored into the score, with a higher priority given to replacing equipment that is damaged, torn, or contaminated over equipment that is worn but usable. For organizations replacing old or damaged equipment, organizations with the oldest equipment will get highest priority, and organizations with the newest equipment will get lowest priority. In addition, we will give

a high competitive rating to EMS organizations with a large percentage of active staff without compliant EMS PPE. We will also give a high competitive rating to EMS organizations wanting to purchase enough PPE to equip 100 percent of their active staff. Our lowest priorities are to fund the purchase of equipment for a new mission, or the purchase of equipment as a reserve in the event it is needed.

DHS believes that training is of critical importance to any first responder organization, and that equipment is of no use if the operator is not trained to use it. As such, applicants that are not, or will not be, sufficiently trained to use the equipment requested under this program will be given a very low priority for funding.

Examples of eligible clothing include EMS turnout gear, non disposable universal precautionary supplies (i.e., medical PPE), extrication jumpsuits, rescue helmets, gloves, and boots. Protective clothing must meet national standards or local EMS protocols. The purchase of SCBA may also be eligible if the EMS organization has a formally adopted standard operating procedure that requires SCBA availability and adequately justifies the request. If you apply for funding for SCBA, we may require you to submit documentation to support the eligibility of SCBA.

Any equipment requested under this section, particularly decontamination and HAZMAT suits, are fundable to the current level of your training (i.e., we will not fund level-A suits for organizations only trained to the HAZMAT operation level unless the application also includes a request for training compatible with the equipment request). Uniforms (formal/parade or station/duty) and uniform items (hats, badges, etc.) are not eligible expenses under this activity. Nonaffiliated EMS organizations also may not apply for non-EMS PPE such as body armor, wildland firefighting gear, and firefighting turnout gear. Personal communications equipment, such as radios and pagers, are not eligible under this activity, but are eligible under the EMS Equipment Acquisition Activity.

d) EMS Wellness and Fitness:

For the FY 2007 AFG, an effective EMS wellness/fitness activity must offer periodic health screenings, entry-level physical examinations, and an immunization program. Applicants for grants in this activity must currently offer, or plan to use grant funds to provide, **all three benefits** to receive consideration and funding for any other initiatives under this activity. After entry-level physicals, annual physicals, and immunizations, high priority is given to formal fitness and injury prevention programs. Lower priority is given to stress management, injury/illness rehabilitation, and employee assistance.

We will afford higher competitive ratings to applicants lacking wellness/fitness programs over applicants that already employ a wellness/fitness program. Applicants already providing the three requisite benefits that wish to expand their wellness and fitness program will receive a slightly lower consideration than applicants seeking to initiate a wellness/fitness program. Finally, since participation is critical to achieving any benefits

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from a wellness/fitness program, we will give higher competitive ratings to departments whose wellness/fitness programs mandate participation and are open to all personnel.

Eligible expenditures in a wellness and fitness activity for EMS personnel may include the procurement of medical services to ensure that EMS personnel are physically able to carry out their duties. The purchase of medical equipment is not an eligible expenditure under this category. Eligible expenditures to carry out wellness/fitness activities may include costs for personnel physicals, physical fitness equipment (including shipping charges and sales tax, as applicable), supplies, or other related contract services (e.g., health-care consultants, trainers, and nutritionists) directly associated with the implementation of the proposed activity. Examples of eligible incentives for participation in a wellness/fitness program would be t-shirts or hats of nominal value, vouchers to local businesses (movie theaters, restaurants, etc.), or time-off awards.

Ineligible expenses include the following:

- transportation expenses;
- fitness club memberships for EMS personnel and their families;
- cash incentives;
- construction of facilities to house a fitness program (exercise or fitness rooms, showers, etc.);
- purchase of real estate.

Minor remodeling or renovations to an existing facility are allowable if justified in the narrative if the remodeling is minor in nature (i.e., limited to minor interior alterations costing less than \$10,000), and if the remodeling is integral to the completion of the wellness/fitness activities funded by the grant. Remodeling that is not directly related to other grant activities is not eligible. Remodeling expenses should be included in the budget as an "Other" line-item expense and explained in the narrative.

e) Modifications to EMS Stations and Facilities:

FY 2007 AFG grants may be used to modify EMS stations, EMS training facilities, and other facilities to protect the health and safety of first responder personnel. Activities involving modifications to facilities are subject to all applicable environmental and historic preservation requirements. Applicants seeking assistance to modify their facilities may undergo additional screening to ascertain to what degree the proposed modifications affect an applicant's structures relative to National Environmental Policy

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Act, National Historic Preservation Act of 1966, and National Flood Insurance Program regulations. No project can proceed – except for planning – prior to formal DHS approval. Noncompliance with this provision may jeopardize an applicant's award and subsequent funding.

Eligible projects under this activity must focus on promoting safety in EMS stations and facilities. Measures eligible for funding are the installation of sprinkler systems, vehicle exhaust extraction systems, smoke or fire alarm notification systems, and emergency facility generators. We will NOT fund any other requests for modifications than the initiatives listed. Any vehicle exhaust extraction system funded under this activity should be either extensive enough to extract all toxic vapors and particulates emitted from internal combustion engines, and meet all applicable Federal, State, and local standards, or be a part of a larger comprehensive system that does. Some exhaust extraction systems may meet standards for removal of certain carcinogens, but not others; therefore, it may be necessary to utilize more than one system, or employ redundancies, to fully protect your first responders.

Grant funds are to be used to retrofit existing structures that do not have the eligible safety features, or to upgrade facilities whose features are outdated. . When requesting funds for modifications to facilities, older structures will receive the highest consideration for funding. Funds may not be used to supplement new construction.

More benefit would be derived from modifying an EMS station than by modifying a dispatch, training, or other EMS facility. Facilities occupied or otherwise in use 24-hours-per-day, 7-days-per-week will receive the highest competitive rating. Facilities used on a full-time basis will receive lower consideration. Facilities used only occasionally, or on an irregular or part-time basis, will receive the lowest consideration. Requests involving facilities that have sleeping quarters will receive a higher competitive rating than those facilities without.

There are no monetary limits on individual initiatives under this activity. However, no applicant may request more than \$100,000 in modifications per station under their authority. If you have multiple stations, you may request funding for modifications for each station up to this \$100,000 per station limit, as long as the entire request does not exceed the Federal share limit.

(2) EMS Vehicle Acquisition Program Area

FY 2007 AFG grants may be used to acquire new, used, or refurbished EMS vehicles. Funds may also be used to refurbish a vehicle the organization currently owns. New vehicles purchased with AFG funds must be compliant with current General Services Administration standards, specifically KKK-A-1822E, found at <http://apps.fss.gsa.gov/vehiclestandards/index.cfm>.

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Used apparatus must be compliant with Federal or industry standards for the year the vehicle was manufactured. Refurbished apparatus must also meet applicable standards.

In FY 2007, applicants that serve urban or suburban communities may apply for more than one vehicle. However, awards will be limited to only one vehicle per station. Applicants serving rural communities are limited to one vehicle per application. If a rural applicant submits an application requesting more than one vehicle, we will deem the application ineligible. Applicants awarded vehicle grants under AFG in previous years ARE ELIGIBLE for another vehicle award in this program year. ***This is a change from the FY 2006 AFG.***

Due to the inherent benefits of an ambulance, or any transport vehicle, to an EMS service provider, these types of vehicles are the highest priority compared to non transport vehicles. Due to the costs associated with obtaining and outfitting non transport rescue vehicles, we believe non transport rescue vehicles should have a lower competitive rating than transport vehicles. Vehicles having a limited function, such as aircraft, boats, and all-terrain vehicles, will receive the lowest competitive rating. Because of the very limited funding for EMS vehicle awards, we anticipate that this program will be very competitive. Therefore, it is unlikely we would fund any vehicles not listed as a "Priority One" this year. Priorities in this year's EMS vehicle program are the same for all communities. The following chart lists priorities in this program area.

EMS Vehicle Priorities

Priority One	Priority Two	Priority Three
• Ambulance or transport unit to support EMT-B needs and functions	• First responder non transport vehicles • Special operations vehicles	• Command vehicles • Rescue boats (over 13 feet in length) • Hovercraft • Other special access vehicles

As with any request, DHS reserves the right to reduce any vehicle request for assistance, in whole or in part, that we deem to be excessive or otherwise contrary to the best interests of this program. AFG funding is meant to supplement, rather than replace, an organization's funding. Grantees must maintain their level of operating expenditures during the grant period at a level equal to, or greater than, the average of their operating expenditures in the two years preceding the year in which assistance is received. (See Appendix 6. Grantee Responsibilities.) This means that, if an

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organization has a vehicle replacement program where it purchases three new vehicles every year, and that organization is awarded a vehicle grant, that organization will have to maintain its practice of purchasing three new vehicles in the year of the grant as well as the vehicle(s) awarded under the grant. The vehicle grantee CANNOT use AFG funding as a substitute for their vehicle replacement budget. In order to assure that this requirement is met, DHS may require detailed documentation regarding an applicant's or grantee's vehicle purchasing practices and policies.

Due to the inherent benefits of an ambulance, or any transport vehicle, to an EMS service provider, these types of vehicles are the highest priority compared to non transport vehicles. As with other eligible AFG activities, one priority of the vehicle acquisition program is the safety of first responders. Therefore, we will give the highest consideration to applicants wanting to replace vehicles that have been converted to use as EMS vehicles, but were not originally designed for EMS, as well as vehicles that did not include seatbelts in their original design. Applicants with these unsafe vehicle characteristics will receive this higher consideration over applicants seeking to replace vehicles having these safety features. Applicants wanting to benefit from this consideration must certify that the unsafe vehicle will be permanently removed from service, if awarded a grant.

In addition, more benefit will be realized by funding applicants owning few or no vehicles of the type they are seeking than there would be by providing vehicle funding to an organization with numerous vehicles of the type they are seeking. In assessing the number of vehicles an organization has within a particular class, we will include all vehicles with similar functions. For example, we would include transport vehicles in the same class as ambulances. We will also give higher competitive ratings to applicants that have an aged fleet of emergency vehicles.

This grant program will achieve the greatest benefits if we provide vehicles to EMS organizations purchasing basic response vehicles (categorized above in priority order) to meet their existing missions. The highest consideration will be given to EMS organizations that have never owned the vehicles, as well as to organizations seeking to replace used or obsolete vehicles. A secondary priority will be to fund EMS organizations seeking to add more vehicles to their existing fleet within their existing mission areas. The lowest priority is funding new apparatus to expand an applicant's services into new mission areas. A department takes on a new mission when it expands its services into areas not previously offered, such as an EMS organization seeking funding to create a HAZMAT response team for the first time.

A higher competitive rating will be given to an EMS organization owning few or no response vehicles relative to other organizations serving similar types of communities. A higher competitive rating also is given to organizations that have an aged fleet of vehicles, as well as to organizations with high-mileage vehicles. Organizations with a newer fleet of vehicles, or with vehicles that are not driven extensively, will receive lower

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consideration. EMS organizations that have formal automatic aid agreements with neighboring departments will receive additional consideration. Organizations with formal mutual aid agreements will receive more consideration than organizations without such arrangements, but not as much consideration as organizations with automatic aid agreements.

Finally, due to the inherent safety benefits to be realized in organizations that utilize a comprehensive driver training program, we provide a high competitive advantage for applicants who have an established comprehensive driver training program. Applicants seeking driver training with their vehicle request will receive a slightly lower competitive advantage. Applicants without a comprehensive driver training program who are not seeking funding for driver training in this application, or through other resources, will **NOT** be considered for a vehicle award.

No competitive advantage has been assigned to the purchase of standard model commercial vehicles versus custom vehicles, or the purchase of used vehicles versus new vehicles in the preliminary evaluation of applications. The technical evaluation panelists often prefer low-cost vehicles when evaluating the cost-benefit section of the project narratives. We also reserve the right to impose funding limits on requests for vehicles whose costs we deem excessive or otherwise not in the best interest of the program.

EMS vehicle awardees will be required to obtain a bond if funds are advanced to the manufacturer and include specific performance requirements and penalties for non-compliance with the requirements as part of the contract with the vehicle manufacturer. Extensions to a grant's period of performance may not be considered if the requisite bond is not included in the purchase contract.

Eligible expenses under this program would include **ONLY** the cost of the vehicle and requested driver training. We will **NOT** provide funding for associated equipment. New, used, or refurbished vehicles are eligible; however, all used or refurbished vehicles must conform to the national standards that were in effect the year the vehicle was manufactured. ATVs, gators, and similar equipment are considered to be EMS equipment, **NOT** vehicles and are not eligible under this category. An allowance for transportation to inspect a vehicle under consideration, or during a vehicle's production, would be eligible if reasonable and justified in the grant proposal. Additionally, operator training may be eligible for any vehicle award if justified in the narrative.

Applicants will not be allowed to modify the scope of work of a vehicle award, i.e., change the type of vehicle requested after award. Vehicles contracted for, or otherwise purchased, prior to the end of the established application period are not eligible for funding. Aircraft, bulldozers, and construction-related equipment are not eligible.

Appendix 3

Other Allowable Costs

This section describes additional costs that may be paid using AFG grant funds.

(1) Administrative Costs: Administrative costs are allowable under any of the program areas listed above in accordance with Office of Management and Budget (OMB) Circular A-87, Cost Principles for State, Local and Indian Tribal Governments, or OMB Circular A-122, Cost Principles for Nonprofit Organizations, as applicable. (For more information about Circulars, go to www.whitehouse.gov/omb/circulars.) Applicants may apply for administrative costs if the costs are directly related to the implementation of the program for which they are applying. Administrative costs are identifiable costs directly associated with the implementation and management of the grant, and cannot exceed 3 percent of the award.

If you are requesting administrative expenses, you must list the costs under the “Other” category in the budget, and explain the purpose for the administrative costs in your project narrative. Administrative costs should be based on actual expenses, not a percentage of the overall grant. We will reimburse actual expenses only. Examples of eligible administrative costs include shipping, office supplies, and computers associated with the NFIRS reporting requirements. Grant funds may not be used for maintenance agreements, product warranties, insurance, Internet service provider fees, or any similar monthly service fees. The cost of a grant writer (if specifically listed on your application) is eligible and can be charged to the grant as administrative costs in accordance with the provisions outlined below [see (7) below]. We will assess the reasonableness of the administrative costs requested in each application and determine if they are reasonable and in the best interest of the program.

(2) Indirect Costs: Indirect costs are those incurred for common or joint objectives and cannot be readily identified with a particular final cost objective. A cost may not be allocated to an award as an indirect cost if any other cost incurred for the same purpose, in like circumstances, has been assigned to an award as a direct cost. Typical examples of indirect costs include depreciation or use allowances on buildings and equipment, the costs of operating and maintaining facilities, general administration, and other general expenses, such as the salaries and expenses of executive officers, personnel administration, and accounting.

If you have an approved indirect cost rate, you may charge indirect costs to the grant. If you are charging indirect costs to the grant, you must submit documentation supporting the indirect cost rate to us for review prior to submitting any claims for reimbursement of indirect costs. Appropriate documentation for an approved indirect rate is a federally approved indirect cost rate agreement. We will allow the rate to be applied as long as it is consistent with its established terms. For example, some indirect cost rates may not

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apply to capital procurements; in these cases, indirect cost rates would not be applicable for an equipment or vehicle grant.

(3) Audit Costs: Grantees must comply with the organizational audit requirements of OMB Circular A-133, Audits of States, Local Governments, and Nonprofit Organizations, which states that recipients of Federal funding that expend more than \$500,000 in Federal funds (from all Federal sources) in their fiscal year are required to have a single audit. (For more information about OMB Circulars, go to www.whitehouse.gov/omb/circulars.) If a single audit is required, a portion of the audit cost would be allowable, if included in the application budget. We will allow you to charge a prorated share of the costs of the single audit to the grant. For example, if you expend \$100,000 from the AFG and \$400,000 from the Forestry Service during your fiscal year, we will allow you to charge one-fifth of the audit cost to the AFG grant. We do not require any other audits; therefore, you cannot charge any other audit expenses to the grant.

(4) Remodeling or Renovation Costs: Remodeling or renovations to an existing facility are allowable only if minor in nature (i.e., limited to minor interior alterations costing less than \$10,000). To be eligible, the remodeling must be essential to the successful completion of the grant's scope of work. The purchase of real estate and construction costs are not eligible. Construction includes major alterations to a building and/or changes to the profile or footprint of the structure. Enhancements to existing structures, such as the installation of apparatus bay ventilation systems and retrofitting fire stations with sprinkler systems, are eligible for application under the Modifications to Fire or EMS Stations and Facilities activity.

(5) Pre-award Costs: Generally, grantees cannot use grant funds to pay for products and services contracted for or purchased prior to the effective date of the grant. However, expenses incurred after the application deadline, but prior to award, may be eligible for reimbursement if the expenses were justified, unavoidable, consistent with the grant's scope of work, and specifically approved by DHS. We will consider requests for reimbursement for pre-award costs on a case-by-case basis.

(6) Pre-application Costs: Expenses, obligations, commitments, or contracts incurred or entered into prior to the application deadline are not eligible to be included as a grant expense with the exception of grant preparation costs [see (7) below].

(7) Grant Writer Fees: Fees for grant writers may be included as a pre-award or pre-application expenditure. Fees payable on a contingency basis are not an eligible expense. For grant writer fees to be eligible as a pre-award expenditure, the fees must be specifically identified and listed in the "Request Details" section of the application. In addition, the fees must have been paid prior to any contact with grants management staff or an award (i.e., paid within 30 days of the end of the application period).

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Applicants may be required to provide documentation to support these pre-award expenditures.

Hiring a grant writer, or use of any other third party in preparing the application, does not eliminate the applicant's responsibility for ensuring that information contained in the application is true and correct. Applicants that falsify their applications, or misrepresent their organizations in any material manner, will have their applications deemed ineligible by the AFG Program Office and referred to OIG for further action, as appropriate.

(8) Pre-payments: A grantee may not use grant funds to pre-pay for any products or services in advance of delivery of the products or rendering of services. A down payment for the purchase of a vehicle is allowable if required in the purchase contract, but we will only allow up to 25 percent of the Federal share to be drawn for this purpose. The grantee may use grant funds to pay for the purchase of any vehicle's chassis if the chassis is being supplied by a third-party vendor (i.e., a company other than the vehicle manufacturer). Documentation to support the independence of the third-party vendor may be required prior to our approval of any payments for any chassis. Federal funds may not be used for any other periodic or progress payments, except the final payment, which should not be requested until after the vehicle is received, inspected, and accepted by the grantee.

Appendix 4

Reasonableness of a Request

The peer review panelists will review all of the applications in the competitive range and judge each application on its own merits. The panelists will consider all expenses budgeted, including administrative and indirect costs, as part of the cost-benefit determination, and may recommend appropriate adjustments. Regardless of the eligibility of any costs requested, we reserve the right to reduce any requests for assistance, in whole or in part, that we deem to be excessive or otherwise contrary to the best interests of this program.

Applicants that falsify their applications, or misrepresent their organizations in any material manner, will have their applications deemed ineligible by the AFG Program Office and referred to the OIG for further action, as appropriate.

Appendix 5 Award Procedure

Awards will be made on a competitive basis using the rank order of peer-reviewed applications as the primary basis for our decisions, regardless of program. However, there are some exceptions to this process. AFG's authorizing legislation restricts how the funds may be used. Grant awards for vehicles may not exceed 25 percent of the total appropriated funding, and nonaffiliated EMS organizations may not receive more than 2 percent of appropriated funding. Once we reach these limits, we must deviate from the rank order with respect to the remaining vehicle requests or nonaffiliated EMS requests.

Throughout the selection process, career organizations will compete against all other organizations for up to 45 percent of the available funding. Volunteer and combination organizations will compete among each other for at least 55 percent of the available funding. Historically, less than 10 percent of the number of applications we receive for AFG funding are from career organizations. Therefore, funding levels may not reach the 45 percent ceiling for career organizations.

To fulfill our obligations under the law, we may also make funding decisions using the size and nature of the community served (urban, suburban, or rural), the type of organization (career, combination, or volunteer), and the geographic location of the organization. In these instances where we are making decisions based on geographic location, we will use States as the basic geographic unit. The geographic location of an applicant will be used primarily as a final discriminator, e.g., in cases where applicants have similar qualifications, we may use the geographic location of the applicants to maximize the diversity of the awardees.

Fire departments that have received funding under the AFG in previous years are eligible to apply for funding in the current year. However, due to our responsibilities under the authorizing statute to assure adequate distribution of awards among certain types of organizations (career, combination and volunteer) and certain types of communities (urban, suburban or rural), we reserve the right to fund or not to fund previous grant recipients under this program in order to fulfill statutory requirements. We may also take into account an applicant's performance on prior grants when making funding decisions on current applications.

As stated earlier, each application will be evaluated based on the answers to the activity-specific questions. The applications that best address the established funding priorities will be deemed to be in the "competitive range" and subject to a second-level review. This second-level review is conducted via a panel of technical reviewers who will assess the application's merits with respect to the detail provided in the narrative on the activity, the applicant's financial need, and the purported benefit to be derived for

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the cost. The panel evaluators will independently score each application, discuss the merits and shortcomings of the application, and reconcile any major discrepancies, if necessary. A consensus is allowed but not required.

Once every application in the competitive range has been through the panel review, the applications will be ranked according to the average score awarded by the panel. The ranking will be summarized in a Technical Report prepared by the AFG Program Office. The AFG Program Office will then make award recommendations to the Office of Grant Operations (OGO). OGO will then contact the applicant to discuss and/or negotiate the content of the application before making final award decisions.

We will select a sufficient number of awardees from this one application period to obligate all of the FY 2007 funding available. Awards will be announced over several months as decisions are made. Awards will not be made in any specified order, i.e., not by State, program, or any other characteristic.

Award amounts are limited based on the population of the jurisdiction. Specifically, an applicant that serves a jurisdiction with a population of 500,000 or less may not receive grant funds in excess of \$1 million in any program year. An applicant that serves a jurisdiction with more than 500,000, but not more than one million, people may not receive grant funds in excess of \$1.75 million. Finally, an applicant that serves a jurisdiction of more than one million people may not receive grant funds in excess of \$2.75 million in any fiscal year.

Appendix 6

Grantee Responsibilities

AFG award recipients (grantees) must agree to:

(1) Perform, within the designated period of performance, all tasks (scope of work) as outlined in the grantee's application and approved by the AFG Program Office in accordance with the Articles of Agreement.

(2) Share in the costs of the projects funded under this grant program. Fire departments and nonaffiliated EMS organizations serving populations of over 50,000 or more must match the Federal grant funds with an amount of non-Federal funds equal to 20 percent of the total project cost. Fire departments and nonaffiliated EMS organizations serving populations between 20,000 and 50,000 must agree to match the Federal grant funds with an amount of non-Federal funds equal to 10 percent of the total project cost. Fire departments and nonaffiliated EMS organizations serving areas with a population 20,000 or fewer must match the Federal grant funds with an amount of non-Federal funds equal to 5 percent of the total project cost. All non-Federal match funds must be in cash; in-kind contributions are not acceptable. No waivers of this requirement will be granted except for applicants located in Insular Areas as provided for in 48 U.S.C. § 1469a.

The grantee is not required to have the cash match in hand at the time of application, nor at the time of award. But, before a grant is awarded, we will ascertain that the grantee either has the funding in hand or has a viable plan to obtain the funding necessary to fulfill the matching requirement.

(3) Maintain operating expenditures for the one-year grant period of performance in the areas funded by this grant activity at a level equal to or greater than the average of their operating expenditures in the two years preceding the year in which this assistance is received. This program is meant to supplement rather than replace an organization's funding.

(4) Retain grant files and supporting documentation for three years after the conclusion and closeout of the grant or any audit subsequent to closeout.

(5) Ensure all procurement actions are conducted in a manner that provides, to the maximum extent possible, open and free competition. In doing so, the grantee must follow its established procurement processes when purchasing vehicles, equipment, and services with AFG funds. If the grantee has no established procedures, it should obtain at least two quotes/bids for the items being procured and document the process

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used in the grant files. Sole-source purchasing is not an acceptable procurement method except in unusual circumstances.

(6) Submit a Performance Report to DHS after six months. If a grant's period of performance is extended for any reason, the grantee must submit performance reports every six months until the grant is closed out. At grant closeout, the grantee must report how the grant funding was used and the benefits realized from the award in a detailed final report. An accounting of the funds must also be included.

(7) Make grant files, books, and records available, if requested, for inspection to ensure compliance with any requirement of the grant program.

(8) If the grantee is a fire department, agree to provide information, through established reporting channels, to the USFA's NFIRS for the period covered by the assistance. Nonaffiliated EMS organizations do not have to comply with the NFIRS reporting requirement. If a fire department does not participate in the incident reporting system, and does not have the capacity to report, at the time of the award, that grantee must agree to provide information to the NFIRS system for a 12-month period commencing as soon as they develop the capacity to report. We expect non reporting grantees to pursue the capacity to report immediately after notification of award, and for these non reporting grantees to be actively reporting to NFIRS within the approved period of performance. AFG program grantees from previous years will not be allowed to close out their grants until they demonstrate that they are complying with this requirement. Failure to close out previous years' grants may affect the consideration of future awards.

(9) Following the audit requirements of OMB Circular A-133, Audits of States, Local Governments, and Nonprofit Organizations, grantees that expend \$500,000 or more in Federal funds in their year (from all Federal sources) must have a single audit performed in accordance with the Circular. (For more information about the Circulars, go to www.whitehouse.gov/omb/circulars.)

(10) Comply with Homeland Security Presidential Directive-5 (HSPD-5). Starting October 1, 2004, HSPD-5 requires all recipients of Federal preparedness funding – including recipients of Federal grants and contracts – to adopt the National Incident Management System (NIMS) as a condition for receipt of Federal funds. Recipients of FY 2007 AFG funds must comply with this directive. AFG recipients will be considered in compliance with this NIMS requirement if the grantee: 1) has an operational knowledge of the Incident Command System (ICS); 2) has an understanding of NIMS' principles and policies; and 3) agrees to adopt and/or comply with all directives, ordinances, rules, orders, edicts, etc., passed down by local or State authorities with respect to incident management. Organizations already trained in ICS do not need retraining if the previous training was consistent with DHS standards. In order for us to

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document compliance, grantees will be required to certify their recognition of NIMS/ICS as part of the grant closeout process.

DHS offers ICS and NIMS training for organizations that have not implemented ICS, or that are unfamiliar with NIMS principles and policies. For example, the Federal Emergency Management Agency (FEMA) offers ICS training, from introductory courses to advanced ICS training. For more information regarding ICS and NIMS training, visit the NIMS website at www.fema.gov/emergency/nims/. For more information about ICS training, contact the DHS Centralized Scheduling and Information Desk (CSID) at 1-800-368-6498, or visit the website of the DHS Emergency Management Institute (EMI) and the National Fire Academy (NFA) at www.usfa.fema.gov. Your State emergency management training office may also be a source of information.

Appendix 7

Excess Funds

Occasionally, due to successful competitive bid processes, some grantees have funds remaining after the completion of the obligations outlined above. Fire department grantees that complete the approved scope of work prior to the end of the performance period, and still have grant funds available, have three options for the use of the excess funds:

- (1) Grantees may use the greater of 1% of their award amount or \$5,000 to continue, or expand, the activities for which they received the award. For example, if a grantee has funds remaining after completion of the activities listed in their grant agreement, the grantee may use excess funds (subject to the above limitation) to purchase other eligible items without seeking DHS approval.
- (2) Grantees may use excess funds to create, or expand, a fire or injury prevention program. Excess funds above the amounts discussed in paragraph (1) above must be used for fire or injury prevention activities or returned to DHS [see option (3) below]. In order to use excess funds for fire or injury prevention activities, a grantee must submit an amendment to its grant. The amendment request should explain the following:
 - i) fire or injury prevention efforts currently underway in your organization;
 - ii) where the use of excess funds would fit within your existing efforts, if applicable;
 - iii) the target audience for your fire or injury prevention project(s), and how this audience was identified;
 - iv) how you will evaluate the effectiveness of the requested fire or injury prevention project(s).
- (3) Grantees may return excess funds to DHS. To exercise this option, a grantee must close out its award and state in the final performance report that the remaining funds are not necessary for the fulfillment of grant obligations. The grantee must also indicate that it understands that the funds will be deobligated and unavailable for future expenses. Deobligation of excess funds will decrease the Federal portion of the grant and the amount of the grantee's match.

Fire department grantees that complete the approved scope of work prior to the end of the performance period, and still have grant funds available, may also use excess funds in a combination of activities from options 1 and 2. Nonaffiliated EMS organizations that

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have excess funds may exercise the same options for use of excess funds as that of a fire department, however, EMS organizations are restricted to uses that involve injury prevention only. EMS organizations may not expend grant funds for fire prevention activities.

Any use of excess funds must be cost-shared in the same fashion as other eligible expenses and disclosed in your reports (i.e., mid-term performance report and final closeout).

**City of Fayetteville
Staff Review Form
City Council Agenda Items
or
Contracts**

5/1/2007

City Council Meeting Date

John Nelson

Submitted By

Solid Waste & Recycling

Division

Operations

Department

Action Required:

A resolution approving an agreement between the City of Fayetteville, Arkansas and TM3, LLC to haul and dispose of solid waste in the City of Fayetteville.

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

Budgeted Item ☐

Budget Adjustment Attached ☐

Department Director

Date

Previous Ordinance or Resolution #

Original Contract Date:

Original Contract Number:

City Attorney

Date

Received in City Clerk's Office

ENTERED

Finance and Internal Service Director

Date

Received in Mayor's Office

ENTERED

Mayor

Date

Comments:



OPERATIONS DEPARTMENT

Interdepartmental Correspondence

To: Mayor and City Council

From: John Nelson, *John Nelson* Operations Mgmt. Accounting Coordinator

Date: April 9, 2007

Subject: Agreement with TM3, L.L.C. to haul and dispose of solid waste in the City of Fayetteville

Recommendation: A resolution approving an agreement between the City of Fayetteville, Arkansas and TM3, L.L.C. to haul and dispose of solid waste in the City of Fayetteville.

Background: TM3, L.L.C. has requested to haul and dispose of waste within the City of Fayetteville. The contract will permit TM3, L.L.C. to haul and dispose of waste in containers twenty (20) cubic yards and greater in size. The agreement requires TM3, L.L.C. to pay a monthly fee to the City of Fayetteville of ten (10%) percent of the gross revenue. This is the standard agreement authorized by City Council in implementing the contract fee.

Discussion: The term of this agreement is three years. TM3, L.L.C. requests to be permitted to operate within the City of Fayetteville.

Staff proposes approval for TM3, L.L.C. to haul and dispose of waste within the City of Fayetteville, per the terms and conditions outlined in the attached agreement.

RESOLUTION NO. _____

A RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE A
CONTRACT WITH TM3, LLC TO HAUL AND DISPOSE OF
SOLID WASTE WITHIN THE CITY LIMITS OF FAYETTEVILLE

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

Section 1. That the City Council of the City of Fayetteville, Arkansas
hereby authorizes the Mayor to execute a contract with TM3, LLC to haul and
dispose of solid waste within the city limits of Fayetteville. A copy of the contract
marked Exhibit "A" is attached hereto and made a part hereof.

PASSED and APPROVED this 1st day of May, 2007.

APPROVED:

ATTEST:

By: _____

DAN COODY, Mayor

By: _____

SONDRA E. SMITH, City Clerk/Treasurer

**AGREEMENT TO HAUL AND DISPOSE OF SOLID WASTE
IN THE CITY OF FAYETTEVILLE**

This Agreement (the "Agreement"), is entered into on this 3 day of April, 2007, between the City of Fayetteville, Arkansas, a municipal corporation (the "City"), and TM3, LLC (the "Hauler"), and shall be in full force and effect on the date first written above. City and Hauler agree as follows:

1. Hauler agrees that from and after the original date of this Agreement, all customer service Agreements for facilities within the corporate limits of the City entered into before or after the effective date of this Agreement, or renewed shall have terms of no more than two (2) years and any subsequent extensions shall be for terms of no more than one (1) year.
2. The term of this Agreement shall be for three (3) years, unless otherwise terminated pursuant to the terms hereof.
3. Hauler agrees and understands that it may only collect and haul Solid Waste using the type equipment commonly referred to as open-top roll-off style containers with capacities of twenty (20) cubic yards or greater, or roll-off style compactor containers with capacities of twenty (20) cubic yards or greater, containing waste generated from industrial, large commercial or construction/demolition activities, or which is classified as Special Waste, Hazardous Waste, grease or any other type Solid Waste which requires special handling or disposal. Hauler shall not collect any Class 1 or Class 4 material in other containers. No unseparated recyclables collected in any type container shall be hauled from any customer within the corporate limits of the City of Fayetteville. The collection of scrap metal, cardboard and other source-separated recyclables are not controlled or affected by this contract.
4. Hauler agrees and understands that it may utilize the City's transfer station for all Class 1 waste collected pursuant to this Agreement and shall deliver all Class 4 waste to a properly licensed landfill facility. Hauler shall pay all transfer station fees to the transfer station operator and all Class 4 landfill fees to the landfill operator, as they may be established and amended, from time to time.
5. Hauler shall pay all fees due hereunder, along with the required supporting information, on or before the 15th of each calendar month for the immediately preceding calendar month. Payments of fees received after the due date shall be assessed a 2% penalty per month. If Hauler failed to pay the fees within forty-five (45) days of the due date, the City may revoke this Agreement upon delivery of written notice to the Hauler. The supporting information shall be sufficient to demonstrate the accuracy of the fee calculation, and shall include the following information: (i) Hauler's worksheet calculating the fees remitted; (ii) a blind list of payments received from customers within the City; (iii) such list shall clearly indicate whether each payment was from a permanent or temporary customer, and (iv) the fee shall be based upon all activity from each customer account within the City, and shall include the normal billing charges for all free or discounted services (excluding those for non-profit organizations) including but not limited to delivery, pull charges, disposal charges, transportation charges, final pull charges, and return charges. The City shall have the right to conduct an audit of Hauler's customer files and records for all customers located within the City, provided that such audit privilege shall be limited to once per calendar quarter. If such audit reveals the

hauler should have paid at least 5% more than reported, the cost of the audit shall be paid by the Hauler to the City. During such audit, the City may review certain trade secret information, including rates, frequency of service, customer lists, and other customer information provided that such trade secret information may not be copied or removed by the City. Nor shall such information be divulged to any third party by the City, its employees, officers, or elected officials without the express written consent of the Hauler.

6. Hauler agrees and understands that it shall submit to the City on an annual basis a list of all commercial vehicles used to provide services in the City, proof of appropriate vehicle registration, and proof of the insurance required under Section 16.
7. Hauler agrees and understands that it shall provide a list of vehicle operators collecting and hauling waste in the City of Fayetteville, along with proof of their valid and appropriate commercial drivers' licenses issued by the State of Arkansas. The Hauler shall also provide, maintain, and implement a plan to ensure that the vehicle operators maintain their commercial driver's licenses in accordance with applicable federal and state laws.
8. Hauler agrees that it shall comply with all federal, state and local laws applicable to the safety, environmental and transportation matters related to providing solid waste collection services under this Agreement. Hauler agrees that all open-top roll-off style containers will be properly covered during transit on streets and highways within Fayetteville.
9. In consideration of the right to provide the services described under this Agreement, Hauler agrees and understands that it shall be required to pay a monthly fee of ten (10%) percent (the "Fee") of the gross revenue received for all services provided under this Agreement. Upon execution of this Agreement, a deposit shall be paid in advance to the City. The deposit shall be equal to one-half of the total fees that were or would have been paid by the Hauler within to the City during the previous twelve (12) months. Such deposit shall be reviewed on an annual basis. Any reasonable disagreement in estimated gross revenue will be decided in the favor of the City. The deposit shall be refunded, less any unpaid fees, when the Hauler ceases operation within the City or this Agreement is terminated, whichever is earlier.
10. The City reserves the right to inspect all vehicles and containers to ensure that the vehicles are safe and well-maintained and that all containers are well-maintained and water tight, if necessary.
11. Hauler agrees and understands that it shall be required to establish an individual credit or service relationship with the City of Fayetteville transfer station operator and the Tonitown Landfill operator. Hauler agrees that it shall comply with all practices, policies and procedures as established by the transfer station operator from time to time. Any tipping fee deposits required by the transfer station or landfill operators shall be refunded, less any unpaid tipping fees, when the Hauler ceases hauling activities governed by this Agreement.
12. This Agreement has been entered into freely and voluntarily by Hauler which agrees to abide by all of the terms and conditions as a matter of contractual obligation pursuant to applicable city ordinances. This is a contractual Agreement and is not intended to be part

of or related in any way to any license or ordinance created pursuant to A.C.A. §26-77-102.

13. Neither this Agreement, nor any rights or obligations hereunder may be assigned or transferred to any third party or affiliate.
14. For the purpose of this contract, the Point of Contact of the City of Fayetteville shall be Gary Dumas or his successor. The Point of Contact for the Hauler shall be Jason Prince. Communications pertaining to day-to-day aspects of this contract shall be through these individuals. Either party may change its designated Point of Contact upon ten (10) days prior written notice to the other party.
15. Hauler agrees to protect, indemnify, defend and save harmless the City, its officials, officers, employees, agents, subcontractors, representatives and assigns from any loss, claim, liability, penalty, fine, forfeiture, demand, cause of action, suit and costs and expenses incidental thereto (including costs of defense, settlement and reasonable attorneys' fees), to the extent caused by (i) Hauler's breach of any term, condition, covenant or warranty contained in this Agreement, or (ii) Hauler's negligent act or omission or willful misconduct related to the delivery of waste to the City transfer station or a properly licensed landfill facility.
16. **Insurance:** Hauler shall maintain the following insurance coverage during the term of this Agreement:
 - (a) Hauler shall provide and maintain, during the term of this Agreement, comprehensive general liability insurance, to protect against all claims arising out of the performance of its services hereunder that result in bodily injury, death or property damage. The policy or policies shall contain a clause that the insurer will not cancel or decrease the insurance coverage without first giving the City sixty (60) days notice in writing.
 - (b) Upon written request, Hauler shall furnish the City with evidence that the insurance required of it is in force.
 - (c) The types of coverage and limits of liability of all insurance required herein shall be as follows:

COVERAGE	LIMITS OF LIABILITY
Workmen's Compensation	Statutory
Employer's Liability	\$500,000
Bodily Injury Liability except Automobile	\$1,000,000 each occurrence
Property Damage Liability Except Automobile	\$1,000,000 each aggregate

Automobile Bodily Injury	\$1,000,000 each person
Comprehensive General Liability	\$1,000,000 each occurrence
Automobile Property Damage Liability	\$1,000,000 each occurrence
Excess Umbrella Liability	\$1,000,000 each occurrence

17. Termination:

- (a) Except as otherwise provided herein, if Hauler breaches this Agreement or defaults in the performance of any of the requirements or conditions contained herein, and such breach continues for fifteen (15) days after the City has given the Hauler written notice of such breach or default, the City may: (i) terminate this Agreement fifteen (15) days after the fifteen (15) days in which to cure; or (ii) cure the breach or default at the expense of the Hauler; and (iii) have recourse to any other right or remedy to which it may be entitled by law.
- (b) The City may terminate this Agreement upon written notice to the Hauler if the Hauler makes an assignment for the benefit of creditors, or files a voluntary petition in bankruptcy, receivership or insolvency, or files an answer in any involuntary proceeding of that nature admitting the material allegations of the petition, or if a proceeding in bankruptcy, receivership or insolvency shall be instituted against the offending and such proceeding is not dismissed within sixty (60) days.
- (c) In the event that this Agreement is terminated for any reason, any amounts payable to the City by Hauler for services rendered for any reason whatsoever shall become immediately due and payable as of the date of such termination.

18. All notices required or permitted under this contract shall be submitted in writing to the other party to this contract, by certified mail, return receipt requested, which notice shall be effective three (3) days after deposit therein addressed to the following:

City of Fayetteville
Dan Coody, Mayor
113 West Mountain Street
Fayetteville, AR 72701

Attn: _____

19. Hauler agrees and understands that this Agreement and documents submitted to the City pursuant hereto are subject to the Arkansas Freedom of Information Act. If a Freedom of Information Act request is presented to the City of Fayetteville requesting such documents, Hauler 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.

20. This agreement shall be interpreted according to and enforced under the laws of the State of Arkansas. Capitalized terms herein shall have the same meaning as set forth in ADEQ Reg. No. 22.
21. A waiver by either party of any of the terms or conditions herein shall be limited to that particular instance, and shall not be construed as a general waiver of either party's right to seek appropriate remedies for any other breaches by either party.
22. 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.
23. 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 the Hauler.
24. 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.
25. To the extent a definition or a specific term is not provided herein but is nonetheless required by the context, it is the intention of the parties to incorporate herein the definitions contained in applicable law and regulation in effect as the date hereof, except to the extent subsequent law or regulation shall expressly or implicitly mandate a revised definition.
26. The obligations of the parties to this Agreement, which by their nature would continue beyond the termination, cancellation or expiration of this Agreement, shall survive the termination (for any reason), cancellation or expiration of this Agreement.

IN WITNESS WHEREOF, we have hereunto set our hands on the date first written above.

CITY OF FAYETTEVILLE

By: _____
DAN COODY, as Mayor

ATTEST:

By: _____
SONDRA SMITH, City Clerk

By: _____
Jason S. Prince
President

**City of Fayetteville
Staff Review Form
City Council Agenda Items
or
Contracts**

5/1/2007
City Council Meeting Date

John Nelson
Submitted By

Solid Waste & Recycling
Division

Operations
Department

Action Required:

A resolution approving an agreement between the City of Fayetteville, Arkansas and TWM Waste Management to haul and dispose of solid waste in the City of Fayetteville.

<u>Cost of this request</u>	\$ <u>-</u>	<u>Category / Project Budget</u>	<u>Program Category / Project Name</u>
<u>Account Number</u>	\$ <u>-</u>	<u>Funds Used to Date</u>	<u>Program / Project Category Name</u>
<u>Project Number</u>	\$ <u>-</u>	<u>Remaining Balance</u>	<u>Fund Name</u>

Budgeted Item ☐

Budget Adjustment Attached ☐

[Signature] 4-13-07
Department Director Date

Previous Ordinance or Resolution #

Original Contract Date:

[Signature] 4/17/2007
City Attorney Date

Original Contract Number:

Paul A. Beck 4-17-2007
Finance and Internal Service Director Date

Received in City Clerk's Office
ENTERED
4/13/07
aw

[Signature] 4/17/07
Mayor Date

Received in Mayor's Office

Comments:



OPERATIONS DEPARTMENT

Interdepartmental Correspondence

To: Mayor and City Council

From: John Nelson, Operations Mgmt. Accounting Coordinator

Date: April 13, 2007

Subject: Agreement with TWM Waste Management to haul and dispose of solid waste in the City of Fayetteville

Recommendation: A resolution approving an agreement between the City of Fayetteville, Arkansas and TWM Waste Management to haul and dispose of solid waste in the City of Fayetteville.

Background: TWM Waste Management has requested to haul and dispose of waste within the City of Fayetteville. The contract will permit TWM Waste Management to haul and dispose of waste in containers twenty (20) cubic yards and greater in size. The agreement requires TWM Waste Management to pay a monthly fee to the City of Fayetteville of ten (10%) percent of the gross revenue. This is the standard agreement authorized by City Council in implementing the contract fee.

Discussion: The term of this agreement is three years. TWM Waste Management requests to be permitted to operate within the City of Fayetteville.

Staff proposes approval for TWM Waste Management to haul and dispose of waste within the City of Fayetteville, per the terms and conditions outlined in the attached agreement.

RESOLUTION NO. _____

A RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE A CONTRACT WITH TWM WASTE MANAGEMENT TO HAUL AND DISPOSE OF SOLID WASTE WITHIN THE CITY LIMITS OF FAYETTEVILLE.

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

Section 1. That the City Council of the City of Fayetteville, Arkansas hereby authorizes the Mayor to execute a contract with TWM Waste Management to haul and dispose of solid waste within the city limits of Fayetteville. A copy of the contract marked Exhibit "A" is attached hereto and made a part hereof.

PASSED and APPROVED this 1st day of May, 2007.

APPROVED:

ATTEST:

By: _____
DAN COODY, Mayor

By: _____
SONDRA E. SMITH, City Clerk/Treasurer

**AGREEMENT TO HAUL AND DISPOSE OF SOLID WASTE
IN THE CITY OF FAYETTEVILLE**

This Agreement (the "Agreement"), is entered into on this 11 day of April, 2007, between the City of Fayetteville, Arkansas, a municipal corporation (the "City"), and TWM Waste Mgt (the "Hauler"), and shall be in full force and effect on the date first written above. City and Hauler agree as follows:

1. Hauler agrees that from and after the original date of this Agreement, all customer service Agreements for facilities within the corporate limits of the City entered into before or after the effective date of this Agreement, or renewed shall have terms of no more than two (2) years and any subsequent extensions shall be for terms of no more than one (1) year.
2. The term of this Agreement shall be for three (3) years, unless otherwise terminated pursuant to the terms hereof.
3. Hauler agrees and understands that it may only collect and haul Solid Waste using the type equipment commonly referred to as open-top roll-off style containers with capacities of twenty (20) cubic yards or greater, or roll-off style compactor containers with capacities of twenty (20) cubic yards or greater, containing waste generated from industrial, large commercial or construction/demolition activities, or which is classified as Special Waste, Hazardous Waste, grease or any other type Solid Waste which requires special handling or disposal. Hauler shall not collect any Class 1 or Class 4 material in other containers. No unseparated recyclables collected in any type container shall be hauled from any customer within the corporate limits of the City of Fayetteville. The collection of scrap metal, cardboard and other source-separated recyclables are not controlled or affected by this contract.
4. Hauler agrees and understands that it may utilize the City's transfer station for all Class 1 waste collected pursuant to this Agreement and shall deliver all Class 4 waste to a properly licensed landfill facility. Hauler shall pay all transfer station fees to the transfer station operator and all Class 4 landfill fees to the landfill operator, as they may be established and amended, from time to time.
5. Hauler shall pay all fees due hereunder, along with the required supporting information, on or before the 15th of each calendar month for the immediately preceding calendar month. Payments of fees received after the due date shall be assessed a 2% penalty per month. If Hauler failed to pay the fees within forty-five (45) days of the due date, the City may revoke this Agreement upon delivery of written notice to the Hauler. The supporting information shall be sufficient to demonstrate the accuracy of the fee calculation, and shall include the following information: (i) Hauler's worksheet calculating the fees remitted; (ii) a blind list of payments received from customers within the City; (iii) such list shall clearly indicate whether each payment was from a permanent or temporary customer, and (iv) the fee shall be based upon all activity from each customer account within the City, and shall include the normal billing charges for all free or discounted services (excluding those for non-profit organizations) including but not limited to delivery, pull charges, disposal charges, transportation charges, final pull charges, and return charges. The City shall have the right to conduct an audit of Hauler's customer files and records for all customers located within the City, provided that such audit privilege shall be limited to once per calendar quarter. If such audit reveals the

hauler should have paid at least 5% more than reported, the cost of the audit shall be paid by the Hauler to the City. During such audit, the City may review certain trade secret information, including rates, frequency of service, customer lists, and other customer information provided that such trade secret information may not be copied or removed by the City. Nor shall such information be divulged to any third party by the City, its employees, officers, or elected officials without the express written consent of the Hauler.

6. Hauler agrees and understands that it shall submit to the City on an annual basis a list of all commercial vehicles used to provide services in the City, proof of appropriate vehicle registration, and proof of the insurance required under Section 16.
7. Hauler agrees and understands that it shall provide a list of vehicle operators collecting and hauling waste in the City of Fayetteville, along with proof of their valid and appropriate commercial drivers' licenses issued by the State of Arkansas. The Hauler shall also provide, maintain, and implement a plan to ensure that the vehicle operators maintain their commercial driver's licenses in accordance with applicable federal and state laws.
8. Hauler agrees that it shall comply with all federal, state and local laws applicable to the safety, environmental and transportation matters related to providing solid waste collection services under this Agreement. Hauler agrees that all open-top roll-off style containers will be properly covered during transit on streets and highways within Fayetteville.
9. In consideration of the right to provide the services described under this Agreement, Hauler agrees and understands that it shall be required to pay a monthly fee of ten (10%) percent (the "Fee") of the gross revenue received for all services provided under this Agreement. Upon execution of this Agreement, a deposit shall be paid in advance to the City. The deposit shall be equal to one-half of the total fees that were or would have been paid by the Hauler within to the City during the previous twelve (12) months. Such deposit shall be reviewed on an annual basis. Any reasonable disagreement in estimated gross revenue will be decided in the favor of the City. The deposit shall be refunded, less any unpaid fees, when the Hauler ceases operation within the City or this Agreement is terminated, whichever is earlier.
10. The City reserves the right to inspect all vehicles and containers to ensure that the vehicles are safe and well-maintained and that all containers are well-maintained and water tight, if necessary.
11. Hauler agrees and understands that it shall be required to establish an individual credit or service relationship with the City of Fayetteville transfer station operator and the Tontitown Landfill operator. Hauler agrees that it shall comply with all practices, policies and procedures as established by the transfer station operator from time to time. Any tipping fee deposits required by the transfer station or landfill operators shall be refunded, less any unpaid tipping fees, when the Hauler ceases hauling activities governed by this Agreement.
12. This Agreement has been entered into freely and voluntarily by Hauler which agrees to abide by all of the terms and conditions as a matter of contractual obligation pursuant to applicable city ordinances. This is a contractual Agreement and is not intended to be part

of or related in any way to any license or ordinance created pursuant to A.C.A. §26-77-102.

13. Neither this Agreement, nor any rights or obligations hereunder may be assigned or transferred to any third party or affiliate.
14. For the purpose of this contract, the Point of Contact of the City of Fayetteville shall be Gary Dumas or his successor. The Point of Contact for the Hauler shall be Daniel Enlow. Communications pertaining to day-to-day aspects of this contract shall be through these individuals. Either party may change its designated Point of Contact upon ten (10) days prior written notice to the other party.
15. Hauler agrees to protect, indemnify, defend and save harmless the City, its officials, officers, employees, agents, subcontractors, representatives and assigns from any loss, claim, liability, penalty, fine, forfeiture, demand, cause of action, suit and costs and expenses incidental thereto (including costs of defense, settlement and reasonable attorneys' fees), to the extent caused by (i) Hauler's breach of any term, condition, covenant or warranty contained in this Agreement, or (ii) Hauler's negligent act or omission or willful misconduct related to the delivery of waste to the City transfer station or a properly licensed landfill facility.
16. Insurance: Hauler shall maintain the following insurance coverage during the term of this Agreement:
 - (a) Hauler shall provide and maintain, during the term of this Agreement, comprehensive general liability insurance, to protect against all claims arising out of the performance of its services hereunder that result in bodily injury, death or property damage. The policy or policies shall contain a clause that the insurer will not cancel or decrease the insurance coverage without first giving the City sixty (60) days notice in writing.
 - (b) Upon written request, Hauler shall furnish the City with evidence that the insurance required of it is in force.
 - (c) The types of coverage and limits of liability of all insurance required herein shall be as follows:

COVERAGE	LIMITS OF LIABILITY
Workmen's Compensation	Statutory
Employer's Liability	\$500,000
Bodily Injury Liability except Automobile	\$1,000,000 each occurrence
Property Damage Liability Except Automobile	\$1,000,000 each aggregate

Automobile Bodily Injury	\$1,000,000 each person
Comprehensive General Liability	\$1,000,000 each occurrence
Automobile Property Damage Liability	\$1,000,000 each occurrence
Excess Umbrella Liability	\$1,000,000 each occurrence

17. Termination:

- (a) Except as otherwise provided herein, if Hauler breaches this Agreement or defaults in the performance of any of the requirements or conditions contained herein, and such breach continues for fifteen (15) days after the City has given the Hauler written notice of such breach or default, the City may: (i) terminate this Agreement fifteen (15) days after the fifteen (15) days in which to cure; or (ii) cure the breach or default at the expense of the Hauler; and (iii) have recourse to any other right or remedy to which it may be entitled by law.
- (b) The City may terminate this Agreement upon written notice to the Hauler if the Hauler makes an assignment for the benefit of creditors, or files a voluntary petition in bankruptcy, receivership or insolvency, or files an answer in any involuntary proceeding of that nature admitting the material allegations of the petition, or if a proceeding in bankruptcy, receivership or insolvency shall be instituted against the offending and such proceeding is not dismissed within sixty (60) days.
- (c) In the event that this Agreement is terminated for any reason, any amounts payable to the City by Hauler for services rendered for any reason whatsoever shall become immediately due and payable as of the date of such termination.

18. All notices required or permitted under this contract shall be submitted in writing to the other party to this contract, by certified mail, return receipt requested, which notice shall be effective three (3) days after deposit therein addressed to the following:

City of Fayetteville
Dan Coody, Mayor
113 West Mountain Street
Fayetteville, AR 72701

Threet Waste Management
Attn: *David Eulow* 479-200-0195
12030 Cordlelaw Rd
Gentry, AR 72734

19. Hauler agrees and understands that this Agreement and documents submitted to the City pursuant hereto are subject to the Arkansas Freedom of Information Act. If a Freedom of Information Act request is presented to the City of Fayetteville requesting such documents, Hauler 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.

20. This agreement shall be interpreted according to and enforced under the laws of the State of Arkansas. Capitalized terms herein shall have the same meaning as set forth in ADEQ Reg. No. 22.
21. A waiver by either party of any of the terms or conditions herein shall be limited to that particular instance, and shall not be construed as a general waiver of either party's right to seek appropriate remedies for any other breaches by either party.
22. 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.
23. 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 the Hauler.
24. 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.
25. To the extent a definition or a specific term is not provided herein but is nonetheless required by the context, it is the intention of the parties to incorporate herein the definitions contained in applicable law and regulation in effect as the date hereof, except to the extent subsequent law or regulation shall expressly or implicitly mandate a revised definition.
26. The obligations of the parties to this Agreement, which by their nature would continue beyond the termination, cancellation or expiration of this Agreement, shall survive the termination (for any reason), cancellation or expiration of this Agreement.

IN WITNESS WHEREOF, we have hereunto set our hands on the date first written above.

CITY OF FAYETTEVILLE

By: _____
DAN COODY, as Mayor

ATTEST:

By: _____
SONDRA SMITH, City Clerk

Threet Waste Management
By: Ben Lester - Partner
Ben Lester or David Eulow
President

City of Fayetteville
Staff Review Form
City Council Agenda Items
or
Contracts

1-May-07
City Council Meeting Date

Ron Petrie
Submitted By

Engineering
Division

Operations
Department

Action Required:

Approval of a resolution to award an Engineering Contract to McClelland Consulting Engineers, Inc. in the amount of \$71,302.00 to perform a drainage study within the upper Scull Creek watershed between College Avenue and Mission Boulevard.

\$71,302.00	\$ 729,412.00	Drainage Study/Phase II Storm
Cost of this request	Category/Project Budget	Water Management
4470-9470-5314-00	\$ 192,216.80	Program Category / Project Name
	Funds Used to Date	Bridge & Drainage Improvements
02097.1	\$ 537,195.20	Program / Project Category Name
Project Number	Remaining Balance	Sales Tax Capital Improvements
		Fund Name

Budgeted Item ☒ Budget Adjustment Attached ☐

4.13.07
Department Director Date

4/17/2007
City Attorney Date

4-17-2007
Finance and Internal Service Director Date

4/18/07
Mayor Date

Previous Ordinance or Resolution # _____

Original Contract Date: _____

Original Contract Number: _____

Received in City Clerk's Office

Received in Mayor's Office

Comments:

CITY COUNCIL AGENDA MEMO

To: Mayor and City Council

Thru: Gary Dumas, Director of Operations

From: Ron Petrie, City Engineer *RSP*

Date: April 13, 2006

Subject: Resolution to award an Engineering Contract to McClelland Consulting Engineers, Inc. in the amount of \$71,302.00 to perform a drainage study within the upper Scull Creek watershed between College Avenue and Mission Boulevard.

RECOMMENDATION

Staff recommends approval of a resolution authorizing the study of Scull Creek between Mission Blvd. and College Ave. by McClelland Consulting Engineers, Inc.

BACKGROUND

The area that is being requested to be studied is bounded by College Avenue to the west, Mission Boulevard to the East, Lafayette Street to the south and Prospect Street to the north. It has been estimated that the drainage in this area is approximately 80-100 years old and is comprised primarily of native stone viaducts that have very few access points. The majority of these viaducts are not contained in drainage easements and it is believed that some are routed under existing residential structures. Several of these residential structures have reported flooding for many years and the City has claimed no responsibility due to the lack of public easements.

DISCUSSION

Due to two rainfall events in 2006 that caused severe flooding within the neighborhood resulting in property damage and flooding of three known residential structures, the City began re-evaluating the long-standing drainage problems. It became apparent through meetings with the property owners that a drainage study of the entire effected area was necessary to determine the critical needs and to develop a priority list of improvements that could be undertaken with the available funds and future funds. It is anticipated that due to the expense to completely resolve all of the drainage issues in this historic

neighborhood that an alternate funding source may be necessary to be identified and implemented.

On October 5, 2006 the City Council's Street Committee authorized staff to proceed with the engineering selection which resulted in the selection of McClelland Consulting Engineers. The engineering contract is scheduled to be presented to the Street Committee on April 16, 2007.

BUDGET IMPACT

The City currently has \$537,195.20 remaining that has been allocated for the Phase II Storm Water Management Program for these projects.

RESOLUTION NO. _____

A RESOLUTION AWARDING AN ENGINEERING CONTRACT TO MCCLELLAND CONSULTING ENGINEERS, INC. IN THE AMOUNT OF \$71,302.00 TO PERFORM A DRAINAGE STUDY WITHIN THE UPPER SCULL CREEK WATERSHED BETWEEN COLLEGE AVENUE AND MISSION BOULEVARD.

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 a engineering contract to McClelland Consulting Engineers, Inc. in the amount of \$71,302.00 to perform a drainage study within the Upper Scull Creek Watershed between College Avenue and Mission Boulevard.

PASSED and APPROVED this 1st day of May, 2007.

APPROVED:

ATTEST:

By: _____
DAN COODY, Mayor

By: _____
SONDRA E. SMITH, City Clerk/Treasurer

AGREEMENT
For
PROFESSIONAL ENGINEERING SERVICES
Between
CITY OF FAYETTEVILLE, ARKANSAS
And
MCCLELLAND CONSULTING ENGINEERS, INC.
FAYETTEVILLE, ARKANSAS

THIS AGREEMENT is made as of _____, 2007, by and between City of Fayetteville, Arkansas, acting by and through its Mayor (hereinafter called CITY OF FAYETTEVILLE) and McClelland Consulting Engineers, Inc. with offices located in Fayetteville, Arkansas (hereinafter called McClelland).

CITY OF FAYETTEVILLE requires professional engineering services in connection with the study and analysis of the drainage systems on upper Scull Creek between Mission Boulevard and College Ave. Therefore, CITY OF FAYETTEVILLE and McClelland in consideration of their mutual covenants agree as follows:

McClelland shall serve as CITY OF FAYETTEVILLE's professional engineering consultant in those assignments to which this Agreement applies, and shall give consultation and advice to CITY OF FAYETTEVILLE during the performance of McClelland's services. All services shall be performed under the direction of a professional engineer registered in the State of Arkansas and qualified in the particular field.

SECTION 1 - AUTHORIZATION OF SERVICES

- 1.1 Services on any assignment shall be undertaken only upon written Authorization of CITY OF FAYETTEVILLE and agreement of McClelland.
- 1.2 Assignments may include services described hereafter as Basic Services or as Additional Services of McClelland.
- 1.3 Changes, modifications or amendments in scope, price or fees to this contract shall **not** be allowed without a formal contract amendment approved by the Mayor and the City Council **in advance** of the change in scope, costs, fees, or delivery schedule.

SECTION 2 - BASIC SERVICES OF MCCLELLAND

2.1 General

2.1.1 Perform professional investigative/study services in connection with the Project as hereinafter stated, which shall include normal civil and geotechnical engineering services.

2.1.1.1 The Scope of Services to be furnished by McClelland during the Investigative/Study Phase is included in Section 2.2 hereafter and in Appendix A attached hereto and made part of this Agreement.

2.1.1.2 The Scope of Services to be furnished by McClelland during the Design Phase, if any, will be finalized and contained in an amendment to this Agreement after the Drainage Study has been completed.

2.1.1.3 The Scope of Services to be furnished by McClelland during the Bidding Phase, if any, will be finalized and contained in an amendment to this Agreement after Design is completed.

2.1.1.4 The Scope of Services to be furnished by McClelland during the Construction Phase, if any, will be finalized and contained in an amendment to this Agreement after Design is completed.

2.1.1.5 The Scope of Services to be furnished by McClelland for Resident Services during Construction, if any, will be finalized and contained in an amendment to this Agreement after Design is completed.

2.2 Drainage Study

2.2.1 The Drainage Study will consist of an engineering drainage study on the upper part of Scull Creek between Mission Blvd. and College Ave., the evaluation of alternatives, and prepare lineal report with cost estimate.

2.3 Design Phase

2.3.1 Prepare for incorporation in the Contract Documents detailed drawings to show the character and scope of the Work to be performed by contractors on the Project (hereinafter called the "Contract Drawings"), and Invitation to Bid, Instructions to Bidders, Bid Form, Agreement and Bond forms, General Conditions, and Specifications (all of which, together with the

Contract Drawings, are hereinafter called the "Bid Documents") for review and approval by CITY OF FAYETTEVILLE, its legal counsel, and other advisors as appropriate, and assist CITY OF FAYETTEVILLE in the preparation of other related documents.

- 2.3.1.1 Bid documents shall be based on Construction Specifications Institute (CSI) Master Format and Section Format and shall incorporate CITY OF FAYETTEVILLE's standard general conditions and forms. Text documents shall be provided to CITY OF FAYETTEVILLE in Microsoft® Word software. Contract drawings shall be prepared using standard borders, sheet sizes, title blocks and CADD standards provided by CITY OF FAYETTEVILLE. McClelland may use their normal software for the preparation of drawings but the final product shall be provided to CITY OF FAYETTEVILLE in Autodesk AutoCAD version 2005.
- 2.3.1.2 Develop for approval by CITY OF FAYETTEVILLE, a project design schedule in which McClelland shall include, in an acceptable level of detail, the steps and milestone dates to be undertaken by McClelland in the completion of design. This Schedule shall include reasonable allowances for review and approval times required by CITY OF FAYETTEVILLE, and review and approval times required by public authorities having jurisdiction over the Project. This schedule shall be equitably adjusted as the Project progresses, allowing for changes in scope, character or size of the Project requested by CITY OF FAYETTEVILLE, or for delays or other causes beyond McClelland's reasonable control. Nonconformance with this schedule by McClelland and its subconsultants may result in the assessment of damages payable by McClelland to the CITY OF FAYETTEVILLE for costs and damages incurred. The maximum cost liability of McClelland shall be limited to the total gross amount payable to or through the Consultant authorized under this agreement, including amendments thereto.
- 2.3.1.3 When requested by the CITY OF FAYETTEVILLE prepare for and attend up to two City Council meetings to provide periodic updates on the progress of the design.
- 2.3.1.4 If the plans and specifications for the project require bids on alternates in addition to a base bid, there shall be no more than three (3) alternates, and the alternates shall be developed and described in accordance with Title 22, Article 9-203 of the Arkansas Code.
- 2.3.2 Prepare technical criteria, written descriptions, design data, and applications necessary for filing applications for permits from or approvals of the following applicable governmental

authorities having jurisdiction to review or approve the final design of the Project and assist in securing approvals. Actual Filing and Permit Fees will be paid by the CITY OF FAYETTEVILLE. Assist CITY OF FAYETTEVILLE in consultations with appropriate authorities.

2.3.2.1 Arkansas Division of Health (DHHS)

2.3.3 Advise CITY OF FAYETTEVILLE of adjustments in excess of five percent of the cost opinion for the Project caused by changes in scope, design requirements, or construction costs and furnish a revised cost opinion for the Project based on the final Bid Documents.

2.3.4 Advise CITY OF FAYETTEVILLE of final Opinion of Probable Project Costs, including, but not limited to, construction, inspection, testing and close out.

2.3.5 Furnish CITY OF FAYETTEVILLE with 3 copies of the final Bid Documents.

2.3.6 Determine land and easement requirements and provide consultation and assistance on property procurement and easement preparation as related to professional engineering services being performed.

2.3.7 Provide appropriate professional interpretations of data, geotechnical investigations, core borings, probings and subsurface explorations, hydrographic surveys, laboratory tests, and inspections of samples, materials and equipment obtained through subcontract services for authorized Project services including property, boundary, easement, right-of-way, topographic, and utility surveys; noting zoning and deed restrictions.

2.3.8 Fully disclose all subcontract agreements including the name and address of the subconsultant, the scope of services to be provided and the value of the subcontract

2.4 Bidding Phase

2.4.1 McClelland will follow City of Fayetteville's bidding protocol for capital improvement projects.

2.4.2 Arrange for bidding notices to be sent to contractors publishing services and direct mailing to contractors of record. Notices shall comply with requirements of CITY OF FAYETTEVILLE. The legal notice to be placed in legal notices section of a local newspaper(s) of countywide and statewide circulation and shall be coordinated with CITY OF FAYETTEVILLE purchasing agent and an affidavit of publication secured.

- 2.4.3 Prepare addenda for drawings and Bid Documents as required and submit to CITY OF FAYETTEVILLE in timely manner such that addenda can be issued by McClelland in accordance with Construction Contract General Conditions. All bidding protocols shall conform to statutory requirements with all addenda being approved by CITY OF FAYETTEVILLE prior to issuance.
- 2.4.4 Secure updated applicable wage rate decisions and incorporate into the Bid Documents. Update wage rate decision by addendum if necessary.
 - 2.4.4.1 Assist CITY OF FAYETTEVILLE by issuing and tracking Bid Documents, addenda and communications during bidding and maintain list of plan holders. Print and distribute copies of plans and specifications for all prospective bidders and plan rooms. Collect from prospective bidders an appropriate non-refundable fee to offset cost of reproducing and distributing Bidding Documents.
- 2.4.5 Assist CITY OF FAYETTEVILLE in obtaining and evaluating bids and preparing construction contracts. McClelland shall prepare and submit bid certification documents to CITY OF FAYETTEVILLE for review.
- 2.4.6 Consult with and advise CITY OF FAYETTEVILLE as to the acceptability of subcontractors and other persons and organizations proposed by the prime construction contractor(s), hereinafter called "Contractor(s)," for those portions of the work as to which such acceptability is required by the Bid Documents.
- 2.4.7 Make recommendations regarding award of construction contracts.
- 2.4.8 Attend Streets Committee meeting and the ensuing City Council meeting to recommend action by the respective bodies. Prepare and present a recommendation complete with such supporting information as necessary for the bodies to make an informed decision on the action recommended.
- 2.4.9 Develop a bidding services schedule in which McClelland shall include, in an acceptable level of detail, the steps and milestone dates to be undertaken by McClelland in the completion of the bidding services.

2.5 Construction Phase

2.5.1 The scope of Construction Phase Services, if any, will be negotiated following completion of Design Phase Services.

2.6 Post-Construction Phase

2.6.1 The scope of Post-Construction Phase Services, if any, will be negotiated following completion of Design Phase Services.

2.7 Resident Services During Construction

2.7.1 The scope of Resident Services During Construction, if any, will be negotiated following completion of Design Phase Services.

SECTION 3 - ADDITIONAL SERVICES OF MCCLELLAND

3.1 General

If authorized in writing by the CITY OF FAYETTEVILLE Mayor and the City Council and agreed to in writing by McClelland, McClelland shall furnish or obtain from others Additional Services of the following types that are not considered normal or customary Basic Services. The scope of Additional Services may include:

3.1.1 Grant and Loan Assistance

Prepare applications and supporting documents for governmental grants, loans, or advances.

3.1.2 Financial Consultation

Consult with CITY OF FAYETTEVILLE's fiscal agents and bond attorneys and provide such engineering data as required for any bond prospectus or other financing requirements.

3.1.3 Administrative Assistance

Provide Contract and Project administration to the degree authorized by CITY OF FAYETTEVILLE.

3.1.4 Furnishing renderings or models of the Project for CITY OF FAYETTEVILLE's use.

3.1.5 Miscellaneous Studies

Investigations involving detailed consideration of operations, maintenance, and overhead expenses, and the preparation of rate schedules, earnings, and expense statements; feasibility studies; appraisals and valuations; detailed quantity surveys of material, equipment, and labor; and audits or inventories required in connection with construction performed by CITY OF FAYETTEVILLE.

3.1.6 Preparing to serve or serving as a witness for CITY OF FAYETTEVILLE in any litigation or other proceeding involving the Project.

3.1.7 Extra Services

3.1.7.1 Services not specifically defined heretofore that may be authorized by CITY OF FAYETTEVILLE.

3.2 Contingent Additional Services

3.2.1 If services described under Contingent Additional Services in Paragraph 3.2 are required due to circumstances beyond McClelland's control, McClelland shall notify CITY OF FAYETTEVILLE and request a formal contract amendment approved by the Mayor and the City Council prior to commencing such services. If CITY OF FAYETTEVILLE deems that such services described in 3.2 are not required, CITY OF FAYETTEVILLE shall give prompt written notice to McClelland. If CITY OF FAYETTEVILLE indicates in writing that all or parts of such Contingent Additional Services are not required, McClelland shall have no obligation to provide those services.

3.2.2 Making revisions in Drawings, Specifications, or other documents when such revisions are:

3.2.2.1 Required because of inconsistent approvals or instructions previously given by CITY OF FAYETTEVILLE, including revisions made necessary by adjustments in CITY OF FAYETTEVILLE's program or Project Budget.

3.2.2.2 Required by the enactment or revision of codes, laws, or regulations subsequent to the preparation of such documents.

SECTION 4 - RESPONSIBILITIES OF CITY OF FAYETTEVILLE

CITY OF FAYETTEVILLE shall, within a reasonable time, so as not to delay the services of McClelland.

- 4.1 Provide full information as to CITY OF FAYETTEVILLE's requirements for the Project.
- 4.2 Assist McClelland by placing at McClelland's disposal all available information pertinent to the assignment including previous reports and any other data relative thereto.
- 4.3 Guarantee access to and make all provisions for McClelland to enter upon public and private property as required for McClelland to perform his services under this Agreement.
- 4.4 Examine all studies, reports, sketches, cost opinions, Bid Documents, Drawings, proposals, and other documents presented by McClelland and render in writing decisions pertaining thereto.
- 4.5 Provide such professional legal, accounting, financial, and insurance counseling services as may be required for the Project.
- 4.6 Designate in writing a person to act as CITY OF FAYETTEVILLE's representative with respect to the services to be performed under this Agreement. Such person shall have complete authority to transmit instructions, receive information, interpret and define CITY OF FAYETTEVILLE's policies and decisions with respect to materials, equipment, elements and systems to be used in the Project, and other matters pertinent to the services covered by this Agreement.
- 4.7 Give prompt written notice to McClelland whenever CITY OF FAYETTEVILLE observes or otherwise becomes aware of any defect in the Project.
- 4.8 Furnish approvals and permits from all governmental authorities having jurisdiction over the Project and such approvals and consents from others as may be necessary for completion of the Project. Pay directly to the governmental authorities the actual filing and permit fees.
- 4.9 Pay for placement of legal notices and advertisements in newspapers or other publications required.
- 4.10 Furnish, or direct McClelland to provide, necessary Additional Services as stipulated in Section 3 of this Agreement or other services as required.

- 4.11 If CITY OF FAYETTEVILLE's standard bidding requirements, Agreement forms and General Conditions are to be used, CITY OF FAYETTEVILLE shall provide copies of such documents for McClelland's use in coordinating the Contract Drawings and Specifications.
- 4.12 CITY OF FAYETTEVILLE and/or its representative will review all documents and provide written comments to McClelland in a timely manner.

SECTION 5 - PERIOD OF SERVICE

- 5.1 This Agreement will become effective upon the first written notice by CITY OF FAYETTEVILLE authorizing services hereunder.

The provisions of this Agreement have been agreed to in anticipation of the orderly progress of the Project through completion of the services stated in the Agreement. McClelland will proceed with providing the authorized services immediately upon receipt of written authorization from CITY OF FAYETTEVILLE. Said authorization shall include the scope of the services authorized and the time in which the services are to be completed.

From the time the City of Fayetteville issues the Notice To Proceed (NTP), McClelland. will endeavor to execute the project within the following time periods:

<u>Task</u>	<u>Completion After NTP</u>
A. Topographic Survey	40 calendar days
B. Drainage Study	150 calendar days

SECTION 6 - PAYMENTS TO MCCLELLAND

- 6.1 Compensation
- 6.1.1 Investigative/Study Phase

For the Scope of Services during the Drainage Study described herein, CITY OF FAYETTEVILLE authorizes an amount estimated to be \$64,820.00, but not to exceed \$71,302.00 as compensation for the scope of work set forth in Appendix A. Engineer will be compensated based upon his standard hourly rate schedule, the current rates being attached to and made a part of this agreement (Appendix B). The hourly rates for compensation include all costs, including labor, overhead, direct expenses, subcontracts and fees.

6.1.1.1 Subject to the City Council approval, adjustment of the contract amount may be made should McClelland establish and CITY OF FAYETTEVILLE agree that there has been or is to be a significant change in scope, complexity or character of the services to be performed; or if CITY OF FAYETTEVILLE decides to shorten the duration of work from the time period specified in the Agreement for completion of work and such modification warrants such adjustment. Changes, modifications or amendments in scope, price or fees to this Contract shall **not** be allowed without formal contract amendment approved by the Mayor and the City Council **in advance** of the change in scope, cost, fees, or delivery schedule.

6.1.1.2 Monthly statements for each calendar month shall be submitted to CITY OF FAYETTEVILLE or such parties as CITY OF FAYETTEVILLE may designate for services consistent with McClelland's normal billing schedule. Once established, the billing schedule shall be maintained throughout the duration of the Project. Applications for payment shall be made in accordance with a format to be developed by McClelland and approved by CITY OF FAYETTEVILLE. Applications for payment shall be accompanied each month by the updated project design schedule as the basis for determining the value earned as the work is accomplished. Final payment for services shall be made upon CITY OF FAYETTEVILLE's approval and acceptance with the satisfactory completion of the Investigative/Study phase.

6.1.2 Design Phase Services

This section is reserved for future details concerning this phase, if any. This Agreement shall be amended to include payment conditions following the completion of Investigative/Study phase Services.

6.1.3 Bidding Phase Services

This section is reserved for future details concerning this phase, if any. This Agreement shall be amended to include payment conditions following the completion of Design Phase Services.

6.1.4 Construction Phase Services

This section is reserved for future details concerning this phase, if any. This Agreement shall be amended to include payment conditions following the completion of Design Phase Services.

6.1.5 Post-Construction Phase Services

This section is reserved for future details concerning this phase, if any. This Agreement shall be amended to include payment conditions following the completion of Construction Phase Services.

6.1.6 Resident Services During Construction

This section is reserved for future details concerning this phase, if any. This Agreement shall be amended to include payment conditions following the completion of Design Phase Services.

6.1.7 Additional Services

For authorized Additional engineering services under Section 3, "Additional Services", compensation to McClelland shall be negotiated at the time Additional services are authorized.

6.2 Statements

Statements and updated progress schedule for each calendar month will be submitted to CITY OF FAYETTEVILLE by signed original document. Statements will be based on McClelland's actual costs incurred and justified by hours expended, hourly rates and other applicable costs in accordance with Attachment B.

6.3 Payments

All statements are payable upon receipt and due within thirty (30) days. If a portion of McClelland's statement is disputed by CITY OF FAYETTEVILLE, the undisputed portion shall be paid by CITY OF FAYETTEVILLE by the due date. CITY OF FAYETTEVILLE shall advise McClelland in writing of the basis for any disputed portion of any statement. CITY OF FAYETTEVILLE will make reasonable effort to pay invoices within 30 days of date the invoice is approved, however, payment within 30 days is not guaranteed.

6.4 Final Payment

Upon satisfactory completion of the work performed under this Agreement, as a condition before final payment under this Agreement, or as a termination settlement under this Agreement, McClelland shall execute and deliver to CITY OF FAYETTEVILLE a release of all claims against CITY OF FAYETTEVILLE arising under or by virtue of this Agreement, except claims which are specifically exempted by McClelland to be set forth therein. Unless otherwise provided in this Agreement or by State law or otherwise expressly agreed to by the parties to this Agreement, final payment under this

Agreement or settlement upon termination of this Agreement shall not constitute a waiver of CITY OF FAYETTEVILLE's claims against McClelland or his sureties under this Agreement or applicable performance and payment bonds, if any.

SECTION 7 - GENERAL CONSIDERATIONS

7.1 Insurance

7.1.1 During the course of performance of these services, McClelland will maintain (in United States Dollars) the following minimum insurance coverages:

<u>Type of Coverage</u>	<u>Limits of Liability</u>
Workers' Compensation Employers' Liability	Statutory \$500,000 Each Accident
Commercial General Liability Bodily Injury and Property Damage	\$1,000,000 Combined Single Limit
Automobile Liability: Bodily Injury and Property Damage	\$1,000,000 Combined Single Limit
Professional Liability Insurance	\$1,000,000 Each Claim

McClelland will provide to CITY OF FAYETTEVILLE certificates as evidence of the specified insurance within ten days of the date of this Agreement and upon each renewal of coverage.

7.1.2 Construction Contractors shall be required to provide (or CITY OF FAYETTEVILLE may provide) Owner's Protective Liability Insurance naming CITY OF FAYETTEVILLE as a Named Insured and McClelland as additional insureds, or, to endorse CITY OF FAYETTEVILLE, and McClelland as additional insureds on construction Contractor's liability insurance policies covering claims for personal injuries and property damage. Construction Contractors shall be required to provide certificates evidencing such insurance to CITY OF FAYETTEVILLE, and McClelland. All contract insurance carriers shall be required to list CITY OF FAYETTEVILLE as certificate holder, furnishing copies of the contractor's insurance certificate to each party

7.1.3 CITY OF FAYETTEVILLE and McClelland waive all rights against each other and their officers, directors, agents, or employees for damage covered by property insurance during and after the completion of McClelland's services. If the services result in a Construction Phase, a provision similar to this shall be incorporated into all Construction Contracts entered

into by CITY OF FAYETTEVILLE, and all construction Contractors shall be required to provide waivers of subrogation in favor of CITY OF FAYETTEVILLE and McClelland for damage or liability covered by any construction Contractor's policy of insurance.

7.2 Professional Responsibility

7.2.1 McClelland will exercise reasonable skill, care, and diligence in the performance of McClelland's services and will carry out its responsibilities in accordance with customarily accepted professional engineering practices. CITY OF FAYETTEVILLE will promptly report to McClelland any defects or suspected defects in McClelland's services of which CITY OF FAYETTEVILLE becomes aware, so that McClelland can take measures to minimize the consequences of such a defect. CITY OF FAYETTEVILLE and McClelland further agree to impose a similar notification requirement on all construction contractors in the Bid Documents and shall require all subcontracts at any level to contain a like requirement. CITY OF FAYETTEVILLE retains all remedies to recover for its damages caused by any negligence of McClelland.

7.2.2 In addition McClelland will be responsible to CITY OF FAYETTEVILLE for damages caused by its negligent conduct during its activities at the Project Site to the extent covered by McClelland's Commercial General Liability and Automobile Liability Insurance policies as specified in Paragraph 7.1.1.

7.3 Cost Opinions and Projections

Cost opinions and projections prepared by McClelland relating to construction costs and schedules, operation and maintenance costs, equipment characteristics and performance, and operating results are based on McClelland's experience, qualifications, and judgment as a design professional. Since McClelland has no control over weather, cost and availability of labor, material and equipment, labor productivity, construction Contractors' procedures and methods, unavoidable delays, construction Contractors' methods of determining prices, economic conditions, competitive bidding or market conditions, and other factors affecting such cost opinions or projections, McClelland does not guarantee that actual rates, costs, performance, schedules, and related items will not vary from cost opinions and projections prepared by McClelland.

7.4 Changes

CITY OF FAYETTEVILLE shall have the right to make changes within the general scope of McClelland's services, with an appropriate change in compensation and schedule only after Fayetteville

City Council approval of such proposed changes and, upon execution of a mutually acceptable amendment or change order signed by the Mayor of the CITY OF FAYETTEVILLE and the President of McClelland.

7.5 Termination

7.5.1 This Agreement may be terminated in whole or in part in writing by either party in the event of substantial failure by the other party to fulfill its obligations under this Agreement through no fault of the terminating party, provided that no termination may be effected unless the other party is given:

7.5.1.1 Not less than ten (10) calendar days written notice (delivered by certified mail, return receipt requested) of intent to terminate,

7.5.1.2 An opportunity for consultation with the terminating party prior to termination.

7.5.2 This Agreement may be terminated in whole or in part in writing by CITY OF FAYETTEVILLE for its convenience, provided that McClelland is given:

7.5.2.1 Not less than ten (10) calendar days written notice (delivered by certified mail, return receipt requested) of intent to terminate,

7.5.2.2 An opportunity for consultation with the terminating party prior to termination.

7.5.3 If termination for default is effected by CITY OF FAYETTEVILLE, an equitable adjustment in the price provided for in this Agreement shall be made, but

7.5.3.1 No amount shall be allowed for anticipated profit on unperformed services or other work,

7.5.3.2 Any payment due to McClelland at the time of termination may be adjusted to cover any additional costs to CITY OF FAYETTEVILLE because of McClelland's default.

7.5.4 If termination for default is effected by McClelland, or if termination for convenience is effected by CITY OF FAYETTEVILLE, the equitable adjustment shall include a reasonable profit for services or other work performed. The equitable adjustment for any termination shall provide for payment to McClelland for services rendered and expenses incurred prior to the termination, in addition to termination settlement costs reasonably incurred by McClelland relating to commitments which had become firm prior to the termination.

7.5.5 Upon receipt of a termination action under Paragraphs 7.5.1 or 7.5.2 above, McClelland shall:

7.5.5.1 Promptly discontinue all affected work (unless the notice directs otherwise),

7.5.5.2 Deliver or otherwise make available to CITY OF FAYETTEVILLE all data, drawings, specifications, reports, estimates, summaries and such other information and materials as may have been accumulated by McClelland in performing this Agreement, whether completed or in process.

7.5.6 Upon termination under Paragraphs 7.5.1 or 7.5.2 above CITY OF FAYETTEVILLE may take over the work and may award another party an agreement to complete the work under this Agreement.

7.5.7 If, after termination for failure of McClelland to fulfill contractual obligations, it is determined that McClelland had not failed to fulfill contractual obligations, the termination shall be deemed to have been for the convenience of CITY OF FAYETTEVILLE. In such event, adjustments of the agreement price shall be made as provided in Paragraph 7.5.4 of this clause.

7.6 Delays

In the event the services of McClelland are suspended or delayed by CITY OF FAYETTEVILLE or by other events beyond McClelland's reasonable control, McClelland shall be entitled to additional compensation and time for reasonable costs incurred by McClelland in temporarily closing down or delaying the Project.

7.7 Rights and Benefits

McClelland's services will be performed solely for the benefit of CITY OF FAYETTEVILLE and not for the benefit of any other persons or entities.

7.8 Dispute Resolution

7.8.1 Scope of Paragraph: The procedures of this Paragraph shall apply to any and all disputes between CITY OF FAYETTEVILLE and McClelland which arise from, or in any way are related to, this Agreement, including, but not limited to the interpretation of this Agreement, the enforcement of its terms, any acts, errors, or omissions of CITY OF FAYETTEVILLE or McClelland in the performance of this Agreement, and disputes concerning payment.

7.8.2 Exhaustion of Remedies Required: No action may be filed unless the parties first negotiate. If timely Notice is given under Paragraph 7.8.3, but an action is initiated prior to exhaustion of these procedures, such action shall be stayed, upon application by either party to a court of proper jurisdiction, until the procedures in Paragraphs 7.8.3 and 7.8.4 have been complied with.

7.8.3 Notice of Dispute

7.8.3.1 For disputes arising prior to the making of final payment promptly after the occurrence of any incident, action, or failure to act upon which a claim is based, the party seeking relief shall serve the other party with a written Notice;

7.8.3.2 For disputes arising within one year after the making of final payment, CITY OF FAYETTEVILLE shall give McClelland written Notice at the address listed in Paragraph 7.14 within thirty (30) days after occurrence of any incident, accident, or first observance of defect or damage. In both instances, the Notice shall specify the nature and amount of relief sought, the reason relief should be granted, and the appropriate portions of this Agreement that authorize the relief requested.

7.8.4 Negotiation: Within seven days of receipt of the Notice, the Project Managers for CITY OF FAYETTEVILLE and McClelland shall confer in an effort to resolve the dispute. If the dispute cannot be resolved at that level, then, upon written request of either side, the matter shall be referred to the President of McClelland and the Mayor of CITY OF FAYETTEVILLE or his designee. These officers shall meet at the Project Site or such other location as is agreed upon within 30 days of the written request to resolve the dispute.

7.9 CITY OF FAYETTEVILLE represents that it has sufficient funds or the means of obtaining funds to remit payment to McClelland for services rendered by McClelland.

7.10 Publications

Recognizing the importance of professional development on the part of McClelland's employees and the importance of McClelland's public relations, McClelland may prepare publications, such as technical papers, articles for periodicals, and press releases, pertaining to McClelland's services for the Project. Such publications will be provided to CITY OF FAYETTEVILLE in draft form for CITY OF FAYETTEVILLE's advance review. CITY OF FAYETTEVILLE shall review such drafts promptly and provide CITY OF FAYETTEVILLE's comments to McClelland. CITY OF FAYETTEVILLE may require deletion of proprietary data or confidential information from such publications, but otherwise

CITY OF FAYETTEVILLE will not unreasonably withhold approval. The cost of McClelland's activities pertaining to any such publication shall be for McClelland's account.

7.11 Indemnification

7.11.1 CITY OF FAYETTEVILLE agrees that it will require all construction Contractors to indemnify, defend, and hold harmless CITY OF FAYETTEVILLE, and McClelland from and against any and all loss where loss is caused or incurred or alleged to be caused or incurred in whole or in part as a result of the negligence or other actionable fault of the Contractors, or their employees, agents, Subcontractors, and Suppliers.

7.12 Computer Models

McClelland may use or modify McClelland's proprietary computer models in service of CITY OF FAYETTEVILLE under this Agreement, or McClelland may develop computer models during McClelland's service to CITY OF FAYETTEVILLE under this Agreement. Such use, modification, or development by McClelland does not constitute a license to CITY OF FAYETTEVILLE to use or modify McClelland's computer models. Said proprietary computer models shall remain the sole property of the McClelland. CITY OF FAYETTEVILLE and McClelland will enter into a separate license agreement if CITY OF FAYETTEVILLE wishes to use McClelland's computer models.

7.13 Ownership of Documents

All documents provided by CITY OF FAYETTEVILLE including original drawings, disks of CADD drawings and cross sections, estimates, specification field notes, and data are and remain the property of CITY OF FAYETTEVILLE. McClelland may retain reproduced copies of drawings and copies of other documents.

Engineering documents, drawings, and specifications prepared by McClelland as part of the Services shall become the property of CITY OF FAYETTEVILLE when McClelland has been compensated for all Services rendered, provided, however, that McClelland shall have the unrestricted right to their use. McClelland shall, however, retain its rights in its standard drawings details, specifications, databases, computer software, and other proprietary property. Rights to intellectual property developed, utilized, or modified in the performance of the Services shall remain the property of McClelland.

Any files delivered in electronic medium may not work on systems and software different than those with which they were originally produced. McClelland makes no warranty as to the compatibility of these files with any other system or software. Because of the potential degradation of electronic medium over

time, in the event of a conflict between the sealed original drawings/hard copies and the electronic files, the sealed drawings/hard copies will govern.

7.14 Notices

Any Notice required under this Agreement will be in writing, addressed to the appropriate party at the following addresses:

CITY OF FAYETTEVILLE's address:

City of Fayetteville

113 W. Mountain

Fayetteville, AR 72701

McClelland's address:

McClelland Consulting Engineers, Inc.

P.O. Box 1229/1810 N. College Ave.

Fayetteville, AR 72702

7.15 Successor and Assigns

CITY OF FAYETTEVILLE and McClelland each binds himself and his successors, executors, administrators, and assigns to the other party of this Agreement and to the successors, executors, administrators, and assigns of such other party, in respect to all covenants of this Agreement; except as above, neither CITY OF FAYETTEVILLE nor McClelland shall assign, sublet, or transfer his interest in the Agreement without the written consent of the other.

7.16 Controlling Law

This Agreement shall be subject to, interpreted and enforced according to the laws of the State of Arkansas without regard to any conflicts of law provisions.

7.17 Entire Agreement

This Agreement represents the entire Agreement between McClelland and CITY OF FAYETTEVILLE relative to the Scope of Services herein. Since terms contained in purchase orders do not generally apply to professional services, in the event CITY OF FAYETTEVILLE issues to McClelland a purchase order, no preprinted terms thereon shall become a part of this Agreement. Said purchase order document, whether or not signed by McClelland, shall be considered as a document for CITY OF FAYETTEVILLE's internal management of its operations.

SECTION 8 - SPECIAL CONDITIONS

8.1 Additional Responsibilities of McClelland:

8.1.1 CITY OF FAYETTEVILLE's review, approval, or acceptance of design drawings, specifications, reports and other services furnished hereunder shall not in any way relieve McClelland of responsibility for the technical adequacy of the work. CITY OF FAYETTEVILLE's review, approval or acceptance of, nor payment for any of the services shall be construed as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement.

8.1.2 McClelland shall be and shall remain liable, in accordance with applicable law, for all damages to CITY OF FAYETTEVILLE caused by McClelland's negligent performance of any of the services furnished under this Agreement except for errors, omissions or other deficiencies to the extent attributable to CITY OF FAYETTEVILLE or CITY OF FAYETTEVILLE-furnished data.

8.1.3 McClelland's obligations under this clause are in addition to McClelland's other express or implied assurances under this Agreement or State law and in no way diminish any other rights that CITY OF FAYETTEVILLE may have against McClelland for faulty materials, equipment, or work.

8.2 Remedies

Except as may be otherwise provided in this Agreement, all claims, counter-claims, disputes and other matters in question between CITY OF FAYETTEVILLE and McClelland arising out of or relating to this Agreement or the breach thereof will be decided in a court of competent jurisdiction within Arkansas.

8.3 Audit: Access to Records

8.3.1 McClelland shall maintain books, records, documents and other evidence directly pertinent to performance on work under this Agreement in accordance with generally accepted accounting principles and practices consistently applied in effect on the date of execution of this Agreement. McClelland shall also maintain the financial information and data used by McClelland in the preparation of support of the cost submission required for any negotiated agreement or change order and send to CITY OF FAYETTEVILLE a copy of the cost summary submitted. The United States Department of Labor, CITY OF FAYETTEVILLE, the State or any of their authorized representatives shall have access to all such books,

records, documents and other evidence for the purpose of inspection, audit and copying during normal business hours. McClelland will provide proper facilities for such access and inspection.

8.3.2 Records under Paragraph 8.3.1 above, shall be maintained and made available during performance on assisted work under this Agreement and until three years from the date of final payment for the project. In addition, those records which relate to any controversy arising out of such performance, or to costs or items to which an audit exception has been taken, shall be maintained and made available until three years after the date of resolution of such appeal, litigation, claim or exception.

8.3.3 This right of access clause (with respect to financial records) applies to:

8.3.3.1 Negotiated prime agreements:

8.3.3.2 Negotiated change orders or agreement amendments in excess of \$10,000 affecting the price of any formally advertised, competitively awarded, fixed price agreement:

8.3.3.3 Agreements or purchase orders under any agreement other than a formally advertised, competitively awarded, fixed price agreement. However, this right of access does not apply to a prime agreement, lower tier subagreement or purchase order awarded after effective price competition, except:

8.3.3.3.1 With respect to record pertaining directly to subagreement performance, excluding any financial records of McClelland;

8.3.3.3.2 If there is any indication that fraud, gross abuse or corrupt practices may be involved;

8.3.3.3.3 If the subagreement is terminated for default or for convenience.

8.4 Covenant Against Contingent Fees

McClelland warrants that no person or selling agency has been employed or retained to solicit or secure this Agreement upon an agreement of understanding for a commission, percentage, brokerage or continent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by McClelland for the purpose of securing business. For breach or violation of this warranty, CITY OF FAYETTEVILLE shall have the right to annul this Agreement without liability or at its discretion, to deduct from the contract price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

8.5 Gratuities

8.5.1 If CITY OF FAYETTEVILLE finds after a notice and hearing that McClelland or any of McClelland's agents or representatives, offered or gave gratuities (in the form of entertainment, gifts or otherwise) to any official, employee or agent of CITY OF FAYETTEVILLE, or the State in an attempt to secure an agreement or favorable treatment in awarding, amending or making any determinations related to the performance of this Agreement, CITY OF FAYETTEVILLE may, by written notice to McClelland terminate this Agreement. CITY OF FAYETTEVILLE may also pursue other rights and remedies that the law or this Agreement provides. However, the existence of the facts on which CITY OF FAYETTEVILLE bases such finding shall be in issue and may be reviewed in proceedings under the Remedies clause of this Agreement.

8.5.2 In the event this Agreement is terminated as provided in Paragraph 8.5.1, CITY OF FAYETTEVILLE may pursue the same remedies against McClelland as it could pursue in the event of a breach of the Agreement by McClelland. As a penalty, in addition to any other damages to which it may be entitled by law, CITY OF FAYETTEVILLE may pursue exemplary damages in an amount (as determined by CITY OF FAYETTEVILLE) which shall be not less than three nor more than ten times the costs McClelland incurs in providing any such gratuities to any such officer or employee.

8.6 Arkansas Freedom of Information Act

City contracts and documents, including internal documents and documents of subcontractors and sub-consultants, prepared while performing City contractual work are subject to the Arkansas Freedom of Information Act (FOIA). If a Freedom of Information Act request is presented to the CITY OF FAYETTEVILLE, McClelland 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.

8.7 Debarment And Suspension

I certify that to the best of my knowledge and belief that the company that I represent 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 government entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (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.

I understand that a false statement on this certification regarding debarment and suspension may be grounds for rejection of this proposal or termination of the award. In addition, under 18 USC Sec. 1001, a false statement may result in a fine of up to \$10,000 or imprisonment for up to 5 years, or both. I further certify that I will obtain a similar certification for each subcontract awarded in excess of \$25,000.

**DEBARMENT CERTIFICATION
AUTHORIZED REPRESENTATIVE**

COMPANY NAME: McClelland Consulting Engineers, Inc.

SIGNATURE: _____

DATE: _____

PRINTED NAME: John C. Quinn, P.E.

TITLE: President

IN WITNESS WHEREOF, CITY OF FAYETTEVILLE, ARKANSAS by and through its Mayor, and
McClelland, by its authorized officer have made and executed this Agreement as of the day and year first
above written.

CITY OF FAYETTEVILLE, ARKANSAS

By: _____
Mayor

ATTEST:

By: _____
City Clerk

McClelland Consulting Engineers, Inc.

By: John C. Quinn

Title: President

ATTEST: R Wayne Jones

Changes, modifications or amendments in scope, price or fees to this Contract shall **not**
be allowed without formal contract amendment approved by the Mayor and the City
Council **in advance** of the change in scope, cost, fees, or delivery schedule.

END OF AGREEMENT FOR PROFESSIONAL ENGINEERING SERVICES

APPENDIX "A"
BASIS OF FEE PROPOSAL
UPPER SCULL CREEK DRAINAGE STUDY, FAYETTEVILLE, ARKANSAS
McCLELLAND CONSULTING ENGINEERS, INC.
 January 10, 2007

LINE NO.	TASK DESCRIPTION	HOURS BUDGETED FOR EACH DISCIPLINE														CLERICAL AN	MILEAGE	OTHER DIR. EXP.	EXTENDED COST
		PROJ. MGR.	ENGR. I	ENGR. TECH.	ENGR. SURV.	REG. SURV.	TECH. SURV.	CREW	DRFT. SUPV.	DRFT. II	LW	CF	ALL	CT	DH	TH	AN		
1	SCULL CREEK DRAINAGE STUDY																		
2																			
3	COLLECT AND COMPILE MAPS																		
4	A. PROPOSAL DEVELOPMENT	2	6															\$10.00	\$871.80
5	B. DOWNLOAD AND SCALE CONTOUR MAPS	2	4															\$10.00	\$330.00
6	C. ADJUST DRAINAGE AREA FOR LAND USE PLAN	2	10	4														\$10.00	\$1,390.00
7	SUBTOTAL, COLLECT AND COMPILE MAPS	4	20	4													0	\$30.00	\$2,591.80
8	IDENTIFY DRAINAGE BASIN AND SUBBASINS ON MAPS																		
9	A. DELINEATE EXISTING MAPS ACCORDING TO DRAINAGE AREA	1	6	1														\$15.00	\$652.60
10	B. LOCATE EXISTING OUTFALLS AND INLETS		4	4														\$250.00	\$870.00
11	C. GENERATE A SURFACE MODEL OF THE DRAINAGE BASIN			4														\$10.00	\$310.00
12	D. DETERMIN SIZE, INLET STRUCTURE, OUTLET STRUCTURE, AND PATH OF EXISTING COUDITS			8	8														\$1,240.00
13	E. CONDUCT PERSONAL RECONNAISSANCE OF PROJECT AREA ASSIGNING "C" FACTORS AND ROUTES	2	16	8															\$2,172.60
14	F. PREPARE RUNOFF CALCULATIONS FOR 2, 5, 10, 25, 50, AND 100 YEAR STORMS	2	4	6														\$20.00	\$1,000.00
15																			
16	SUBTOTAL, IDENTIFY DRAINAGE BASIN AND SUBBASINS ON MAPS	4	38	31													0	\$295.00	\$6,245.20
17	EVALUATION/GENERATION OF DATA																		
18	A. IDENTIFY PRIMARY AND SECONDARY CHANNELS		1	3															\$313.40
19	B. CHARACTERIZE CHANNEL SURFACES		5	3															\$625.00
20	C. IDENTIFY CRITICAL POINTS		3																\$240.00
21	D. DETAIL CROSS SECTION SURVEYS OF CRITICAL POINTS																		
22																			
23	SUBTOTAL, EVALUATION/GENERATION OF DATA	0	9	11													0	\$20.00	\$29,571.80
24	IDENTIFY AREAS SUBJECT TO FLOODING																		
25	A. USE COMPUTER MODELING TO GENERATE WATER SURFACE PROFILES FOR DESIGN STORMS	4	40	36														\$20.00	\$6,480.00
26	B. IDENTIFY STRUCTURES SUBJECT TO FLOODING AT Q PEAK DURING DESIGN STORMS		3	2	1													\$5.00	\$1,550.50
27	C. FORMULATE A LIST OF POTENTIAL IMPROVEMENTS TO DRAINAGE AREA	2	10	5														\$20.00	\$1,666.00
28	D. EVALUATE IMPROVEMENTS WITH COMPUTER MODELING TO IDENTIFY EFFECTIVE IMPROVEMENTS		40	40														\$20.00	\$6,220.00
29	E. FORMULATE ROUGH COST ESTIMATES	1	12															\$10.00	\$1,110.00
30	F. PRIORITIZE PREFERRED IMPROVEMENTS	2	6															\$760.00	\$760.00
31	G. SUMMARIZE FINDINGS AND PRESENT TO CITY IN "DRAFT" FORMAT	2	10	10														\$100.00	\$2,667.60
32	SUBTOTAL, IDENTIFY AREAS SUBJECT TO FLOODING	11	121	93													4	\$165.00	\$20,343.10
33	PROPERTY OWNER RELATIONS																		
34	A. MEET WITH PROPERTY OWNERS TO PRESENT FINDINGS	2	6															\$50.00	\$831.00
35	B. IDENTIFY EXTENT OF DRAINAGE EASEMENTS NEEDED TO IMPLEMENT RECOMMENDATIONS		6															\$480.00	\$480.00
36	SUBTOTAL, PROPERTY OWNER RELATIONS	2	12	0													0	\$50.00	\$1,311.00
37	FINAL REPORT																		
38	A. WRITE AND REPRODUCE THE FINAL REPORT WITH THE FOLLOWING																	\$100.00	\$286.30
39	1. FINDINGS	2	5														4	\$100.00	\$680.00
40	2. RECOMMENDATIONS	3	7															\$1,310.00	\$1,310.00
41	3. COST ESTIMATES	1	3															\$380.00	\$380.00
42	4. PRIORITIES	1	3															\$380.00	\$380.00
43	5. SCHEDULE FOR IMPLEMENTATION	1	5															\$540.00	\$540.00
44	SUBTOTAL, FINAL REPORT	8	23	0													4	\$100.00	\$3,576.30
45	TOTAL	29	223	139													8	\$650.00	\$64,817.60

APPENDIX "B"

2007 BILLING RATES

January, 2007

<u>CATEGORY</u>	<u>*HOURLY RATE</u>
Principal Engineer	\$ 140.00
Sr. Project Manager	\$ 130.00
Project Manager	\$ 120.00
Project Engineer II	\$ 100.00
Project Engineer I	\$ 80.00
Design Engineer	\$ 75.00
Landscape Architect	\$ 85.00
Landscape Architect Assistant	\$ 50.00
Engineering Technician III	\$ 75.00
Engineering Technician II	\$ 60.00
Engineering Technician I	\$ 45.00
Construction Observer III	\$ 75.00
Construction Observer II	\$ 50.00
Construction Observer I	\$ 40.00
Chief Draftsman	\$ 65.00
Draftsman II	\$ 50.00
Draftsman I	\$ 45.00
Survey Technician	\$ 70.00
Registered Land Surveyor	\$ 85.00
Survey (2-Man or 1-Man/Robotic) Crew	\$ 130.00
Field Survey -1 Man	\$ 65.00
Party Chief	\$ 60.00
Soils Lab Supervisor	\$ 55.00
Soils Lab Technician II	\$ 45.00
Soils Lab Technician I	\$ 38.00
Clerk/Typist	\$ 45.00
Mileage	\$ 0.40

* Subject to Annual Adjustment Mid-Year.

City of Fayetteville
Staff Review Form
City Council Agenda Items
or
Contracts

5/1/2007
City Council Meeting Date

Ron Petrie
Submitted By

Engineering
Division

Operations
Department

Action Required:

A Resolution to award a contract to Tomlinson Asphalt Company, Inc. in the amount of \$187,760.00 and to approve a project contingency of \$18,776.00 for Traffic Calming Construction in Wilson Park and Washington/Willow Neighborhoods as Part of the Transportation Improvement Bond Program.

\$ 206,536.00 Cost of this request	\$ 24,496,473.00 Category / Project Budget	Wilson Park/Washington Willow Area Trans. Impts. Program Category / Project Name
4520.9520.5809.00 Account Number	\$ 632,968.00 Funds Used to Date	Street Improvements Program / Project Category Name
06035.0601 Project Number	\$ 23,863,505.00 Remaining Balance	2006A Sales Tax Construction Fund Name

Budgeted Item ☒ Budget Adjustment Attached ☐


Department Director

4/13/07
Date

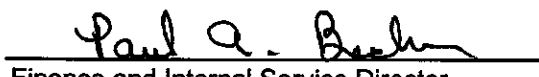
Previous Ordinance or Resolution # _____

Original Contract Date: _____


City Attorney

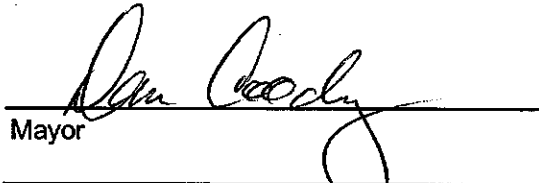
4/17/2007
Date

Original Contract Number: _____


Finance and Internal Service Director

4-17-2007
Date

Received in City Clerk's Office
 4/13/07


Mayor

4/18/07
Date

Received in Mayor's Office

Comments:

CITY COUNCIL AGENDA MEMO

To: Mayor and City Council

Thru: Gary Dumas, Director of Operations

From: Ron Petrie, City Engineer *RP*

Date: April 13, 2007

Subject: A Resolution to award a contract to Tomlinson Asphalt Company, Inc. in the amount of \$187,760.00 and to approve a project contingency of \$18,776.00 for Traffic Calming Construction in Wilson Park and Washington/Willow Neighborhoods as Part of the Transportation Improvement Bond Program.

RECOMMENDATION

Staff recommends award of a construction contract in the amount of \$187,760.00 to Tomlinson Asphalt Company of Fayetteville, and approval of a project contingency of \$18,776.00 (10% of construction bid) on the Wilson Park and Washington Willow Areas Traffic Calming project.

BACKGROUND

This project includes installation of a total of 22 speed tables and 3 landscaped islands in the Wilson Park and Washington/Willow Neighborhoods. The work to be completed in each neighborhood has been reviewed by the respective Neighborhood Associations.

This work is part of a larger project entitled Wilson Park Area/Washington-Willow Area Transportation Improvements, which is included in the Transportation Bond Program.

DISCUSSION

The following are the results of the bid opening for this project:

<u>Bidder</u>	<u>Bid Amount</u>
Tomlinson Asphalt Company	\$ 187,760.00 (Low Bidder)
Midland Construction	\$ 194,940.00
Sweetser Construction	\$ 196,600.00

The low bid is approximately 40% below the Engineer's Estimate for the project.

The total estimated project costs, including a project contingency of 10% of the Construction bid, are as follows:

Contractor Bid	\$187,760.00
Construction Contingency	\$18,776.00
In House Construction Mgmt	\$20,000.00
Materials Testing	\$5,000.00
Total Estimated Project Cost	\$231,536.00

BUDGET IMPACT

The Wilson Park/Washington Willow Transportation Improvements Project is a subproject of the Transportation Bond Project. The total budget for this subproject is \$4,277,000. The cost of the Traffic Calming construction will be paid for from these funds

RESOLUTION NO. _____

A RESOLUTION AWARDDING A CONTRACT TO TOMLINSON ASPHALT COMPANY, INC. IN THE AMOUNT OF \$187,760.00 FOR TRAFFIC CALMING CONSTRUCTION IN THE WILSON PARK AND WASHINGTON/WILLOW NEIGHBORHOODS AS PART OF THE TRANSPORTATION IMPROVEMENT BOND PROGRAM; AND APPROVING A PROJECT CONTINGENCY IN THE AMOUNT OF \$18,776.00.

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

Section 1. That the City Council of the City of Fayetteville, Arkansas hereby awards a contract to Tomlinson Asphalt Company, Inc. in the amount of \$187,760.00 for traffic calming construction in the Wilson Park and Washington/Willow Neighborhoods as part of the Transportation Improvement Bond Program.

Section 2. That the City Council of the City of Fayetteville, Arkansas hereby approves a project contingency in the amount of \$18,776.00.

PASSED and APPROVED this 19 day of May, 2007.

APPROVED:

ATTEST:

By: _____
DAN COODY, Mayor

By: _____
SONDRA E. SMITH, City Clerk/Treasurer

City of Fayetteville, Arkansas
Bid 07-35, Traffic Calming Devices Construction
Detailed Bid Tab: 4/11/07 - 2:00 PM, Central Standard Time

ITEM#	DESCRIPTION	UNIT	EST. QTY.	Tomlinson Asphalt Co. Inc.		Midland Construction		Sweetser Construction	
				Unit Price	Bid Price	Unit Price	Bid Price	Unit Price	Bid Price
1	Mobilization (1)	L.S.	1.00	\$8,500.00	\$8,500.00	\$5,200.00	\$5,200.00	\$9,000.00	\$9,000.00
2	Standard Width Speed Tables	Each	22.00	\$5,400.00	\$118,800.00	\$6,000.00	\$132,000.00	\$6,200.00	\$136,400.00
3	Landscaped Islands	Each	3.00	\$8,500.00	\$25,500.00	\$8,000.00	\$24,000.00	\$3,250.00	\$9,750.00
4	Curb and Gutter	Linear Ft	500.00	\$22.00	\$11,000.00	\$23.00	\$11,500.00	\$25.00	\$12,500.00
5	Additional Speed Table Width	Linear Ft	40.00	\$200.00	\$8,000.00	\$220.00	\$8,800.00	\$225.00	\$9,000.00
6	Concrete Pavement Removal and Repair	Sq. Yds	210.00	\$78.00	\$15,960.00	\$84.00	\$13,440.00	\$85.00	\$19,950.00
TOTAL BID AMOUNT					\$187,760.00		\$194,940.00		\$196,600.00

CERTIFIED: P. Vice H. Jones 4/11/07
Peggy Vice, Purchasing Manager WITNESS DATE

*NOTICE: Bid award is contingent upon vendor meeting minimum specifications and formal authorization by City officials.

Section 00500

AGREEMENT

BETWEEN CITY OF FAYETTEVILLE AND CONTRACTOR

THIS AGREEMENT is dated as of the _____ day of _____ in the year 2005 by and between the *City of Fayetteville*, Arkansas and Tomlinson Asphalt Company, Inc. (hereinafter called Contractor).

City of Fayetteville and Contractor, in consideration of the mutual covenants hereinafter set forth, agree as follows:

Article 1. WORK.

Contractor shall complete all Work as specified or indicated in the Contract Documents.

The work generally consists of construction of Traffic Calming Devices and appurtenances as indicated in the Drawings and Specifications. Construction items may include: demolition and removal of concrete and/or asphalt pavement and other existing improvements, placement of concrete for traffic circles, speed tables, curb and gutter, and other miscellaneous concrete items, pavement striping, signage, and other related items.

Article 2. ENGINEER.

The Project has been designed by

City of Fayetteville Engineering Dept.
113 W. Mountain
Fayetteville, Arkansas 72701

who is hereinafter called Engineer and who is to act as City of Fayetteville's representative, assume all duties and responsibilities, and have the rights and authority assigned to Engineer in the Contract Documents in connection with completion of the Work in accordance with the Contract documents.

Article 3. CONTRACT TIME.

3.1. The Work shall be substantially completed within 120 consecutive calendar days after the date when the Contract Time commences to run as provided in paragraph 2.03 of the General Conditions, and completed and ready for final payment in accordance with paragraphs 14.07.B & C of the General Conditions within 150 consecutive calendar days after the date when the Contract Time commences to run.

3.2. *Liquidated Damages.* City of Fayetteville and Contractor recognize that time is of the essence of the Agreement and that City of Fayetteville will suffer financial loss if the Work is not completed within the times specified in paragraph 3.1 above, plus and extensions thereof allowed in accordance with Article 12 of the General Conditions. They also recognize the delays, expense and difficulties involved in proving the actual loss suffered by City of Fayetteville if the Work is not completed on time. Accordingly, instead of requiring any such proof, City of Fayetteville and Contractor agree that as liquidated damages for delay (but not as a penalty) Contractor shall pay City of Fayetteville Three Hundred Fifty dollars (\$350.00) for each day that expires after the time specified in paragraph 3.1 for Substantial Completion until the Work is substantially complete. After Substantial Completion, if Contractor shall neglect, refuse or fail to complete the remaining Work within the

time specified in paragraph 3.1 for completion and readiness for final payment or any proper extension thereof granted by City of Fayetteville, Contractor shall pay City of Fayetteville **Three Hundred Fifty dollars (\$350.00)** for each day that expires after the time specified in paragraph 3.1 for completion and readiness for final payment.

Article 4. CONTRACT PRICE.

City of Fayetteville shall pay Contractor for completion of the Work in accordance with the Contract Documents an amount in current funds equal to the sum of the amounts determined from the following Schedule of Values pursuant to paragraphs 4.1 and 4.2 below:

- 4.1. for all Work other than Unit Price Work, an amount equal to the sum of the established lump sums for each separately identified item of Lump Sum Work; and
- 4.2. for all Unit Price Work, an amount equal to the sum of the established unit price for each separately identified item of Unit Price Work times the estimated quantity of that item as indicated in this paragraph 4.2.

Item No.	Item Description	Unit	Estimated Quantity	Unit Price	Total Price
1	Mobilization	LS	1	\$8,500.00	\$8,500.00
2	Speed Tables	EA	22	\$5,400.00	\$118,800.00
3	Landscaped Islands	EA	3	\$8,500.00	\$25,500.00
4	Curb and Gutter	LF	500	\$22.00	\$11,000.00
5	Additional Speed Table Width	LF	40	\$200.00	\$8,000.00
6	Concrete Pavement Removal and Repair	SY	210	\$76.00	\$15,960.00
TOTAL BID					\$187,760.00

As provided in paragraph 11.03 of the General Conditions estimated quantities are not guaranteed, and determinations of actual quantities and classifications are to be made by Engineer as provided in paragraph 9.07 of the General Conditions. Unit prices have been computed as provided in paragraph 11.03.C of the General Conditions.

Article 5. PAYMENT PROCEDURES

Contractor shall submit Applications for Payment in accordance with Article 14 of the General Conditions or as modified in the Supplementary Conditions. Applications for Payment will be processed by Engineer as provided in the General Conditions.

5.1. Progress Payments. City of Fayetteville shall make progress payments on account of the Contract Price on the basis of Contractor's Applications for Payment as recommended by Engineer, on or about the 1st day of each month during construction as provided in paragraphs 5.1.1 and 5.1.2 below and SC-14.02. All such payments will be measured by the schedule of values established in paragraph 2.07 of the General Conditions and based on the number of units completed in the case of Unit Price Work or, in the event there is no schedule of values, as provided in the General Requirements.

5.1.1. Prior to Substantial Completion, progress payments will be made in an amount equal to the percentage indicated below, but, in case, less the aggregate of payments previously made and less such

amounts as Engineer shall determine, or City of Fayetteville may withhold, in accordance with paragraphs 14.02.B.5 & 14.02.D of the General Conditions.

90 percent of Work completed (with the balance of 10 percent being retainage). If Work has been 50 percent completed as determined by the Engineer, and if the character and progress of the Work have been satisfactory to City of Fayetteville and Engineer, City of Fayetteville, on recommendation of Engineer, may determine that as long as the character and progress of the Work remain satisfactory to them, there will be no additional retainage on account of work completed, in which case the remaining progress payments prior to Substantial Completion will be in an amount equal to 100 percent of the Work completed.

100 percent of materials and equipment not incorporated in the Work but delivered, suitably stored, and accompanied by documentation satisfactory to City of Fayetteville as provided in paragraphs 14.02.B.5 & 14.02.D of the General Conditions. That is, if any such items are setup for that type payment in the Specifications.

5.1.2. Upon Substantial Completion, in an amount sufficient to increase total payments to Contractor to 98 percent of the Contract Price (with the balance of 2 percent being retainage), less such amounts as Engineer shall determine, or City of Fayetteville may withhold, in accordance with paragraphs 14.02.B.5 & 14.02.D of the General Conditions.

5.3 Final Payment. Upon final completion and acceptance of the Work in accordance with paragraphs 14.07.B & C of the General Conditions, City of Fayetteville shall pay the remainder of the Contract Price as recommended by Engineer as provided in said paragraphs 14.07.B & C.

Article 6. CONTRACTOR'S REPRESENTATIONS.

In order to induce City of Fayetteville to enter into this Agreement Contractor makes the following representations:

6.1. Contractor has examined and carefully studied the Contract Documents (including the Addenda listed in Article 7) and the other related data identified in the Bidding Documents including "technical data."

6.2. Contractor has visited the site and become familiar with and is satisfied as to the general, local, and site conditions that may affect cost, progress, performance, or furnishing of the Work.

6.3. Contractor is familiar with and is satisfied as to all federal, state, and local Laws and Regulations that may affect cost, progress, performance, and furnishing of the Work.

6.4. Contractor has carefully studied all reports of explorations and tests of subsurface conditions at or contiguous to the site and all drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the site which have been identified in the Supplementary Conditions as provided in paragraph 4.02.A of the General Conditions. Contractor accepts the determination set forth in paragraph SC-4.02 of the Supplementary Conditions of the extent of the "technical data" contained in such reports and drawings upon which Contractor is entitled to rely as provided in paragraph 4.02 of the General Conditions.

Contractor acknowledges that such reports and drawings are not Contract Documents and may not be complete for Contractor's purposes. Contractor acknowledges that City of Fayetteville and Engineer do not assume responsibility for the accuracy or completeness of information and data shown or indicated in the Contract Documents with respect to Underground Facilities at or contiguous to the site. Contractor has obtained and

carefully studied (or assumes responsibility for having done so) all such additional supplementary examinations, investigations, explorations, tests, studies, and data concerning conditions (surface, subsurface, and Underground Facilities) at or contiguous to the site or otherwise which may affect cost, progress, performance, or furnishing of the Work or which relate to any aspect of the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor and safety precautions and programs incident thereto. Contractor does not consider that any additional examinations, investigations, explorations, tests, studies, or data are necessary for the performance and furnishing of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract Documents.

6.5. Contractor is aware of the general nature of work to be performed by City of Fayetteville and others at the site that relates to the Work as indicated in the Contract Documents.

6.6. Contractor has correlated the information known to Contractor, information and observations obtained from visits to the site, reports and drawings identified in the Contract Documents, and all additional examinations, investigations, explorations, tests, studies, and data with the Contract Documents.

6.7. Contractor has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Contractor has discovered in the Contract Documents and the written resolution thereof by Engineer is acceptable to Contractor and the Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

Article 7. CONTRACT DOCUMENTS

The Contract Documents which comprise the entire agreement between City of Fayetteville and Contractor concerning the Work consist of the following:

- 7.1. This Agreement (pages 1 to 8, inclusive).
- 7.2. Performance and Payment Bonds (Exhibits A and B respectively).
- 7.3. Certificates of Insurance (Exhibit C).
- 7.4. Documentation submitted by Contractor prior to Notice of Selection.
- 7.5. General Conditions (pages 1 to 41, inclusive).
- 7.6. Supplementary Conditions (pages 1 to 10 inclusive).
- 7.9. Specifications consisting of Divisions 1 through 3 as listed in table of contents thereof.
- 7.10. Addenda number ____.
- 7.11. Drawings (not attached hereto) consisting of cover sheets and additional sheets with each sheet bearing the following general titles:

Wilson Park and Washington-Willow Area Traffic Calming (5 sheets total)

- 7.12. The following which may be delivered or issued after the Effective Date of the Agreement and are not attached hereto:

7.12.1. Notice to Proceed

7.12.2. All Written Amendments and other documents amending, modifying or supplementing the Contract Documents pursuant to paragraph 3.04 of the General Conditions.

The documents listed in paragraphs 7.1-7.12 et seq. above are attached to this Agreement (except as expressly noted otherwise above).

There are no Contract Documents other than those listed above in this Article 7. The Contract Documents may only be amended, modified or supplemented as provided in paragraph 3.04 of the General Conditions.

Article 8. MISCELLANEOUS.

8.1. Terms used in the Agreement which are defined in Article 1 of the General Conditions will have the meanings indicated in the General Conditions.

8.2. No assignment by a party hereto of any rights under or interests in the Contract Documents will be binding on another party hereto without the written consent of the party sought to be bound; and, specifically but without limitation, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

8.3. City of Fayetteville and Contractor each binds itself, its partners, successors, assigns, and legal representatives to the other party hereto, its partners, successors, assigns, and legal representatives in respect to all covenants, agreements and obligations contained in the Contract Documents.

8.4. Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken and all remaining provisions shall continue to be valid and binding upon stricken provision or part thereof with a valid and enforceable provision that comes as close as possible expressing the intention of the stricken provision.

8.5. 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.

8.6. **Freedom of Information Act.** City of Fayetteville 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, Contractor 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.

8.7. This contract must be interpreted under Arkansas Law.

IN WITNESS WHEREOF, CITY OF FAYETTEVILLE and CONTRACTOR have signed this Agreement in quadruplicate. One counterpart each has been delivered to City of Fayetteville and Engineer, and two counterparts have been delivered to Contractor. All portions of the Contract Documents have been signed, initialed, or identified by City of Fayetteville and Contractor or identified by Engineer on their behalf.

This Agreement will be effective on _____, 2007 (which is the Effective Date of the Agreement).

OWNER: City of Fayetteville

CONTRACTOR: Tomlinson Asphalt Company, Inc.

By: _____
Mayor Dan Coody

By: _____

Title

[CORPORATE SEAL]

[CORPORATE SEAL]

Attest _____

* Attest _____

* If a Corporation, attest by the Secretary.

Address for giving notices

Address for giving notices

(If Owner is a public body, attach evidence of authority to sign and resolution or other documents authorizing execution of Agreement.)

License No. _____

Agent for service of process:

(If Contractor is a corporation, attach evidence of authority to sign)

City of Fayetteville
Staff Review Form
City Council Agenda Items
or
Contracts

5/1/2007
City Council Meeting Date

Susan Thomas

Submitted By

Public Information

Division

General Government

Department

Action Required:

Resolution authorizing the Mayor to negotiate and execute a contract not to exceed \$25,000 with the University of Arkansas Survey Research Center to design and conduct the 2007 Citizen Survey for the City of Fayetteville; and approving a budget adjustment for \$25,000.

\$ 25,000.00

Cost of this request

\$ -

Category / Project Budget

Program Category / Project Name

1010-6600-5315-00

Account Number

\$ -

Funds Used to Date

Program / Project Category Name

\$ -

Remaining Balance

Fund Name

Budgeted Item

☐

Budget Adjustment Attached

☒

Department Director

4/13/2007

Date

Previous Ordinance or Resolution #

Original Contract Date:

Original Contract Number:

City Attorney

4/17/07

Date

Finance and Internal Service Director

4-17-07

Date

Mayor

5/1/07

Date

Received in City Clerk's Office

ENTERED

4/13/07

AW

Received in Mayor's Office

ENTERED

4/17/07

PA

Comments:



City Council Memo

TO: Mayor Coody and City Council

FROM: Susan B. Thomas, Ph.D., Public Information & Policy Advisor *SBT*

DATE: April 13, 2007

SUBJECT: 2007 Citizen Survey

RECOMMENDATION

Resolution authorizing the Mayor to negotiate and execute a contract not to exceed \$25,000 with the University of Arkansas Survey Research Center and approving a budget adjustment for that same amount.

BACKGROUND

Every other year beginning in 2001, the City has conducted a Citizens Survey to assess citizen opinion on issues ranging from transportation to parks to planned and managed growth. Since 2003, the University of Arkansas Survey Research Center has assisted the City with that project. In 2005, you received critical information on citizen willingness to support additional taxes for improved infrastructure, and each year Council can use the survey data to ensure that City projects and programs are in line with Citizen priorities.

DISCUSSION

At Council's Agenda Setting Session on March 13, 2007, Council was informed that no funds were budgeted for this project. During that meeting, Council requested that staff move forward, working with the Survey Research Center, to develop a survey that would allow the City to continue tracking public opinion. I informed Council that I believed we could develop and implement the 2007 Citizen Survey for no more than \$25,000. There appeared to be general agreement from Council that the Citizen Survey was important, useful, and something that staff should pursue at or around a price of \$25,000.

The 2005 survey cost approximately \$30,000. To minimize that, we have reduced the survey time from 23 to 17 minutes. All questions that were added in 2005 have been removed, with two exceptions. First, in 2003 we asked one question that combined Downtown Fayetteville, Dickson Street, and College Avenue together. Because the improvements to Dickson Street were complete, in the 2005 survey we removed Dickson Street from the questions and split Downtown

Fayetteville and College Avenue into two separate choices. Second, we have included a demographic question to identify likely voters. The proposed survey document is attached.

The SRC has estimated a price for this survey of \$23,971.88. It should be noted that the estimate does not allow for over-sampling of minority populations, which would cost an additional \$3,732.16. However, minority responses will be properly weighted to reflect their actual population in the community. For example, the 2006 Special Census indicates that Fayetteville's population is 6.5% Hispanic. Therefore, responses from Hispanic citizens will be weighted so their opinions make up approximately 6.5% of the survey respondents. Additionally, if instrument develop time is minimized (and it should be minimized since there will likely be no new questions developed), there could be room in the budget to complete some over-sampling of minorities. Using the weighting of answers instead of (or in addition to) over-sampling is commonly accepted survey research practice.

BUDGET IMPACT

Funds for this project were not included in the 2007 budget. The estimated cost for design and implementation of the survey is \$23,971.88. Staff is requesting a budget adjustment of \$25,000 from the Use of Fund Balance account to cover the full cost of the survey and to allow for as much over-sampling of minorities as possible.

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

A. 8
2007 Citizen Survey
Page 4 of 36

Budget Year 2007	Department: General Government Division: Miscellaneous Program: Miscellaneous	Date Requested 5/1/2007	Adjustment Number
--------------------------------	---	---------------------------------------	-------------------

Project or Item Added/Increased:
\$25,000 is requested in the Contract Services account for the conducting of a Citizen's Survey by the University of Arkansas.

Project or Item Deleted/Reduced:
None. \$25,000 from the General Fund Use of Fund Balance account.

Justification of this Increase:
The University of Arkansas will be conducting a 2007 Citizen's Survey.

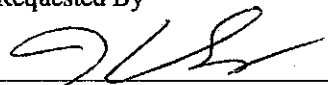
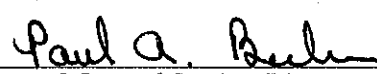
Justification of this Decrease:
There is sufficient fund balance remaining to comply with City Policy.

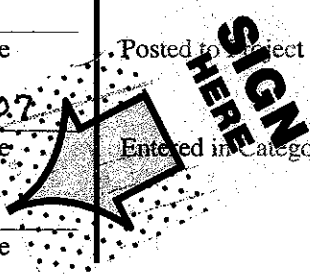
Increase Expense Budget (Decrease Revenue Budget)

Account Name	Account Number				Amount	Project Number
Contract services	1010	6600	5315	00	25,000	

Decrease Expense Budget (Increase Revenue Budget)

Account Name	Account Number				Amount	Project Number
Use of fund balance	1010	0001	4999	99	25,000	

Approval Signatures		Budget Office Use Only	
 Requested By	4-17-07 Date	Type: A B C <u>D</u> E	
 Budget Manager	4-16-07 Date	Posted to General Ledger	Initial Date
Department Director	Date	Posted to Project Accounting	Initial Date
 Finance & Internal Services Director	4-17-07 Date	Entered in Category Log	Initial Date
Mayor	Date		



RESOLUTION NO. _____

A RESOLUTION AUTHORIZING THE MAYOR TO NEGOTIATE AND EXECUTE A CONTRACT WITH THE SURVEY RESEARCH CENTER (SRC) AT THE UNIVERSITY OF ARKANSAS IN AN AMOUNT NOT-TO-EXCEED OF \$25,000.00 TO DESIGN AND CONDUCT THE 2007 CITIZEN SURVEY; AND APPROVING A BUDGET ADJUSTMENT IN THE AMOUNT OF \$25,000.00.

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

Section 1. That the City Council of the City of Fayetteville, Arkansas hereby authorizes the Mayor to negotiate and execute a contract with the Survey Research Center (SRC) at the University of Arkansas in an amount not-to-exceed of \$25,000.00 to design and conduct the 2007 Citizen Survey.

Section 1. That the City Council of the City of Fayetteville, Arkansas hereby approves a budget adjustment in the amount of \$25,000.00.

PASSED and APPROVED this 1st day of May, 2007.

APPROVED:

ATTEST:

By: _____

DAN COODY, Mayor

By: _____

SONDRA E. SMITH, City Clerk/Treasurer

Codebook for the Fayetteville Citizen's Survey 2005
Prepared by the Survey Research Center, University of Arkansas
August 25, 2005

NOTE: QUESTIONS HIGHLIGHTED IN YELLOW WERE ASKED ON THE 2003 FAYETTEVILLE CITIZEN'S SURVEY. QUESTIONS NOT HIGHLIGHTED WERE NEW IN THE 2005 FAYETTEVILLE CITIZENS SURVEY.

QUESTIONS WHICH ARE CROSSED OUT ARE NOT INCLUDED IN THE BUDGET BROVIDED FOR THE 2007 FAYETTEVILLE CITIZENS SURVEY.

54: **Q1A**

Let's start with your assessment of Fayetteville. How would you rate Fayetteville as a place to live?

Excellent.....	1
Good	2
Neither good nor poor.....	3
Poor.....	4
Very poor.....	5
Don't know.....	8
Refused.....	9

55: **Q1B**

How would you rate the effectiveness of Fayetteville's City government?

Excellent.....	1
Good	2
Neither good nor poor.....	3
Poor.....	4
Very poor.....	5
Don't know.....	8
Refused.....	9

56: **Q2A**

With which one of the following city services are you most satisfied?

Interviewer: Read the whole list. Definitions: Public Safety Services include Animal Control, the Police and Fire Departments, bicycle patrol, the Crime Prevention Unit and the School Resource officers. These services help to ensure that the citizens of Fayetteville can live safely.

Utilities	01
Public Safety Services	02
Transportation.....	03
Streets	04
Parks and Recreation Services	05
Information Programs.....	06
Other	07 O
Don't know.....	98
Refused.....	99

Codebook for the Fayetteville Citizen's Survey 2005
Prepared by the Survey Research Center, University of Arkansas
August 25, 2005

57: **Q2B**

Here is a second list of city services. With which one of these are you most satisfied?

Interviewer: Read the whole list.

Definitions: Downtown Fayetteville includes the region of Fayetteville bordered by College Avenue and Arkansas Avenue on the east and west and Maple Street and Sixth Street on the north and south.

Fayetteville Public Library	01
Growth and Development	02
Surface and Ground water	03
Development of Downtown Fayetteville	04
College Avenue Improvement	05
Housing	06
A Clean and Green City	07
Other	08 O
Don't know	98
Refused	99

58: **Q3**

Which one of the following city services do you think needs the most improvement?

Definitions: Public Safety Services include Animal Control, the Police and Fire Departments, bicycle patrol, the Crime Prevention Unit and the School Resource officers. These services help to ensure that the citizens of Fayetteville can live safely.

Utilities	1	=> Q3A
Public Safety Services	2	=> Q3B
Transportation	3	=> Q3C
Streets	4	=> Q3D
Parks and Recreation Services	5	=> Q3E
Information Programs	6	=> Q3F
Other	7 O	=> Q3TX
Don't know	8	=> Q4
Refused	9	=> Q4

59: **Q3A**

What aspect of utilities needs the most attention?

Garbage collection	1	=> Q3TX
Recycling	2	=> Q3TX
Water and sewer maintenance services	3	=> Q3TX
Meter reading and utility billing services	4	=> Q3TX
All of the above aspects of utilities	5	=> Q3TX
Other	6 O	=> Q3TX
Don't know	8	=> Q4
Refused	9	=> Q4

Codebook for the Fayetteville Citizen's Survey 2005
Prepared by the Survey Research Center, University of Arkansas
August 25, 2005

60: **Q3B**

What aspect of public safety services needs the most attention?

Police.....	1	=> Q3TX
Fire.....	2	=> Q3TX
Animal control.....	3	=> Q3TX
Ambulance.....	4	=> Q3TX
Disaster preparedness	5	=> Q3TX
All of the above aspects of public safety services	6	=> Q3TX
Other	7 O	=> Q3TX
Don't know.....	8	=> Q4
Refused	9	=> Q4

61: **Q3C**

What aspect of transportation needs the most attention?

Ease of car travel in the city	1	=> Q3TX
Ozark Regional Transit/Public transportation	2	=> Q3TX
Razorback Transit.....	3	=> Q3TX
Alternative transportation such as bicycling and walking	4	=> Q3TX
All of the above aspects of transportation.....	5	=> Q3TX
Other	6 O	=> Q3TX
Don't know.....	8	=> Q4
Refused	9	=> Q4

62: **Q3D**

What aspect of streets needs the most attention?

Street maintenance.....	1	=> Q3TX
Cleanliness of streets	2	=> Q3TX
Street repair	3	=> Q3TX
Sidewalk maintenance	4	=> Q3TX
Sidewalk accessibility, such as cut-away curbs	5	=> Q3TX
All of the above aspects of streets	6	=> Q3TX
Other	7 O	=> Q3TX
Don't know.....	8	=> Q4
Refused	9	=> Q4

Codebook for the Fayetteville Citizen's Survey 2005
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August 25, 2005

63: **Q3E**

What aspect of parks and recreation services needs the most attention?

Development of new parks	01	=> Q3TX
Park maintenance.....	02	=> Q3TX
Improvement to existing parks	03	=> Q3TX
Recreational facilities	05	=> Q3TX
Recreation for youth	06	=> Q3TX
Recreation for adults.....	07	=> Q3TX
Concerts in city parks	08	=> Q3TX
Lights of the Ozarks	09	=> Q3TX
All of the above aspects of park and recreation services	10	=> Q3TX
Other	11 O	=> Q3TX
Don't know.....	98	=> Q4
Refused	99	=> Q4

64: **Q3F**

What aspect of information programs needs the most attention?

Definitions: Government Access Channel (PEG) appears on COX Channel 16. Its broadcasts include but aren't limited to: Fayetteville City Council Meetings, Fayetteville City Planning Commission Meetings and Washington County Quorum Court. Public Access Television appears on COX Channel 18. It's operated by Community Access Television (CAT), a nonprofit organization under contract with the city of Fayetteville. CAT's purpose is to provide a channel of free expression for every citizen. The city of Fayetteville exercises no editorial control over CAT.

Public Access Television (CAT)	1	=> Q3TX
Government Access Channel.....	2	=> Q3TX
City's information system for resolving complaints	3	=> Q3TX
City website	4	=> Q3TX
All of the above aspects of information programs	5	=> Q3TX
Other	6 O	=> Q3TX
Don't know.....	8	=> Q4
Refused	9	=> Q4

65: **Q3TX**

In order to address <Q3>, would you be willing to pay additional taxes?

Yes	1
Maybe	2
No	3
Don't know.....	8
Refused	9

Codebook for the Fayetteville Citizen's Survey 2005
Prepared by the Survey Research Center, University of Arkansas
August 25, 2005

66: **Q4**

Here is another list of city services. Which of these do you think needs the most improvement?

Definitions: Downtown Fayetteville includes the region of Fayetteville bordered by College Avenue and Arkansas Avenue on the east and west and Maple Street and Sixth Street on the north and south.

Fayetteville Public Library	01	=> Q4A
Growth and Development.....	02	=> Q4B
Surface and Ground water	03	=> Q4C
Development of Downtown Fayetteville.....	04	=> Q4F
College Avenue Improvement.....	05	=> Q4G
Housing.....	06	=> Q4D
A Clean and Green City.....	07	=> Q4E
Other.....	08	O => Q4TX
Don't know.....	98	=> Q5
Refused.....	99	=> Q5

67: **Q4A**

What aspect of the Fayetteville Public Library needs the most attention?

Hours open.....	01	=> Q4TX
Books available.....	02	=> Q4TX
Audiovisual items available (eg videos, DVDs, CDs, audiobooks).....	03	=> Q4TX
Computer resources available.....	04	=> Q4TX
Children's and teen programs and services	05	=> Q4TX
Adult programs and services	06	=> Q4TX
Availability of branch libraries.....	07	=> Q4TX
All of the above aspects of the Fayetteville Public Library.....	08	=> Q4TX
Other.....	09	O => Q4TX
Don't know.....	98	=> Q5
Refused.....	99	=> Q5

68: **Q4B**

What aspect of growth and development needs the most attention?

Stricter development standards.....	1	=> Q4TX
Lower development standards	2	=> Q4TX
Limiting growth.....	3	=> Q4TX
Promoting growth.....	4	=> Q4TX
More environmental protection	5	=> Q4TX
Less environmental protection.....	6	=> Q4TX
Other.....	7	O => Q4TX
Don't know.....	8	=> Q5
Refused.....	9	=> Q5

Codebook for the Fayetteville Citizen's Survey 2005
Prepared by the Survey Research Center, University of Arkansas
August 25, 2005

69: **Q4C**

What aspect of ground and surface water needs the most attention?

Water quality	1	=> Q4TX
Storm drainage.....	2	=> Q4TX
Flood control.....	3	=> Q4TX
All of the above aspects of water.....	4	=> Q4TX
Other.....	5 O	=> Q4TX
Don't know.....	8	=> Q5
Refused	9	=> Q5

70: **Q4D**

What aspect of housing needs the most attention?

Promote affordable housing.....	1	=> Q4TX
Code enforcement.....	2	=> Q4TX
Public housing	3	=> Q4TX
Funding for safety or handicap accessibility	4	=> Q4TX
All of the above aspects of housing	5	=> Q4TX
Other.....	6 O	=> Q4TX
Don't know.....	8	=> Q5
Refused	9	=> Q5

71: **Q4E**

What aspect of a clean and green city needs the most attention?

Definitions: Code Enforcement examples include enforcing city building codes dealing with issues such as abandoned homes and cars, trash, weeds and debris.

Hillside preservation.....	01	=> Q4TX
Tree planting and landscaping	02	=> Q4TX
Litter pick-up and cleanliness of streets.....	03	=> Q4TX
Removal of power lines from street frontage	04	=> Q4TX
Stronger codes	05	=> Q4TX
Improved code enforcement	06	=> Q4TX
All of the above	07	=> Q4TX
Other.....	08 O	=> Q4TX
Don't know.....	98	=> Q5
Refused	99	=> Q5

Codebook for the Fayetteville Citizen's Survey 2005
Prepared by the Survey Research Center, University of Arkansas
August 25, 2005

72: **Q4F**

To continue improving Downtown Fayetteville which would you most prefer?

Definitions: Downtown Fayetteville includes the region of Fayetteville bordered by College Avenue and Arkansas Avenue on the east and west and Maple Street and Sixth Street on the north and south.

More housing units in and around downtown.....	1	=> Q4TX
More attractive buildings and streets	2	=> Q4TX
More entertainment businesses and venues	3	=> Q4TX
More unique retail opportunities attracting shoppers	4	=> Q4TX
Greater ease of access and parking	5	=> Q4TX
More office space	6	=> Q4TX
Don't know.....	8	=> Q5
Refused	9	=> Q5

73: **Q4G**

Which section of College Avenue needs the most attention?

Interviewer: Don't read "All of College Avenue needs improvement". Use landmarks if needed: Mountain St.: Mountain Inn & Old Courthouse Maple: Papa John's Pizza Sycamore: Traffic light north of McDonald's Rolling Hills: Fiesta Square Shopping Center Zion Rd.: NWA Mall & Lowe's

Mountain to Maple Street	1	
Maple to Sycamore Street.....	2	
Sycamore Street to Rolling Hills Boulevard.....	3	
Rolling Hills Boulevard to Zion Road.....	4	
All of College Avenue needs improvement.....	5	
Don't know.....	8	=> Q5
Refused	9	=> Q5

74: **Q4H**

Which aspect of the <Q4G> section of College Avenue needs the most attention?

Interviewer: If the R tries to choose more than one response or says "all of those" ask them to choose the aspect that needs the most attention. Definitions: Landscape improvements other than trees means weed removal, planting bushes and flowers, etc.

Planting more trees on the streets	1	
Landscaping improvements other than trees.....	2	
Sidewalks.....	3	
Crosswalks.....	4	
The center turn lane at intersections	5	
Street resurfacing	6	
Don't know.....	8	
Refused	9	

Codebook for the Fayetteville Citizen's Survey 2005
Prepared by the Survey Research Center, University of Arkansas
August 25, 2005

75: **Q4TX**

In order to address <Q4>, would you be willing to pay additional taxes?

Yes.....	1
Maybe.....	2
No.....	3
Don't know.....	8
Refused.....	9

76: **Q5**

Okay, let's look at a slightly different subject. Of the following goals for the City of Fayetteville, which is the most important to you? Is it:

Definitions: Downtown Fayetteville includes the region of Fayetteville bordered by College Avenue and Arkansas Avenue on the east and west and Maple Street and Sixth Street on the north and south.

Planned and managed growth.....	1	=> Q5A
Development of Downtown Fayetteville.....	2	=> Q5B
Improvement of College Avenue.....	3	=> Q5F
Development of South Fayetteville.....	4	=> Q5C
Improved mobility and street quality.....	5	=> Q5D
A beautiful city- clean and green.....	6	=> Q5E
Don't know.....	8	=> Q7A
Refused.....	9	=> Q7A

77: **Q5A**

Which method of managing growth would you most prefer?

Interviewer: If the R is unsure what option two means tell them, "Denser housing means more units per acre."

Quality development within existing neighborhoods consistent with neighborhood plans.....	1	=> Q5TX
Develop denser housing of quality, such as condominiums and row houses.....	2	=> Q5TX
Upgrade infrastructure such as streets and utilities in older parts of Fayetteville.....	3	=> Q5TX
Growth paying for growth- continued use of fees on new construction to pay for needed infrastructure.....	4	=> Q5TX
New planning standards and/or regulations to support alternative development.....	5	=> Q5TX
Don't know.....	8	=> Q6
Refused.....	9	=> Q6

Codebook for the Fayetteville Citizen's Survey 2005
Prepared by the Survey Research Center, University of Arkansas
August 25, 2005

78: **Q5B**

To continue improving Downtown Fayetteville, which would you most prefer?

Definitions: Downtown Fayetteville includes the region of Fayetteville bordered by College Avenue and Arkansas Avenue on the east and west and Maple Street and Sixth Street on the north and south.

More housing units in and around downtown.....	1	=> Q5TX
More attractive buildings and streets	2	=> Q5TX
More entertainment businesses and venues	3	=> Q5TX
More unique retail opportunities attracting shoppers	4	=> Q5TX
Greater ease of access and parking	5	=> Q5TX
More office space	6	=> Q5TX
Don't know.....	8	=> Q6
Refused	9	=> Q6

79: **Q5C**

To improve South Fayetteville, which would you most prefer?

Develop more housing units in and around South Fayetteville	1	=> Q5TX
Develop new parks	2	=> Q5TX
Improve existing parks	3	=> Q5TX
Redevelop industrial areas for non-industrial uses	4	=> Q5TX
Develop sidewalks	5	=> Q5TX
Improve South School Avenue	6	=> Q5H
Don't know.....	8	=> Q6
Refused	9	=> Q6

80: **Q5D**

In order to improve mobility and street quality, which would you most prefer?

Definition: Improve traffic flow may include improving conditions of streets, widening the major streets that already exist, adding new streets, adding stop signs or stop lights and/or adjusting speed limits to reduce travel time and congestion and to improve safety.

Develop more sidewalks.....	1	=> Q5TX
Protect neighborhoods from traffic impacts	3	=> Q5TX
Develop improved public transportation	4	=> Q5TX
Improve traffic flow.....	5	=> Q5TX
Don't know.....	8	=> Q6
Refused	9	=> Q6

Codebook for the Fayetteville Citizen's Survey 2005
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August 25, 2005

81: **Q5E**

To enhance the beauty of Fayetteville, which would you most prefer?

Definitions: Streetscapes involve construction of enhancements to a street to improve the overall appearance and make it more appealing (eg brick crosswalks like those on Dickson Street). Gateways are entrances to a city from a major road or highway (eg interchange on Interstate 540 at the Fayetteville Business District exit near the NW Arkansas Mall.

Improve appearances of major corridors such as College Avenue	1	=> Q5TX
Preserve hillsides	2	=> Q5TX
Improve quality of parks throughout the city	3	=> Q5TX
Preserve trees	4	=> Q5TX
Enforce codes such as less trash on streets and integrity of structures ...	5	=> Q5TX
Create more attractive streetscapes and gateways or entrances	6	=> Q5TX
Enact a rental property inspection program	7	=> Q5TX
Don't know	8	=> Q6
Refused	9	=> Q6

82: **Q5F**

Which section of College Avenue needs the most attention?

Interviewer: Don't read "All of College Avenue needs improvement". Use landmarks if needed: Mountain St.: Mountain Inn & Old Courthouse Maple: Traffic light, pizza shop, frame shop Sycamore: Traffic light north of McDonald's Rolling Hills: Fiesta Square Shopping Center Zion Rd.: NWA Mall & Lowe's

Mountain to Maple Street	1	
Maple to Sycamore Street	2	
Sycamore Street to Rolling Hills Boulevard	3	
Rolling Hills Boulevard to Zion Road	4	
All of College Avenue needs improvement	5	
Don't know	8	=> Q6
Refused	9	=> Q6

83: **Q5G**

Which aspect of the <Q5F> section of College Avenue needs the most attention?

Interviewer: If the R tries to choose more than one response or says "all of those" ask them to choose the aspect that needs the most attention.

Definitions: Landscape improvements other than trees means weed removal, planting bushes and flowers, etc.

Planting more trees on the streets	1	=> Q5TX
Landscaping improvements other than trees	2	=> Q5TX
Sidewalks	3	=> Q5TX
Crosswalks	4	=> Q5TX
The center turn lane at intersections	5	=> Q5TX
Street resurfacing	6	=> Q5TX
Don't know	8	=> Q6
Refused	9	=> Q6

Codebook for the Fayetteville Citizen's Survey 2005
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August 25, 2005

84:

Q5H

Which aspect of S. School Avenue needs the most attention?

Interviewer: If the R tries to choose more than one response or says "all of those" ask them to choose the aspect that needs the most attention.

Definitions: Landscape improvements other than trees means weed removal, planting bushes and flowers, etc.

Planting more trees on the streets	1
Landscaping improvements other than trees.....	2
Sidewalks.....	3
Crosswalks.....	4
The center turn lane at intersections	5
Street resurfacing	6
Don't know.....	8
Refused	9

85:

Q5TX

In order to address <Q5>, would you be willing to pay additional taxes?

Yes.....	1
Maybe.....	2
No	3
Don't know.....	8
Refused	9

86:

Q6

Of the remaining goals for the City of Fayetteville, which is the most important to you?

Definitions: Downtown Fayetteville includes the region of Fayetteville bordered by College Avenue and Arkansas Avenue on the east and west and Maple Street and Sixth Street on the north and south.

Planned and managed growth	1	=> Q6A
Development of Downtown Fayetteville	2	=> Q6B
Improvement of College Avenue.....	3	=> Q6F
Development of South Fayetteville	4	=> Q6C
Improved mobility and street quality.....	5	=> Q6D
A beautiful city- clean and green.....	6	=> Q6E
Don't know.....	8	=> Q7A
Refused	9	=> Q7A

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87: **Q6A**

Which method of managing growth would you most prefer?

Quality development within existing neighborhoods consistent with neighborhood plans.....	1	=> Q6TX
Develop affordable housing.....	2	=> Q6TX
Upgrade infrastructure such as streets and utilities in older parts of Fayetteville	3	=> Q6TX
Growth paying for growth- continued use of fees on new construction to pay for needed infrastructure	4	=> Q6TX
New planning standards and/or regulations to support alternative development.....	5	=> Q6TX
Don't know.....	8	=> Q7A
Refused.....	9	=> Q7A

88: **Q6B**

To continue improving Downtown Fayetteville, which would you most prefer?

Definitions: Downtown Fayetteville includes the region of Fayetteville bordered by College Avenue and Arkansas Avenue on the east and west and Maple Street and Sixth Street on the north and south.

More housing units in and around downtown.....	1	=> Q6TX
More attractive buildings and streets	2	=> Q6TX
More entertainment businesses and venues	3	=> Q6TX
More unique retail opportunities attracting shoppers	4	=> Q6TX
Greater ease of access and parking	5	=> Q6TX
More office space	6	=> Q6TX
Don't know.....	8	=> Q7A
Refused.....	9	=> Q7A

89: **Q6C**

To improve South Fayetteville, which would you most prefer?

Develop more housing units in and around South Fayetteville	1	=> Q6TX
Develop new parks	2	=> Q6TX
Improve existing parks	3	=> Q6TX
Redevelop industrial areas for non-industrial uses	4	=> Q6TX
Develop sidewalks.....	5	=> Q6TX
Improve South School Avenue.....	6	=> Q6H
Don't know.....	8	=> Q6TX
Refused.....	9	=> Q7A

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90: **Q6D**

In order to improve mobility and street quality, which would you most prefer?

Definition: Improve traffic flow may include improving conditions of streets, widening the major streets that already exist, adding new streets, adding stop signs or stop lights and/or adjusting speed limits to reduce travel time and congestion and to improve safety.

Develop more sidewalks.....	1	=> Q6TX
Protect neighborhoods from traffic impacts	3	=> Q6TX
Develop improved public transportation	4	=> Q6TX
Improve traffic flow.....	5	=> Q6TX
Don't know.....	8	=> Q6TX
Refused.....	9	=> Q7A

91: **Q6E**

To enhance the beauty of Fayetteville, which would you most prefer?

Definitions: Streetscapes involve construction of enhancements to a street to improve the overall appearance and make it more appealing (eg brick crosswalks like those on Dickson Street). Gateways are entrances to a city from a major road or highway (eg interchange on Interstate 540 at the Fayetteville Business District exit near the NW Arkansas Mall.

Improve appearances of major corridors such as College Avenue	1	=> Q6TX
Preserve hillsides	2	=> Q6TX
Improve quality of parks throughout the city	3	=> Q6TX
Preserve trees.....	4	=> Q6TX
Enforce codes such as less trash on streets and integrity of structures ...	5	=> Q6TX
Create more attractive streetscapes and gateways or entrances	6	=> Q6TX
Enact a rental property inspection program.....	7	=> Q6TX
Don't know.....	8	=> Q7A
Refused	9	=> Q7A

92: **Q6F**

Which section of College Avenue needs the most attention?

Interviewer: Don't read "All of College Avenue needs improvement". Use landmarks if needed: Mountain St.: Mountain Inn & Old Courthouse Maple: Traffic light, Pizza Shop, Frame Shop Sycamore: Traffic light north of McDonald's Rolling Hills: Fiesta Square Shopping Center Zion Rd.: NWA Mall & Lowe's

Mountain to Maple Street.....	1	
Maple to Sycamore Street.....	2	
Sycamore Street to Rolling Hills Boulevard.....	3	
Rolling Hills Boulevard to Zion Road.....	4	
All of College Avenue needs improvement.....	5	
Don't know.....	8	=> Q7A
Refused	9	=> Q7A

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93:

Q6G

Which aspect of the <Q6F> section of College Avenue needs the most attention?

Interviewer: If the R tries to choose more than one response or says "all of those" ask them to choose the aspect that needs the most attention.

Definitions: Landscape improvements other than trees means weed removal, planting bushes and flowers, etc.

Planting more trees on the streets	1	=> Q6TX
Landscaping improvements other than trees.....	2	=> Q6TX
Sidewalks.....	3	=> Q6TX
Crosswalks.....	4	=> Q6TX
The center turn lane at intersections	5	=> Q6TX
Street resurfacing.....	6	=> Q6TX
Don't know.....	8	=> Q7A
Refused.....	9	=> Q7A

94:

Q6H

Which aspect of S. School Avenue needs the most attention?

Interviewer: If the R tries to choose more than one response or says "all of those" ask them to choose the aspect that needs the most attention. Definitions:

Landscape improvements other than trees means weed removal, planting bushes and flowers, etc.

Planting more trees on the streets	1
Landscaping improvements other than trees.....	2
Sidewalks.....	3
Crosswalks.....	4
The center turn lane at intersections	5
Street resurfacing.....	6
Don't know.....	8
Refused.....	9

95:

Q6IX

In order to address <Q6>, would you be willing to pay additional taxes?

Yes.....	1
Maybe.....	2
No	3
Don't know.....	8
Refused.....	9

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96:

Q7A

Downtown Master Plan

In the past few years, the City has developed the Downtown Master Plan for revitalizing downtown Fayetteville. How satisfied are you with the planning process? Are you:

Interviewer: Don't read "haven't heard of the plan". Examples of the revitalization include the Convention Center, moving the library downtown, financing the rebuilding of the Mountain Inn block, remodeling the old Courthouse, redesigning and improving the gardens on the square and improving the Lights of the Ozarks Festival.

- | | | |
|---|---|-------|
| Very satisfied..... | 1 | |
| Satisfied..... | 2 | |
| Neither satisfied nor dissatisfied..... | 3 | |
| Dissatisfied..... | 4 | |
| Very dissatisfied..... | 5 | |
| Haven't heard of the plan (silent)..... | 6 | => Q8 |
| Don't know..... | 8 | => Q8 |
| Refused..... | 9 | => Q8 |

97:

Q7B

Downtown Master Plan

To what extent have you participated in the Downtown Master Planning process? Was it to:

- | | |
|---|---|
| A great extent..... | 1 |
| Some extent..... | 2 |
| Neither some or a small extent..... | 3 |
| Small extent..... | 4 |
| Have not participated at all in the planning process..... | 5 |
| Don't know..... | 8 |
| Refused..... | 9 |

98:

Q8

Dickson Street Improvements

In the past few years, the City rebuilt and repaved Dickson Street, installed new lighting, installed and repaired sidewalks, gutters and curbs, added handicap accessibility features and added new street crossings, signage and landscaping. How satisfied or dissatisfied are you with the changes:

- | | |
|---|---|
| Very satisfied..... | 1 |
| Satisfied..... | 2 |
| Neither satisfied nor dissatisfied..... | 3 |
| Dissatisfied..... | 4 |
| Very dissatisfied..... | 5 |
| Don't know..... | 8 |
| Refused..... | 9 |

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99:

Q9.1

Fayetteville has initiated several new programs in the last few years. Please tell me which of the following programs you are aware of?				
	Yes	No	Don't know	Refused
The anti-litter program	☒	☒	☒	☒
Street resurfacing, sidewalk, curb and gutter improvements	☒	☒	☒	☒
New park programming	☒	☒	☒	☒
New multi-use trail system	☒	☒	☒	☒
Council of Neighborhoods' neighborhood associations	☒	☒	☒	☒
Public safety improvements	☒	☒	☒	☒

105:

Q9A

~~City program awareness~~

How effective has the anti-litter program been?

- Very effective 1
- Effective 2
- Neither effective nor ineffective 3
- Ineffective 4
- Very ineffective 5
- Don't know 8
- Refused 9

106:

Q9B

~~City program awareness~~

How has the street resurfacing, sidewalks, curbs and gutters program changed the quality of your typical ride? Is it:

Interviewer: This is also called the "overlay" program.

- A lot smoother 1
- Smoother 2
- The same as before 3
- Rougher 4
- A lot rougher 5
- Don't know 8
- Refused 9

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107:

Q9C

How has your use of Fayetteville's parks changed, if at all, as a result of the changes in park programming? Has your park use:

- Increased a lot..... 1
- Increased..... 2
- Stayed the same..... 3
- Decreased..... 4
- Decreased a lot..... 5
- Don't know..... 8
- Refused..... 9

108:

Q9D

One of the goals for the multi-use trail system is to provide a well-planned, safe and efficient system for pedestrians and bicyclists that will connect neighborhoods, parks, schools and businesses. If such a trail system existed in your neighborhood, how likely would you be to use it to get around for transportation and/or recreation:

- Very likely..... 1
- Likely..... 2
- Neither likely nor unlikely..... 3
- Unlikely..... 4
- Very unlikely..... 5
- Don't know..... 8
- Refused..... 9

109:

Q9E

How responsive is your neighborhood association to your concerns:

Interviewer: This pertains only to Council of Neighborhoods' neighborhood associations.

- Very responsive..... 1
- Responsive..... 2
- Neither responsive nor unresponsive..... 3
- Unresponsive..... 4
- Very unresponsive..... 5
- I am not a member of a neighborhood association (silent)..... 6
- Don't know..... 8
- Refused..... 9

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110:

Q9F

~~Citizen's awareness~~

Which of the following public safety services performs the best?

Police.....	1	
Fire.....	2	
Ambulance.....	3	
Don't know.....	8	=> HOU
Refused.....	9	=> HOU

111:

Q9G

~~Citizen's awareness~~

Which of the following public safety services needs more attention?

Police.....	1
Fire.....	2
Ambulance.....	3
Don't know.....	8
Refused.....	9

112:

HOU

~~Housing types~~

Now we're going to do something a bit different. For each of the following types of housing in Fayetteville, please tell me if there are too many, too few or if the number of these housing units is just about right.

113:

Q10A

Housing for first time buyers

Interviewer: if the R seems hesitant repeat, "Are there too many, too few or just about the right amount of this type of housing".

Too many.....	1
Too few.....	2
Just about the right amount.....	3
Don't know.....	8
Refused.....	9

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114: **Q10B**
Condominiums

Interviewer: if the R seems hesitant repeat, "Are there too many, too few or just about the right amount of this type of housing".

Definitions: Condominiums are individually owned homes or apartments contained in a multi-unit complex or on land owned commonly by all residents.

Too many..... 1
Too few..... 2
Just about the right amount..... 3
Don't know..... 8
Refused..... 9

115: **Q10C**
Apartments

Interviewer: if the R seems hesitant repeat, "Are there too many, too few or just about the right amount of this type of housing".

Too many..... 1
Too few..... 2
Just about the right amount..... 3
Don't know..... 8
Refused..... 9

116: **Q10D**
Single family homes

Interviewer: if the R seems hesitant repeat, "Are there too many, too few or just about the right amount of this type of housing".

Too many..... 1
Too few..... 2
Just about the right amount..... 3
Don't know..... 8
Refused..... 9

117: **Q10E**
Housing for older adults

Interviewer: if the R seems hesitant repeat, "Are there too many, too few or just about the right amount of this type of housing".

Too many..... 1
Too few..... 2
Just about the right amount..... 3
Don't know..... 8
Refused..... 9

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118 **Q10F**

Affordable housing

Interviewer: if the R seems hesitant repeat, "Are there too many, too few or just about the right amount of this type of housing".

Definitions: Affordable housing is housing which costs no more than 30% of a household's annual income.

Too many.....	1
Too few.....	2
Just about the right amount.....	3
Don't know.....	8
Refused.....	9

119 **Q11**

Switching gears, I'm about to ask you two questions where you can select all the answers that apply. To start, when you want information from the city, how do you get it? Do you obtain it through:

Definitions: Personal Contact includes such activities as attending City Council meetings, visiting with Council representatives, attending public meetings, visiting City Hall and talking to neighbors, friends or relatives. Newspapers include the Arkansas Democrat Gazette, the Morning News, the NWA Times, Fayetteville Free Weekly and All About Town among others. Radio includes stations such as KUAF, KKEG, KXNA and others. Government Access Channel (PEG) appears on COX Channel 16. Its broadcasts include but aren't limited to: Fayetteville City Council Meetings, Fayetteville City Planning Commission Meetings and Washington County Quorum Court. Public Access Television appears on COX Channel 18. It's operated by Community Access Television (CAT), a nonprofit organization under contract with the city of Fayetteville. CAT's purpose is to provide a channel of free expression for every citizen. The city of Fayetteville exercises no editorial control over CAT. Internet includes going to the city website or to other websites. Inserts in utility bills are fliers and handbills included in the utility bills mailed by the City. These inserts inform citizens of changes in policy, suggest energy-saving techniques and other things.

Personal contact.....	01
Ward meetings.....	02
Council of Neighborhood Association meetings.....	03
Newspapers.....	04
Radio.....	05
Public access television (CAT).....	06
Government access channel.....	07
Other television stations.....	08
Internet.....	09
Inserts in utility bills.....	10
I don't seek information from the City.....	11
Don't know.....	98
Refused.....	99

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120: **Q12**

How do you communicate with the City? Again, please tell me all the answers that apply. Do you:

Attend City Council meetings	01
Visit with City Council representatives	02
Attend Ward meetings	03
Attend Council of Neighborhood Association meetings	04
Visit with other governmental representatives (eg mayor, city staff) ...	05
Communicate via telephone	06
Communicate via letter	07
Communicate via e-mail	08
Communicate via the city website	09
Don't contact the city	10
Don't know	98
Refused	99

121: **Q13**

Fayetteville has grown over the past two years. Would you say that Fayetteville's growth has been:

Much too slow	1
Somewhat too slow	2
The right amount	3
Somewhat too fast	4
Much too fast	5
Don't know	8
Refused	9

122: **Q14**

Fayetteville's business and retail growth has been:

Much too slow	1
Somewhat too slow	2
The right amount	3
Somewhat too fast	4
Much too fast	5
Don't know	8
Refused	9

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123: Q15

Fayetteville's job growth has been:

- Much too slow 1
- Somewhat too slow 2
- The right amount 3
- Somewhat too fast 4
- Much too fast 5
- One of the above, but they're all minimum wage jobs 6
- Don't know 8
- Refused 9

124: MGR

Now we would like your opinions about some options for managing growth.

125: Q16

Which do you prefer, that the City promote quality development by allowing building:

- Within existing neighborhoods consistent with neighborhood plans 1
- Outside currently established neighborhoods 2
- Neither one 3
- Don't know 8
- Refused 9

126: Q17

How supportive or unsupportive are you of the City acquiring land to preserve open or green spaces? Are you:

- Very supportive 1
- Supportive 2
- Neither supportive nor unsupportive 3
- Unsupportive 4
- Very unsupportive 5
- Don't know 8
- Refused 9

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127: **Q18**

How well or poorly do you feel the City is following established long-term land use plans? Are they following them:

Definitions: Long-term land use plans are plans for an area of land that prepares for growth and use of the land over a time span of decades.

- Very well 1
- Well 2
- Neither well nor poorly 3
- Poorly 4
- Very poorly 5
- Don't know 8
- Refused 9

128: **Q19**

Cities sometimes focus on specific areas of the city that need more development.

How supportive or unsupportive are you of providing incentives to encourage development temporarily in specific areas of the city? Are you:

Interviewer: Examples include the TIF district, South Fayetteville.

- Very supportive 1
- Supportive 2
- Neither supportive nor unsupportive 3
- Unsupportive 4
- Very unsupportive 5
- Don't know 8
- Refused 9

129: **Q20**

For which of the following would you be willing to pay an extra \$10.00 to \$20.00 per year in taxes?

- Instituting a smart growth plan for the area 1
- Buying land for greenspace that would not be developed 2
- Buying land to keep farmland from being developed 3
- Buying land for parks 4
- Unwilling to pay any additional taxes (silent) 5
- Don't know 8
- Refused 9

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130:

Q21

Currently 3/4 of a cent of Fayetteville's sales tax is used for sewer improvement. Do you favor or oppose extending the existing 3/4 cent tax to make other infrastructural improvements?

Interviewer: If the tax is extended, citizens will not see an increase in their sales tax. This will simply extend the duration of the tax to provide money for other infrastructural improvements such as improving city water services and road maintenance.

Favor..... 1
Oppose..... 2
Unsure..... 3
Refused..... 9

131:

Q22

Do you favor or oppose spending additional tax dollars for street improvements?

Favor..... 1
Oppose..... 2
Unsure..... 3
Refused..... 9

132:

Q23

Is there any area of Fayetteville where you would be afraid to walk alone at night?

Yes..... 1
No..... 2 => Q25
Don't know..... 8 => Q25
Refused..... 9 => Q25

133:

Q24

Where?

Enter location here..... 0
Don't know..... 8
Refused..... 9

134:

Q25

How about at home at night-- do you feel safe and secure, or not?

Yes..... 1
No..... 2
Don't know..... 8
Refused..... 9

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135:

DEMO

Demographics
We're nearly done. I just need to ask you a few questions to make sure we've talked to a wide variety of people from all over the city.

136:

TENU

Demographics
How long have you lived in Fayetteville?

- Less than one year 1
- 1 to 5 years..... 2
- 6 to 10 years..... 3
- 11 to 20 years..... 4
- More than 20 years, but not all my life..... 5
- All of my life 6
- Don't know..... 8
- Refused..... 9

137:

STLV

Demographics
On what street do you live?

- Betty Jo Dr..... 01 => /CSST
- Cato Springs Rd..... 02 => /CSST
- College Ave..... 03 => /CSST
- Crossover (Highway 265)..... 04 => /CSST
- Garland Ave..... 05
- Huntsville Rd. (Route 16)..... 06 => /CSST
- Lafayette..... 07 => /CSST
- Lake Sequoyah Dr. 08 => /CSST
- Leverett..... 09 => /CSST
- Maple St..... 10 => /CSST
- Mission (Route 45) 11
- North St. 12 => /CSST
- Old Wire Rd..... 13
- Rolling Hills Blvd..... 14 => /CSST
- Sang Ave. 15 => /CSST
- School St..... 16 => /CSST
- Sixth St. (Highway 62) 17 => /CSST
- Sycamore 18 => /CSST
- Township Rd..... 19
- Wedington Rd..... 20 => /CSST
- Zion Blvd..... 21 => /CSST
- Other street 22 O => /CSST
- Don't know..... 98 => /CSST
- Refused..... 99 => /CSST

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138:

ODEV

Is your house number odd or even?

Interviewer: If the respondent asks why you want to know tell them, "your street is a ward boundary. To know which ward you live in we need to know whether your house number is odd or even."

Odd	1
Even	2
Don't know.....	8
Refused	9

139:

CSST

What is the nearest cross street to your home?

Cleveland.....	01
Crossover (Highway 265).....	02
Garland Ave.....	03
Huntsville Rd. (Route 16).....	04
Lafayette	05
Leverett.....	06
Maple St.....	07
Mission Blvd. (Route 45)	08
North St.	09
Old Missouri Rd.	10
Old Wire Rd.....	11
Razorback Rd.	12
Rock St.	13
S. School St.	14
Sang Ave.	15
Sixth St. (Highway 62)	16
Sycamore St.....	17
Township Ave.....	18
Wedington Rd.....	19
Zion Rd.....	20
Other street	21 O
Don't know.....	98
Refused	99

140:

RESD

Demographics

Which of these best describes your residence:

One family house detached from any other houses	1
One family house attached to one or more houses.....	2
A building with two or more apartments	3
Mobile home.....	4
Dormitory or residence hall	5
Other	6 O
Don't know.....	8
Refused	9

=> /FUTR

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141:

HOME

~~Demographics~~

Do you rent or own your current residence?

Rent.....	1	
Own	2	=> /FUTO
Lease to own.....	3	=> /FUTO
Other.....	4	O
Don't know.....	8	
Refused.....	9	

142:

FUTR

~~Demographics~~

In the next five years, do you plan to rent a home or do you plan to buy a home?

Rent a home.....	1	=> /REAS
Buy a home.....	2	=> /REAS
Neither	4	=> /REAS
Other.....	3	O
Don't know.....	8	=> /REAS
Refused.....	9	=> /REAS

143:

FUTO

~~Demographics~~

In the next five years, do you plan to continue owning a home or do you plan to rent a home?

Rent a home.....	1	
Continue owning a home.....	2	
Other.....	3	O
Don't know.....	8	
Refused.....	9	

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144: REAS

Demographic

What is the top reason you choose to live in Fayetteville? I have a list:

Interviewer: if the R gives more than one reason, get the TOP reason.

Close to family.....	01
Quality of life.....	02
Close to work.....	03
Close to the U of A.....	04
School quality.....	05
The weather.....	06
High value for the tax dollar.....	07
Recreation opportunities.....	08
Born here.....	09
All of the above.....	10
Other.....	11 O
Don't know.....	98
Refused.....	99

145: WORK

Demographic

Which of the following best describes you? Are you:

Interviewer: If the R gives you two answers, ask them which BEST describes them.

Working full-time (35 hours a week or more).....	01
Working part-time.....	02
Looking for work.....	03
Student, not working.....	04
Student, working part-time.....	05
Student, working full-time.....	06
A full-time homemaker.....	07
Retired and work part or full-time.....	08
Retired and don't work.....	09
Other.....	10 O
Don't know.....	98
Refused.....	99

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146: **CONG**

Demographics
How long, on average, does it take you to go one way to work, school or a place to which you regularly commute?

Interviewer: If they have two or more activities, e.g. work and school, ask about their longer commute.

One quarter hour or less (15 minutes or less)	01
Half hour (30 minutes).....	02
Three quarters hour (45 minutes).....	03
One hour (60 minutes).....	04
Hour and 15 minutes (75 minutes)	05
Hour and a half (90 minutes).....	06
Hour and three-quarters (105 minutes).....	07
Two hours (120 minutes).....	08
Two and a quarter hours or more (135 minutes or more).....	09
Not applicable (doesn't leave home).....	97
Don't know.....	98
Refused.....	99

147: **HISP**

Demographics
Are you Spanish, Hispanic or Latino?
Definitions: Spanish, Hispanic or Latino describes people of Cuban, Mexican, Puerto Rican, South or Central American or other Spanish culture or origin, regardless of race (US Census Bureau definition).
Yes..... 1
No..... 2
Don't know..... 8
Refused..... 9

148: **RACE**

Demographics
What is your race?
White..... 1
Black or African-American..... 2
Asian..... 3
American Indian or Alaska native..... 4
Native Hawaiian or other Pacific Islander..... 5
Other..... 6 O
Don't know..... 8
Refused..... 9

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149: **EDUC**

Demographics

What is the highest degree or level of school you have completed?

- 12th grade or less, no diploma 1
- High school graduate or GED..... 2
- Some college, no degree 3
- Associate degree (eg AA, AS, vocational school, certificate program).. 4
- Bachelor's degree (eg BA, BS, AB)..... 5
- Graduate or professional degree 6
- Don't know..... 8
- Refused 9

150: **VOTE**

Demographics

In talking to people about elections, we often find that a lot of people were not able to vote because they weren't registered, they were sick, or they just didn't have time. Which of the following statements best describes you in the 2004 presidential election:

Interviewer: If the R is unsure which election you are referring to tell them, "In 2004, you remember that John Kerry ran for president on the Democratic ticket against George W. Bush for the Republicans. For that election, which of the following best describes you:"

- I did not vote (in the election last November) 1
- I thought about voting last time- but didn't..... 2
- I usually vote, but didn't last time 3
- I am sure I voted 4
- Don't know..... 8
- Refused 9

151: **BYEAR**

Demographics

In what year were you born?

- Enter year.....
- Don't know..... 9998
- Refused 9999

Codebook for the Fayetteville Citizen's Survey 2005
Prepared by the Survey Research Center, University of Arkansas
August 25, 2005

152: **INCO**

Demographics
How much do you anticipate your household's total income before taxes will be in 2005?

Interviewer: if the R asks why we need this information, explain that it is only to assure that we spoke to a sufficient number of people of different backgrounds.

Less than \$15,000 1
\$15,001 to \$25,000 2
\$25,001 to \$35,000 3
\$35,001 to \$50,000 4
\$50,001 to \$75,000 5
\$75,001 to \$100,000 6
More than \$100,000 7
Don't know 8
Refused 9

153: **GEND**

Demographics
Finally, are you:

Male 1
Female 2
Refused 9

154: **SIZE**

How many people, including yourself, live in this household?

Enter response
Don't know 98
Refused 99

155: **CHIL**

How many children live in this household? Interviewer: Children are ages 17 or younger.

Enter number
Don't know 98
Refused 99

Tabled to May 1, 2007 City Council Mtg 4/17/07

City Council Meeting of April 17, 2007
Agenda Item Number

CITY COUNCIL AGENDA MEMO

To: Mayor and City Council
Thru: Gary Dumas, Director of Operations
From: Tim Conklin, Planning and Development Management Director
Date: March 30, 2007
Subject: Approval of a resolution to change seven street names and convert addresses to the Fayetteville E911 house numbering system within the City of Fayetteville as a result of the West Fayetteville annexation.

RECOMMENDATION

Staff recommends approval of a resolution to change seven street names and convert addresses to the Fayetteville E911 street numbering system within the City of Fayetteville as a result of the West Fayetteville annexation.

BACKGROUND

The City of Fayetteville has adopted an addressing system that provides a uniform four-digit numbering grid system, which also doesn't allow duplicate street names. Currently, there are seven street names that are duplicated in the City as the result of the annexed area. This grid also differs from the Washington County five-digit street numbering system. After consulting with Fayetteville Central Dispatch, Fire Department, and Police Department, the City recommends making this change in order to provide the best emergency response to this area. Attached is a list of proposed street name changes.

BUDGET IMPACT

The City proposes to distribute new address numbers to the residents at a cost of approximately \$1,800.

RESOLUTION NO. _____

**A RESOLUTION TO CHANGE THE NAMES OF SEVERAL
STREETS OR ROADS WITHIN FAYETTEVILLE BECAUSE
OF DUPLICATE OR CONFUSING STREET NAMES WITHIN
ANNEXED AREAS**

WHEREAS, GIS and emergency services have requested that the streets shown below be renamed in order to prevent confusion especially for the possible dispatch of emergency services for citizens living on those streets.

**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 changes the names of the listed streets to the new names as shown:

- (a) Zion Drive – changed to North Columbia Drive
- (b) Harmon South Road – changed to Harmon Road (with northern and southern portions identified)
- (c) West Hill Side Drive – changed to West Scarborough Drive
- (d) West Highway 16 – changed to West Wedington Drive (within City limits)
- (e) East Overlook Place – changed to East Canyon Court
- (f) Timber Ridge Lane – changed to North Riding Ridge Lane
- (g) Edwards Lane – changed to Athens Lane

Section 2: That the City Council of the City of Fayetteville, Arkansas hereby resolves this Resolution to be in full force and effect on May 1, 2007.

PASSED and APPROVED this 17th day of April, 2007.

APPROVED:

ATTEST:

By: _____
DAN COODY, Mayor

By: _____
SONDRA E. SMITH, City Clerk/Treasurer

Street Name Changes:

1. ZION DR change to N COLUMBIA DR

- Prior to ORD. 4888, there was already a ZION RD and ZION PL. Propose change due to possible confusion for e911 dispatch.

2. HARMON SOUTH RD change to N HARMON RD and S HARMON RD

- Using the City's address blocks, the northern half of HARMON SOUTH RD would have been given a NORTH pre-direction, making it N HARMON SOUTH RD. In order to avoid confusion for citizens & e911 dispatch and comply with the addressing system, HARMON SOUTH RD should be split at the 00 N/S block line.

3. W HILL SIDE DR change to W SCARBOROUGH DR

- Prior to ORD. 4888, there was already a N HILLSIDE TER. Propose change due to possible confusion for e911 dispatch.

4. W HWY 16 change to W WEDINGTON DR

- Propose change because W HWY 16 is the continuation of W WEDINGTON DR within the City Limits.

5. E OVERLOOK PL change to E CANYON CT (there are lots, but no housing units on this street yet)

- Propose change to E OVERLOOK PL (within City Limits prior to ORD. 4888) because there are currently no addresses off this street and would not affect anyone. There is also, in the newly annexed area, a S OVERLOOK DR. Propose change to avoid confusion for e911 dispatch.

6. TIMBER RIDGE LN change to N RIDING RIDGE LN

- Prior to ORD. 4888, there was already a N TIMBERRIDGE CT. Propose change due to possible confusion for e911 dispatch.

7. EDWARDS LN change to ATHENS LN

- Prior to ORD. 4888, a street named Ed Edwards Rd existed within the City. Proposed change due to possible confusion for E911.



Notice of Address Change

««AddressBlock»»

In the event of an emergency, the rapid response of emergency service personnel is critical for your safety and well being. When the E911 system was developed, there were two types of address numbering systems put in place. One is used by the county and the other is used by cities, individually. As the population of each city increases, there is a need to incorporate the county addresses into the city's addressing scheme. For this reason, with the recent annexation in west Fayetteville, it is appropriate to change the county addresses to fit the City of Fayetteville's addressing scheme.

While this will create some short-term inconvenience, the long-term benefit to your safety and well-being will be well worth the inconvenience.

In order to comply with E911 standards the following address has changed:

Old Address: «FULLADD_OLD», «CITY», «STATE» «ZIP»

New Address: «FullAdd_new», «New_City», «STATE» «New_Zip»

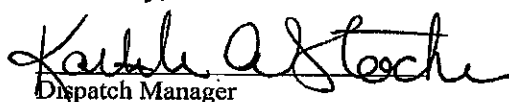
We will notify the utilities, the post office, AT&T and Prairie Grove Telephone and E911 response agencies. Your mail will be forwarded for up to one year, this will allow time for you to notify those you do business with, and deplete your existing stationary, checks etc. It is important that you verify that the County Clerk's office has changed the address for your **voter registration (444-1711)**.

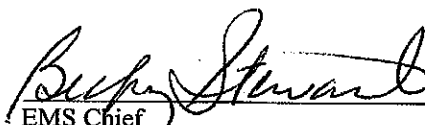
For your convenience, I have enclosed new address numbers for your use. For your safety and the convenience of those who are delivering items to you, or to locate your home or business in an emergency situation **please post your address so it can be seen from the street**. Please change your address numbers as soon as possible, as E911 will begin using this new address immediately. The enclosed nail-up house numbers and mail box labels are highly visible and will assist all those trying to locate your home or business. Using an old address may increase the time it takes emergency services to reach your location.

In the cases where this letter goes to a corporate office or property owner at a different location than this address, please make sure those doing business at this address are notified of this change and will make the appropriate adjustments.

If you feel you received this letter in error, please contact Susan Pierce at 575-8391 at your earliest convenience.

Sincerely,


Dispatch Manager


EMS Chief


Fire Chief


Police Chief



FAYETTEVILLE

B. 1
Fayetteville E911 House Numbering
Page 6 of 14

THE CITY OF FAYETTEVILLE, ARKANSAS

POLICE DEPARTMENT

March 5, 2007

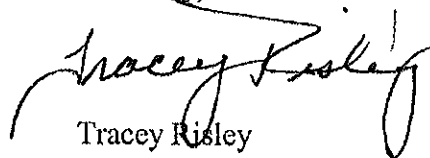
Dear Newly Annexed Fayetteville Resident:

I would like to take this opportunity to welcome you into the city limits of Fayetteville. It is our wish to provide you with prompt and efficient service especially in public safety related matters. On behalf of the divisional directors that represent the City of Fayetteville's service related operations, we sincerely thank you for your cooperation and understanding as we undertake the task of mapping and identifying your property for service delivery.

One of the largest challenges we face is the ability to effectively identify your property with a unique address that does not permit any ambiguity or possibility for confusion with similar preexisting addresses within Fayetteville. This issue is of great concern to police and fire officials responding to emergency calls for service. Timely response is critical in matters involving your safety. We will be working with the city's Mapping Services Division to clear up any duplicate or similar addresses. This will require the renaming and renumbering of many streets within the annexed area. We understand this poses an inconvenience for many of you. It will be essential for you to mark your mailbox and property with the new address so it is clearly visible to service providers.

Please feel free to contact the Fayetteville Police Department if you need our services. You may visit our website at www.accessfayetteville.org for a comprehensive list of services offered by the City of Fayetteville or we can provide you with a list of services by standard or electronic mail. The Fayetteville Police Department's non-emergency phone number is 479-587-3555. Ask for the Community Policing Division to request information about the Fayetteville Police Department.

Sincerely,


Tracey Risley
Deputy Chief of Police



City of Fayetteville Fire Department
303 W. Center St. Fayetteville, AR. 72701
Phone (479) 575-8365 Fax (479) 575-0471

March 1, 2007

To: New City of Fayetteville Residents

I would like to take this opportunity to welcome each and every household that has been annexed by the City of Fayetteville, to our community. The City provides the highest level of service and offers many opportunities for its residents to enjoy. As fire chief, it is my priority to maintain the reputation of the City as a "Safe Community."

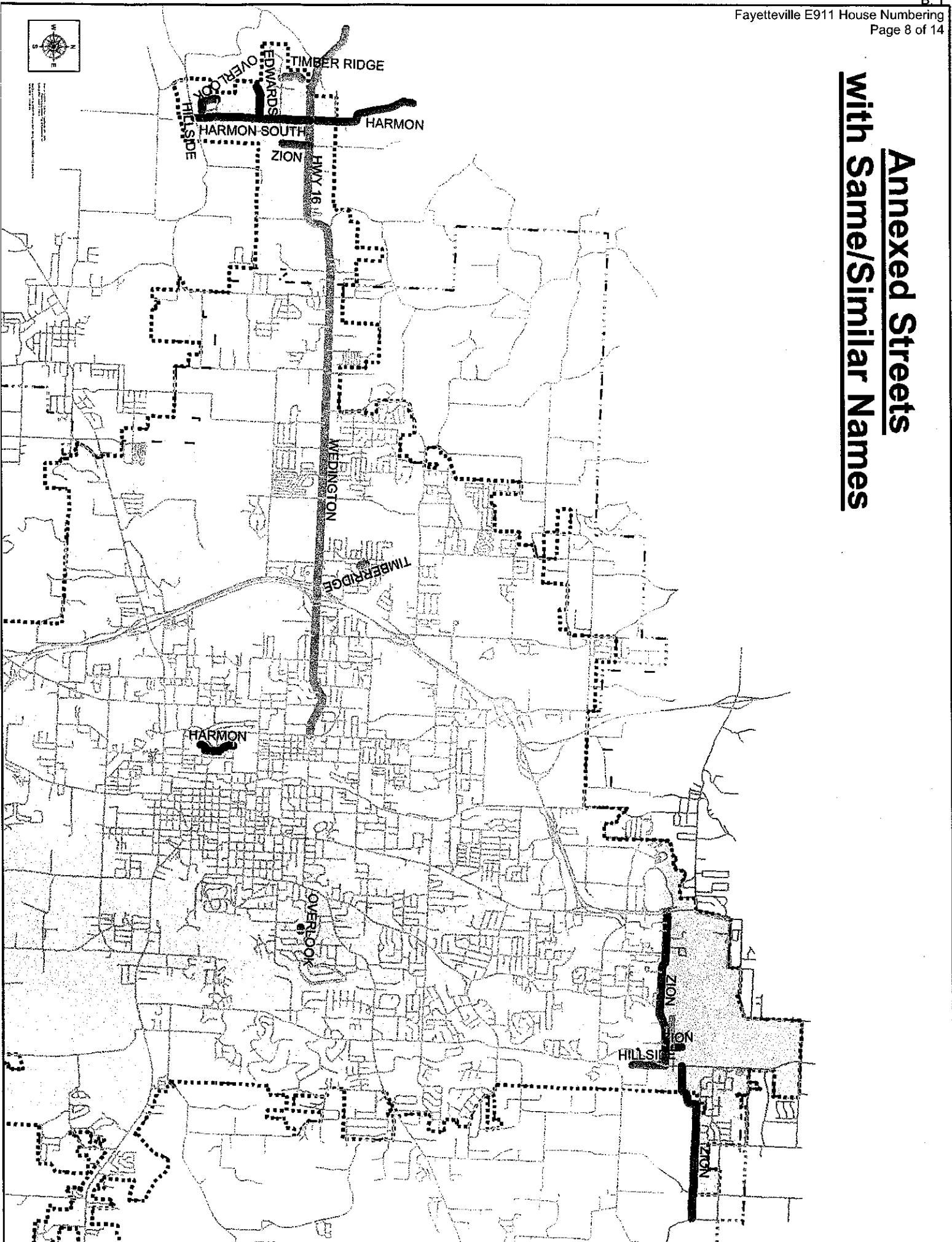
In an effort to continue with our reputation and to provide for an effective, efficient and accountable emergency response, I'm supporting a request that will be going before the Fayetteville City Council for address and street name changes. Your current house number does not follow in sequence with Fayetteville's numbering system. In addition, there may also be a need to change the name of your street from the county index to a municipal index. These changes are important from an emergency service standpoint and it will assist the firefighters and emergency medical technicians of our department to locate and respond to your call for service in the shortest amount of time.

I am asking that you help me to better serve you by supporting the proposed changes in the re-numbering and re-naming of addresses.

Thanking you in advance for your support,

Tony Johnson, Fire Chief
City of Fayetteville

Annexed Streets with Same/Similar Names



c. 1.

Fayetteville E911

House Numbering

Handed out at Agenda Session 4/10/07

B. 1
Fayetteville E911 House Numbering
Page 9 of 14

**Park Ridge Estates
Property Owners Association**

Post Office Box 886
Farmington, Arkansas 72730-0886

RECEIVED

APR 09 2007

ENGINEERING DIV.

April 9, 2007

Mr. Dan Coody, Mayor
Mr. Tim Conklin, Planning and Development Management Director
Mr. Tony Johnson, Fire Chief
Mr. Tracy Risley, Deputy Chief of Police
Ms. Becky Stewart, EMS Chief
Ms. Kathy Stocker, Dispatch Manager

RECEIVED

APR 09 2007

**CITY OF FAYETTEVILLE
CITY CLERK'S OFFICE**

RE: Proposed E911 Street Name Change
Hill Side Drive to West Scarborough Drive

To All:

We are writing you in regards to the proposed E911 address change of Hill Side Drive located in the Park Ridge Estates Subdivision to West Scarborough Drive that is currently scheduled for approval at the April 17, 2007 City Council Meeting. The Park Ridge Estates Property Owners Association Board of Directors and those residents currently living in Park Ridge are not in favor of the proposed name of West Scarborough Drive.

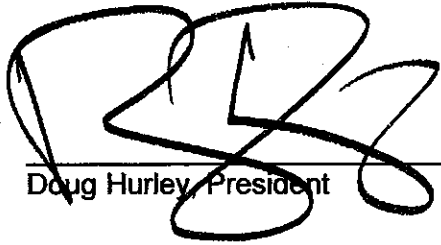
It is our feeling that the proposed name of West Scarborough Drive does not coincide with the other street names in our subdivision or reflect the ambience of the area. We realize the importance of the name change itself and have therefore researched current Fayetteville street names, and have the following suggestions which we feel will be an adequate replacement for Hill Side Drive. We have listed these suggestions in the order of our preference.

1. Stone Ridge Drive
2. Trace Ridge Drive
- ③ 3. Stonehenge Drive

It should be noted that four property owners currently residing in the subdivision contacted the number provided by the mail placard which was received on Friday, April 6, 2007. Those four property owners were told the new street name for Hill Side Drive was as of yet undetermined pending the April 17th City Council Meeting. Only after reviewing the agenda posted on the city website did we learn of the proposed name that was chosen for our subdivision. None of the property owners or members of the Board of Directors in the subdivision were contacted for suggestions regarding a new street name prior to the selection of West Scarborough Drive. We chose to be a part of this new development for many reasons and would like to have a voice in the decisions that affect its growth, perception and prosperity in the future.

We respectfully ask that one of the three selections that we have listed will be approved as the new E911 street name in lieu of the proposed West Scarborough Drive; we feel that these names more closely reflect the remaining street names as well as the character of the subdivision.

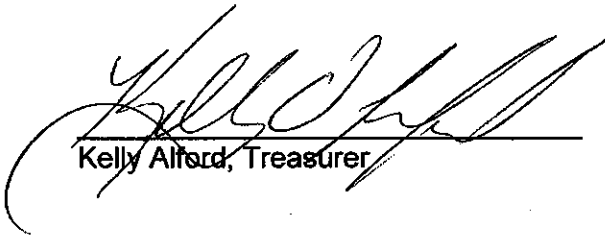
Thank you,
Park Ridge Property Association
Board of Directors

A large, stylized handwritten signature in black ink, consisting of several loops and a long horizontal stroke.

Doug Hurley, President

A handwritten signature in black ink, appearing to read "Rob Wilkins" with a stylized flourish at the end.

Rob Wilkins, Vice President

A handwritten signature in black ink, appearing to read "Kelly Alford" with a large, sweeping flourish on the left side.

Kelly Alford, Treasurer

A handwritten signature in black ink, appearing to read "Jimmy Vinyard" with a stylized flourish at the end.

Jimmy Vinyard, Secretary

Petition Opposed to the Renaming and Renumbering of our Addresses

The following are opposed to the proposal as announced by the city:

April 7, 2007 Calvin & Davis Bay 13361 Forest Hills Dr.
Brett and Glynn Rader 13759 Forest Hills Dr
Shelby & Lori Gabner 14889 Timber Ridge Rd.
BRADY & Amy MEADORS 14914 Timber Ridge Rd.
Jimmy Keweenaw & Mark 13498 Forest Hills Dr.
Chad & Leslie Felt 14954 Timber Ridge Rd.
Trent & Julia Mills 14953 Timber Ridge Rd.
Evel & Donna Kislina 14925 Timber Ridge Rd.
Jerry & Diane Owens 13791 Forest Hills Dr.
Dan & Andrew Charles 13229 Forest Hills Dr.
Dave & Debbie Klotzbuecher 14725 Cedar Ridge Ln
Don & Kim Horton 14892 Cedar Ridge Lane
Leslie & Kristi Hassell 14724 Walnut Ridge Lane, Fayetteville
Rene & Meg Rogers 13751 Forest Hills Dr.
Mike & Kathy Barker 14726 Cedar Ridge Ln
Larry & Helen Balding 13311 Forest Hills Dr.
Kevin & Susan Bracy 13271 Forest Hills Drive
Mike & Valerie Hamby 13272 Forest Hills Drive
Gene & Sue Ann Fulcher 13230 Forest Hills Drive
Eugene & Edith Carter 13194 Reed Rd
Chris & Linda Hawkins 14848 Fox Meadows
Montie & Nancy Bailey 14856 Cedar Ridge Lane
Shelly & Ricky 14891 Cedar Ridge Lane, Fayetteville AR 72704
Brent Mucken 14692 Cedar Ridge Lane, Fayetteville, AR 72704
J.P. 14327 Oldbrook Fayetteville AR 72704
Gladwin L. Cass 13722 Forest Hills Dr Fayetteville AR 72704
ERIC ROBINSON 13545 FOREST HILLS DR. FAYETTEVILLE AR 72704
ANNE MOHRNEY 13545 FOREST HILLS DR. FAYETTEVILLE, AR 72704
The Millin 13721 Forest Hills Dr Fayetteville, AR 72704
Shirley Franklin 13721 Forest Hills Dr. Fayetteville, AR 72704
Mary B. Henderson 13683 Forest Hills Dr Fayetteville AR 72704
Richard T. Henderson 13683 Forest Hills Dr Fayetteville AR 72704

Petition Opposed to the Renaming and Renumbering of our Addresses

The following are opposed to the proposal as announced by the city:

Robert Higgs 14920 Fox Meadows Ln. Fay.
Marci Critch 14908 Fox Meadows Ln Fayetteville AR 72704
Theresa P. Reddick 14908 Fox Meadows Ln Fayetteville
TRINA HOLMAN 14806 FOX MEADOWS LN FAYETTEVILLE AR
Michael Corey 14836 Fox Meadows Ln Fay. AR 72704
Ashley Corey 14836 Fox Meadows Ln Fayetteville, AR 72704
JAP Feagin 13183 Vista Terrace Dr Fayetteville AR 72704
Jackie L. Rotcrume 13132 Westridge Fayetteville AR. 72704
William Se Hie 13132 Westridge Fayetteville, AR. 72704
Craig Down 13144 Westridge Fayetteville, AR 72704
Rhonda Hooper 13151 Westridge Fayetteville AR 72704
Ann: Elia Patten 13192 Westridge Dr Fayetteville AR 72704
MARIA ALTMANN 13722 FOREST HILLS DR - FAYETTEVILLE AR 72704

C.4. Fayetteville E911 House Numbering
Handed out at the City Council
Meeting 4-17-07

Letter Faxed from Citizen, April, 17, 2007

ATTENTION SUSAN ... Fax 479-718-7698

Re: Proposed Address Changes -

Dear Susan,

Please take this letter to the City Council Meeting this evening. I cannot get there - but I want the Council to know how I feel about these proposed changes.

I want to know why the City of Fayetteville cannot adjust their 911 system to accommodate the addresses as they are. 911 Service is working so I don't understand the issue .. If you have problems .. fix the system .. you have programmers, IT support etc. You should have addressed those issues prior to annexing .. if the costs were too great .. then you should have left us alone .. now you expect us to pay - pay and pay more.

Who is going to reimburse us for stationary? Business cards? Yellow Page Advertising that is already contracted for until late 2008, and the fees that must be paid to regulatory entities (ARC Corp) for us to change an address.

Will be guaranteed to receive mail sent to the current address at the new address for a least two years .. Who is going to guarantee that?

Annexation seems to benefiting the City of Fayetteville and NO ONE ELSE.

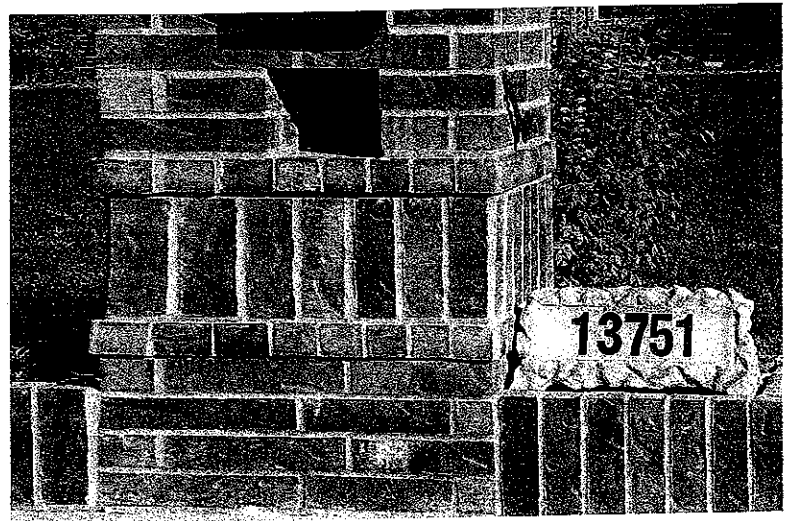
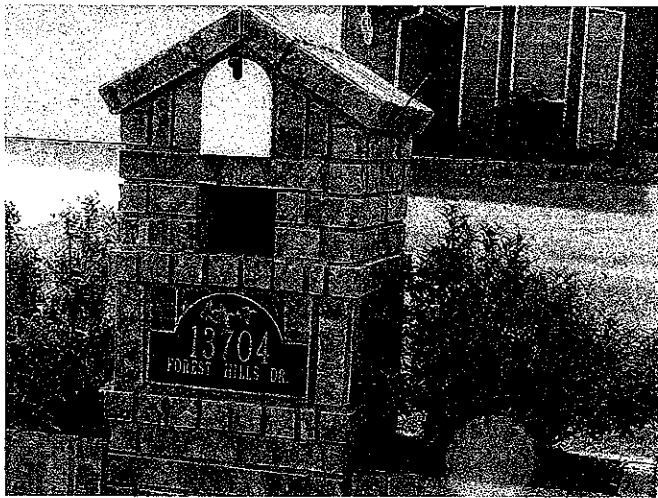
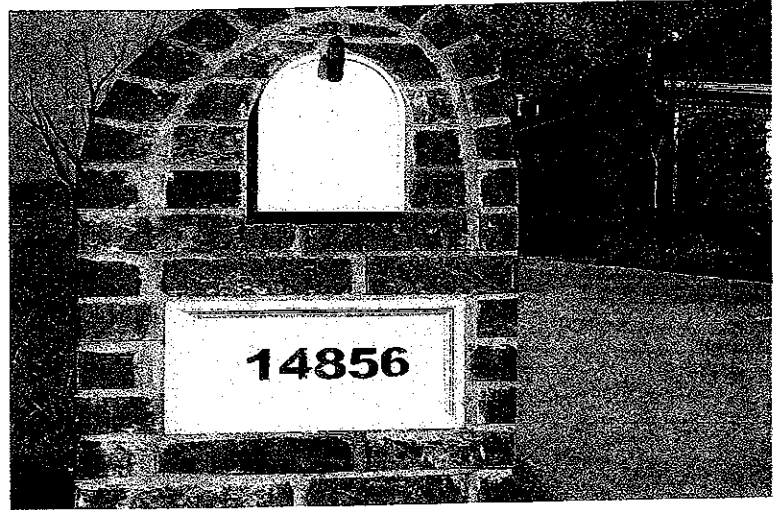
Since the annexation, you have rezoned us .. mandated utilities that we previously had a choice of providers for ... and now .. you want to change our addresses. When is it going to stop??

You are causing undue hardship and I am sure that you have no intention of reimbursing us for our losses .. the same as you probably don't give a darn about those affected.


D. L. Flynn
12924 Highway 16 West
Fayetteville, AR 72704

Fayetteville E911 House Numbering
Handed out at the City Council Meeting 4-17-07

B. 1
Fayetteville E911 House Numbering
Page 14 of 14



**City of Fayetteville
Staff Review Form
City Council Agenda Items
or
Contracts**

17-Apr-07

City Council Meeting Date

Jeremy Pate
Submitted By

Planning
Division

Operations
Department

Action Required:

RZN 07-2504: (Sloan/Cobblestone, 246): Submitted by Dave Jorgensen for property located south of Salem Road and east of Crystal Springs Subdivision in the interior of the Cobblestone Subdivision. The property is zoned RSF-4, Residential Single-Family, 4 units per acre, and contains approximately 17.22 acres. The request is to rezone the subject property to RSF-8, Residential Single-Family, 8 units per acre.

Action Required:	n/a	n/a
Cost of this request	Category/Project Budget	Program Category / Project Name
n/a	n/a	n/a
Account Number	Funds Used to Date	Program / Project Category Name
n/a	n/a	n/a
Project Number	Remaining Balance	Fund Name
	\$ -	

Budgeted Item

☐

Budget Adjustment Attached

☐

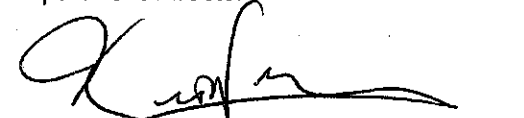

Department Director

3-29-07
Date

Previous Ordinance or Resolution # n/a

Original Contract Date: n/a

Original Contract Number: n/a


City Attorney

3-29-07
Date

Received in City Clerk's Office

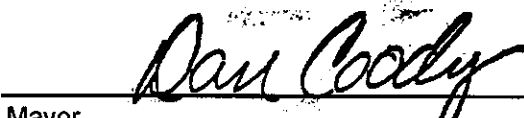
ENTERED
3/29/07


Finance and Internal Service Director

3-30-07
Date

Received in Mayor's Office

ENTERED
3/30/07
JH


Mayor

4-2-07
Date

Comments:

Left on the second reading 4/12/07

CITY COUNCIL AGENDA MEMO

To: Mayor and City Council

Thru: Gary Dumas, Director of Operations

From: Jeremy C. Pate, Director of Current Planning ✂

Date: March 28, 2007

Subject: Rezoning for Sloan/Cobblestone Subdivision (RZN 07-2504)

RECOMMENDATION

Planning staff recommended and the Planning Commission voted in favor of rezoning the subject property from RSF-4 to RSF-8 for approximately 17.22 acres located at south of Salem Road and east of Crystal Springs Subdivision, in the interior of the Cobblestone Subdivision that is currently under construction.

BACKGROUND

The subject property contains approximately 17.22 acres. The property is located in the southern, interior portion of the Cobblestone Subdivision, Lots 154-195 (see attached site plan). The property is zoned RSF-4, Residential Single Family, 4 Units per Acre.

The request is to rezone the subject 17.22 acre property from RSF-4, Residential Single-Family, 4 Units per Acre to RSF-8, Residential Single Family, 8 Units per Acre within the interior of the development, to allow for the opportunity for a variety of lot/home size within the residential neighborhood.

DISCUSSION

This item was heard at the regular Planning Commission on March 26, 2007. The Planning Commission voted 8-0-0 to recommend approval of this rezoning request to the City Council. No public comment was received.

BUDGET IMPACT

None.

ORDINANCE NO.

AN ORDINANCE REZONING THAT PROPERTY DESCRIBED IN REZONING PETITION RZN 07-2504, FOR APPROXIMATELY 17.22 ACRES, LOCATED SOUTH OF SALEM ROAD AND EAST OF CRYSTAL SPRINGS SUBDIVISION IN THE INTERIOR OF THE COBBLESTONE SUBDIVISION FROM RSF-4, RESIDENTIAL SINGLE-FAMILY, 4 UNITS PER ACRE, TO RSF-8, RESIDENTIAL SINGLE-FAMILY, 8 UNITS PER ACRE.

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 RSF-4, Residential Single-Family, 4 units per acre to RSF-8, Residential Single-Family, 8 units per acre, as shown on Exhibits "A" and "B" 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 , 2007.

APPROVED:

ATTEST:

By: _____
DAN COODY, Mayor

By: _____
SONDRA SMITH, City Clerk/Treasurer

EXHIBIT "A"

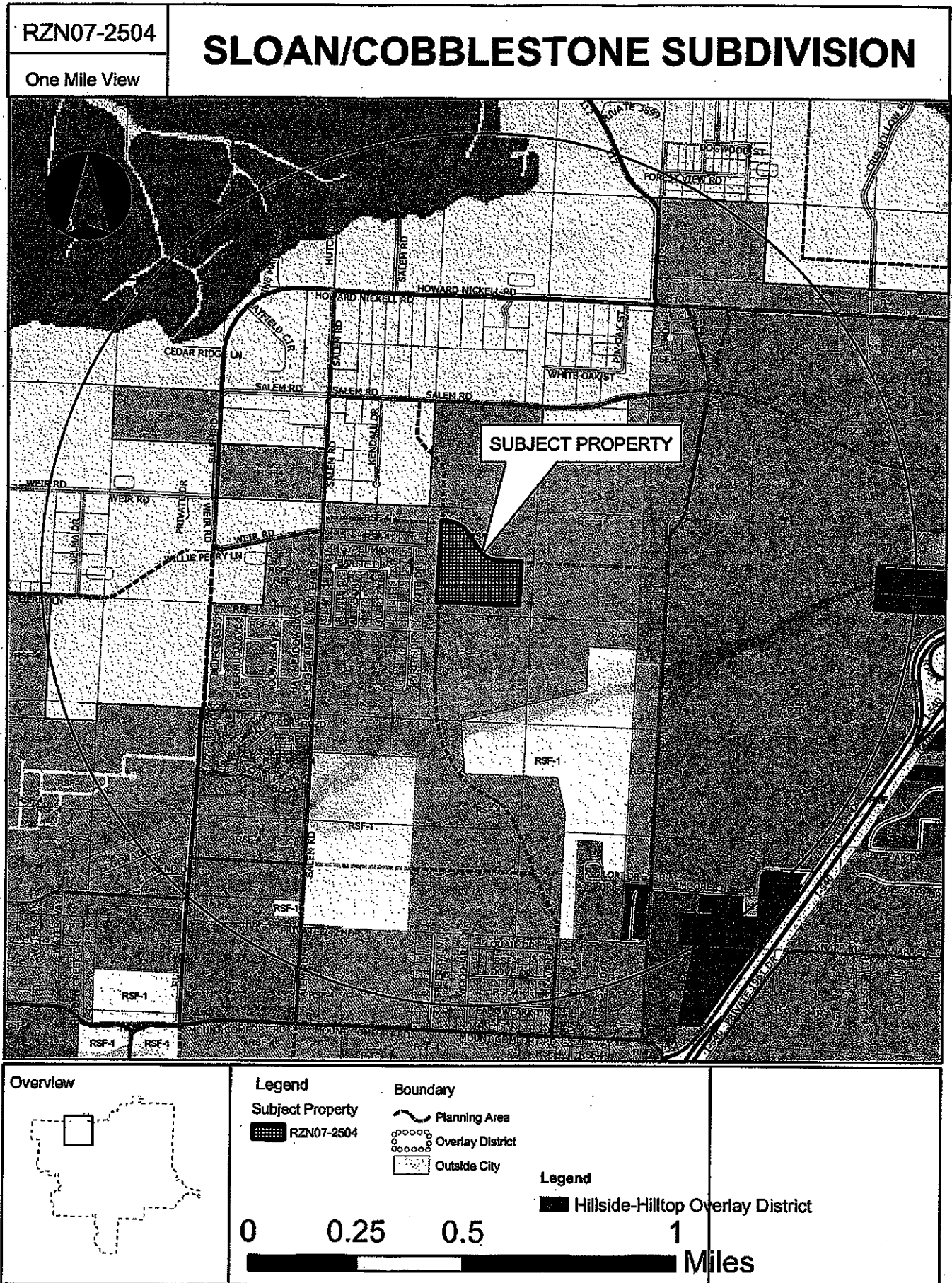


EXHIBIT "B"
RZN 07-2504

PART OF THE NW1/4 OF THE NE1/4 OF SECTION 32, T17N, R30W IN WASHINGTON COUNTY, ARKANSAS AND BEING DESCRIBED MORE PARTICULARLY AS FOLLOWS: COMMENCING AT THE NW CORNER OF SAID NW1/4, NE1/4 THENCE EAST 146.50 FEET, THENCE SOUTH 170.08 FEET TO THE P.O.B., THENCE S87°04'11"E 61.31 FEET, THENCE ALONG A CURVE TO THE RIGHT 325.75 FEET, SAID CURVE HAVING A RADIUS OF 350.00 FEET AND A CHORD BEARING OF S60°24'23"E 314.12 FEET, THENCE S33°44'35"E 238.67, THENCE ALONG A CURVE TO THE LEFT 279.22 FEET, SAID CURVE HAVING A RADIUS OF 300.00 FEET AND A CHORD BEARING OF S60°24'23"E 269.25 FEET, THENCE S87°04'11"E 295.80 FEET, THENCE S02°55'49"W 554.92 FEET, THENCE N87°04'11"W 921.99 FEET, THENCE ALONG A CURVE TO THE LEFT 26.80 FEET, SAID CURVE HAVING A RADIUS OF 150.00 FEET AND A CHORD BEARING OF S87°48'42"W 26.77 FEET, THENCE S82°41'35"W 69.93 FEET, THENCE ALONG A CURVE TO THE RIGHT 32.61 FEET, SAID CURVE HAVING A RADIUS OF 150.00 FEET AND A CHORD BEARING OF N03°17'51"W 32.55 FEET, THENCE N02°55'49"E 990.60 FEET TO THE P.O.B.; CONTAINING 17.22 ACRES MORE OR LESS SUBJECT TO EASEMENTS AND RIGHT OF WAY OF RECORD.



PC Meeting of March 26, 2007

THE CITY OF FAYETTEVILLE, ARKANSAS

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

PLANNING DIVISION CORRESPONDENCE

TO: Fayetteville Planning Commission
FROM: Andrew Garner, Senior Planner
Matt Casey, Assistant City Engineer
THRU: Jeremy Pate, Director of Current Planning
DATE: March 20, 2007 Updated March 28, 2007

RZN 07-2504: (SLOAN/COBBLESTONE SUBDIVISION, 246): Submitted by DAVE JORGENSEN for property located SOUTH OF SALEM ROAD AND WEST OF DEANE SOLOMON ROAD in the interior of the COBBLESTONE SUBDIVISION. The property is zoned RSF-4, SINGLE FAMILY - 4 UNITS/ACRE and contains approximately 17.22 acres. The request is to rezone the subject property to RSF-8, Residential Single Family, 8 units per acre.

Developer: SCM PROPERTIES, LLC
Planner: ANDREW GARNER

RECOMMENDATION:

Staff recommends approval of the requested rezoning from RSF-4 to RSF-8 based on the findings herein.

PLANNING COMMISSION ACTION:		Required	<u>YES</u>	☐ Denied
		☒ Forward to City Council (recommend approval)		
Date: <u>March 26, 2007</u>				
Motion: <u>Clark</u>				
Second: <u>Ostner</u>				
Vote: <u>8-0</u>				
CITY COUNCIL ACTION:		Required	<u>YES</u>	☐ Denied
		☐ Approved		
Date: <u>April 17, 2007 (1st reading if recommended)</u>				

BACKGROUND:

Background: The Planning Commission approved the preliminary plat for Cobblestone Subdivision on the subject property on March 13, 2006 (PPL 06-1940). The preliminary plat granted approval of 194 single-family lots.

Property Description: The overall Cobblestone Subdivision property contains approximately 60.28 acres located east of Salem Road, adjacent to Crystal Springs Phase I and Rockhaven Subdivision to the west and Crystal Springs Phase III to the south. The property is zoned RSF-4 and is bisected by two Collector Streets shown on the Master Street Plan. The subject property requested for rezoning is 17.22 acres in the southern, interior portion of the Cobblestone Subdivision. The proposed subdivision surrounds the property in its entirety.

Surrounding Land Use and Zoning:

Direction from Site	Land Use	Zoning
North	Rural Residential; one Single Family property	R-A
South	Crystal Springs Phase 3 (under construction)	RSF-4
East	Vacant (school-owned))	RSF-4
West	Crystal Springs Phase 1, Rockhaven and Rural Residential property	RSF-4 and Planning Area

Proposal: The applicant proposes to rezone 17.22 acres of the overall 60.28-acre Cobblestone Subdivision to RSF-8 for a single-family development. The portion of the subdivision that is proposed to be rezoned is in the southern interior portion of the property, Lots 154-195. The applicant proposes the RSF-8 zoning to allow for reduced building setbacks and smaller lot size than those permitted within the RSF-4 zoning district. This would allow for a varied lot/housing size within the same neighborhood. The zoning criteria for RSF-4 and RSF-8 are attached to this report.

Recommendation: Staff recommends approval of the rezoning request. Development on this site will be regulated by the city allowing for a uniform and consistent development pattern. The higher density proposed in the interior of the Cobblestone Subdivision would transition with surrounding RSF-4 lots in the subdivision before transitioning again outside the neighborhood to other surrounding RSF-4 development. The RSF-8 designation allows the potential for a more traditional form of development with narrow lots and homes closer to the street than would be allowed under a typical RSF-4 zoning. It also provides a greater opportunity to provide a variety of lot and house size within the same development, creating the potential for an attainable housing product.

INFRASTRUCTURE:

Streets and Drainage:	Street and drainage improvements are being constructed with the subdivision development.
Water:	Public water is located adjacent to the site. There is a 12" waterline along being constructed through the development with a system of 8" mains.
Sewer:	Sanitary sewer is available on the site. There is an 8" sewer main system being constructed throughout the development as a part of the subdivision development.

Fire:

These 17.22 acres are covered by Engine 7 located at 835 Ruppel Road. The property is 2.9 miles from the station with an expected response time of 7.25 minutes. This response time is above the City's goal of having the first unit on the scene within 6 minutes, 90% of the time, and the goal of assembling all responding units on the scene of a moderate risk assessment within 10 minutes, 90% of the time. It has been proposed to build a fire station (Station 9) to cover the northwest part of the city and the Fire Department is currently working with builders in that area to locate a suitable lot.

Police:

It is the opinion of the Fayetteville Police Department that this annexation will not substantially alter the population density and thereby undesirably increase the load on police services. The volume of traffic accessing and exiting this area through the one existing street will possibly create an appreciable increase in traffic congestion; however the completion of the proposed streets will help with this issue.

LAND USE PLAN: The Future Land Use Plan adopted as part of the City Plan 2025 designates this site **Residential Neighborhood Area**. Rezoning this property to RSF-8 in the interior of the Cobblestone Subdivision is compatible to the surrounding density of adjacent residential development and consistent with the surrounding land uses. The RSF-8 zoning would allow for a more traditional form of residential development with narrower lots and buildings closer to the street. This would allow for a mix of lot sizes in an area that currently has a number of standard suburban neighborhoods, consistent with the City Plan 2025 policies. In order to alter the preliminary plat from that which is approved, a new plat would have to be reviewed and approved by the City.

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 RSF-8 zoning in the interior of the Cobblestone Subdivision for single-family residential use is compatible with adjacent and nearby single family residential land use while promoting a variety of lot sizes and development patterns. These developments include residential subdivisions zoned RSF-4 (maximum four units per acre) and being developed to the south and west of the property (Crystal Springs Phases I and III, and Rockhaven). In addition, the Fayetteville School District has purchased the property to the east and may be developed for a school.

The 17.22-acre portion of the Cobblestone Subdivision tract is currently zoned RSF-4, consistent with the City Plan 2025 designation of the site as Neighborhood Residential Area. Residential development in the interior of the

Cobblestone Subdivision at a density of approximately eight units per acre is appropriate in this developing area. The RSF-8 zoning will allow for a mix of residential housing types in a more traditional design and the opportunity for narrow lots and houses closer to the street, consistent with land use planning policies, and common in other developed areas of the City.

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 order to provide for a variety of lot sizes and variation in development pattern consistent with City land use objectives and policies.

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

Finding: The proposed zoning will generate additional traffic on the surrounding street system over the existing RSF-4 zoning. As shown in the revised conceptual subdivision layout provided by the applicant, this rezoning would yield 12 additional single family lots, subject to a new preliminary plat approval. The street improvements required as part of the Cobblestone Subdivision will be adequate to account for these additional vehicle trips. The Fayetteville Police Department finds that rezoning this property will possibly result in an appreciable increase in traffic congestion but that the completion of the proposed streets as part of the Cobblestone Subdivision will help with this issue.

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 would increase population density. The proposed zoning would allow for 12 additional single family lots in this subdivision. However, this increase in single-family residences is consistent with land use, zoning, and development patterns in the immediate vicinity.

Increased load on public services was taken into consideration and recommendations from Engineering, Fire, and Police Departments are included in this report. Significant adverse impacts to public services would not result with the incorporation of standard improvements as part of the development.

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

FAYETTEVILLE UNIFIED DEVELOPMENT CODE

161.09 District RSF-8, Residential Single-Family – 8 Units Per Acre

(A) *Purpose.* The RSF-8 Residential District is designed to bring historic platted development into conformity and to allow for the development of new single family residential areas with similar lot size, density, and land use as the historical neighborhoods in the downtown area.

(B) *Uses.*

(1) *Permitted uses.*

Unit 1	City-wide uses by right
Unit 8	Single-family dwellings

(2) *Conditional uses.*

Unit 2	City-wide uses by conditional use permit
Unit 3	Public protection and utility facilities
Unit 4	Cultural and recreational facilities
Unit 9	Two-family dwellings
Unit 24	Home occupations
Unit 36	Wireless communications facilities

(C) *Density.*

	By Right	Conditional Use
Single-family dwelling units per acre	8 or less	--
Two-family dwelling units per acre	--	8

(D) *Bulk and area regulations.*

(1) *Lot width minimum.*

Single-family	50 ft.
Two-family	50 ft.
Townhouse, no more than two attached	25 ft.

(2) *Lot area minimum.*

Single-family	5,000 sq. ft.
Two-family	5,000 sq. ft.

(3) *Land area per dwelling unit.*

Single-family	5,000 sq. ft.
Two-family	5,000 sq. ft.
Townhouse, no more than two attached	2,500 sq. ft.

(E) *Setback requirements.*

Front	Side	Rear
15 ft.	5 ft.	5 ft.

(F) *Height regulations.*

Building height maximum	45 ft.
-------------------------	--------

(G) *Building area.* The area occupied by all buildings shall not exceed 50% of the total lot area, except when a detached garage exists or is proposed; then the area occupied by all buildings shall not exceed 60% of the total lot area.

(Ord. 4783, 10-18-05)

161.07 District RSF-4, Residential Single-Family – Four Units Per Acre

(A) *Purpose.* The RSF-4 Residential District is designed to permit and encourage the development of low density detached dwellings in suitable environments, as well as to protect existing development of these types.

(B) *Uses.*

(1) *Permitted uses.*

Unit 1	City-wide uses by right
Unit 8	Single-family dwelling

(2) *Conditional uses.*

Unit 2	City-wide uses by conditional use permit
Unit 3	Public protection and utility facilities
Unit 4	Cultural and recreational facilities
Unit 9	Two-family dwellings
Unit 24	Home occupations
Unit 36	Wireless communications facilities

(C) *Density.*

	Single-family dwellings	Two-family dwellings
Units per acre	4 or less	7 or less

(D) *Bulk and area regulations.*

	Single-family dwellings	Two-family dwellings
Lot minimum width	70 ft.	80 ft.
Lot area minimum	8,000 sq. ft.	12,000 sq.-ft.
Land area per dwelling unit	8,000 sq. ft.	6,000 sq. ft.
Hillside Overlay District Lot minimum width	60 ft.	70 ft.
Hillside Overlay District Lot area minimum	8,000 sq. ft.	12,000 sq.-ft.
Land area per dwelling unit	8,000 sq. ft.	6,000 sq. ft.

(E) *Setback requirements.*

FRONT	SIDE	REAR
25 ft.	8 ft.	20 ft.
HOD Front	HOD Side	HOD Rear
15 ft.	5 ft.	15 ft.

(F) *Height.* Structures in this District are limited to a building height of 45 feet. The height of a proposed structure may only be increased above 45 feet by obtaining a variance after hearing by the Planning Commission. Existing structures that exceed 45 feet in height shall be grandfathered in, and not considered nonconforming uses.

(G) *Building area.* On any lot the area occupied by all buildings shall not exceed 40% of the total area of such lot.

(Code 1991, §160.031; Ord. No. 4100, §2 (Ex. A), 6-16-98; Ord. No. 4178, 8-31-99; Ord. 4858, 4-18-06)



FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

POLICE DEPARTMENT

March 7, 2007

Jeremy Pate
Zoning and Development Director
City of Fayetteville
113 W. Mountain
Fayetteville, Arkansas 72701

Dear Director Pate,

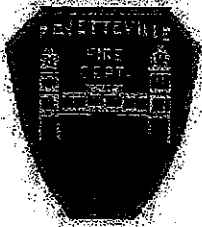
This document is in response to the request for a determination of whether the proposed RZN 07-2504: (SLOAN, 246): Submitted by DAVE JORGENSEN for property located at COBBLESTONE SUBDIVISION would substantially alter the population density and thereby undesirably increase the load on public services and create an appreciable increase in traffic danger and congestion. The property is zoned RSF-4, SINGLE FAMILY - 4 UNITS/ACRE and contains approximately 17.22 acres. The request is to rezone the subject property to RSF-8, Residential Single Family, 8 units per acre.

It is the opinion of the Fayetteville Police Department that this Rezoning will not substantially alter the population density causing an undesirable increase in the load on police services. The volume of traffic accessing and exiting this area through the one mapped street will possibly create an appreciable increase in traffic congestion, however the completion of the proposed streets will help with this issue.

Sincerely,

A handwritten signature in dark ink, appearing to read "William Brown", is written over a horizontal line.

Captain William Brown
Fayetteville Police Department



Fayetteville Fire Department

MEMO

To: Suzanne Morgan, Andrew Garner, Jeren [unclear] and Jesse Fulcher
Thru: Chief Tony Johnson *T.O.*
Chief Bud Thompson *B.T.*
From: Captain Dale Riggins
Date: March 5, 2007
Re: March 7, 2007 Zoning Review -- Fire Department Comments

RECEIVED
MAR 07 2007
PLANNING DIV.

ANX 07-2485 (Homestead Homes)

These 125.32 acres are covered by Engine 7 located at 835 S Ruppel Road. It is 2.4 miles from the station with an anticipated response time of 5.75 minutes to the beginning of this development.

The Fire Department anticipates 33(30 EMS – 13 Fire/Other) calls for service per year at the current R-A Zoning of one dwelling per two acres. The service impact of this development will typically take eighteen months after the development is started, and the units begin to be occupied, to occur. There should be no adverse effects on our call volume or response time to this development.

ANX 07-2507 (Spencer)

These 13.22 acres are covered by Engine 5 located at 833 N Crossover.

It is 5 miles from the station with an anticipated response time of 8 minutes. When the new station 3 is in service at Happy Hollow and Huntsville, the response time will be reduced to 7 minutes. This response time is above our goal of having the first unit on the scene within 6 minutes, 90% of the time, and our goal of assembling all responding units to the scene of a moderate risk assignment within 10 minutes, 90% of the time. There should be no adverse effects on our call volume.

RZN 07-2503 (Moler)

These 4.20 acres are covered by Engine 4 and Ladder 4 located at 3385 N Plainview.

It is 1.7 miles from the station with an anticipated response time of 4.5 minutes. The Fire Department does not figure calls for service on properties being re-zoned to R-0, Residential Offices, but typically this type of development will not increase our call volumes or response times.

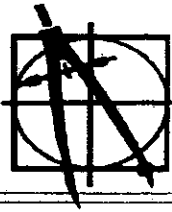
RZN 07-2504 (Sloan)

These 17.22 acres are covered by Engine located at 835 S Ruppel Road.

It is 2.9 miles from the station with an anticipated response time of 7.25 minutes. This response time is above our goal of having the first unit on the scene within 6 minutes, 90% of the time, and our goal of assembling all responding units to the scene of a moderate risk assignment within 10 minutes, 90% of the time. It has been proposed (*Fayetteville Fire Department: Deployment Study 2003*) to build a fire station (*Station 2*) to cover this northwest part of the city and we are currently working with builders in that area to locate a suitable lot.

If you have any questions concerning these comments please don't hesitate to call me

Captain Dale Riggins
Fayetteville Fire Department



JORGENSEN & ASSOCIATES

CIVIL ENGINEERS • SURVEYORS

124 WEST SUNBRIDGE, SUITE 5 • FAYETTEVILLE, ARKANSAS 72703 • (479) 442-9127 • FAX (479) 582-4807

DAVID L. JORGENSEN, P.E., P.L.S.
CHRISTOPHER B. BRACKETT, P.E.

February 15, 2007

City of Fayetteville
113 W. Mountain Street
Fayetteville, AR 72701

Attn: Planning Department
Re: Cobblestone Subdivision - Rezoning

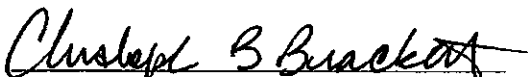
Attached herewith please find the documents for a rezoning request on the Cobblestone Subdivision property. This property is located east of Crystal Springs Subdivision Phase I and II and north of Crystal Springs Subdivision Phase III. The property is currently zoned RSF-4 and the request is to rezone to RSF-8. This area to be rezoned is completely enclosed within the subdivision with RSF-4 surrounding it on all sides.

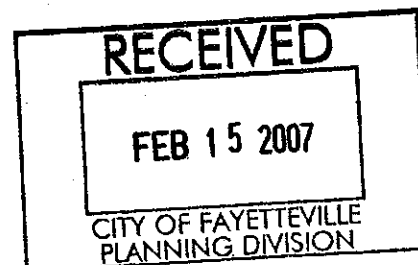
New 8" waterline and 8" sewerline is currently being installed within this area and around it with the infrastructure of the Cobblestone Subdivision. Access to this area will be through the new streets that are being installed at this time. This new streets will have two connections into the Crystal Springs Subdivision to the east and south and there will be one connection to a new subdivision north of Crystal Springs.

Please review this information and call concerning any questions you may have.

Thank you.

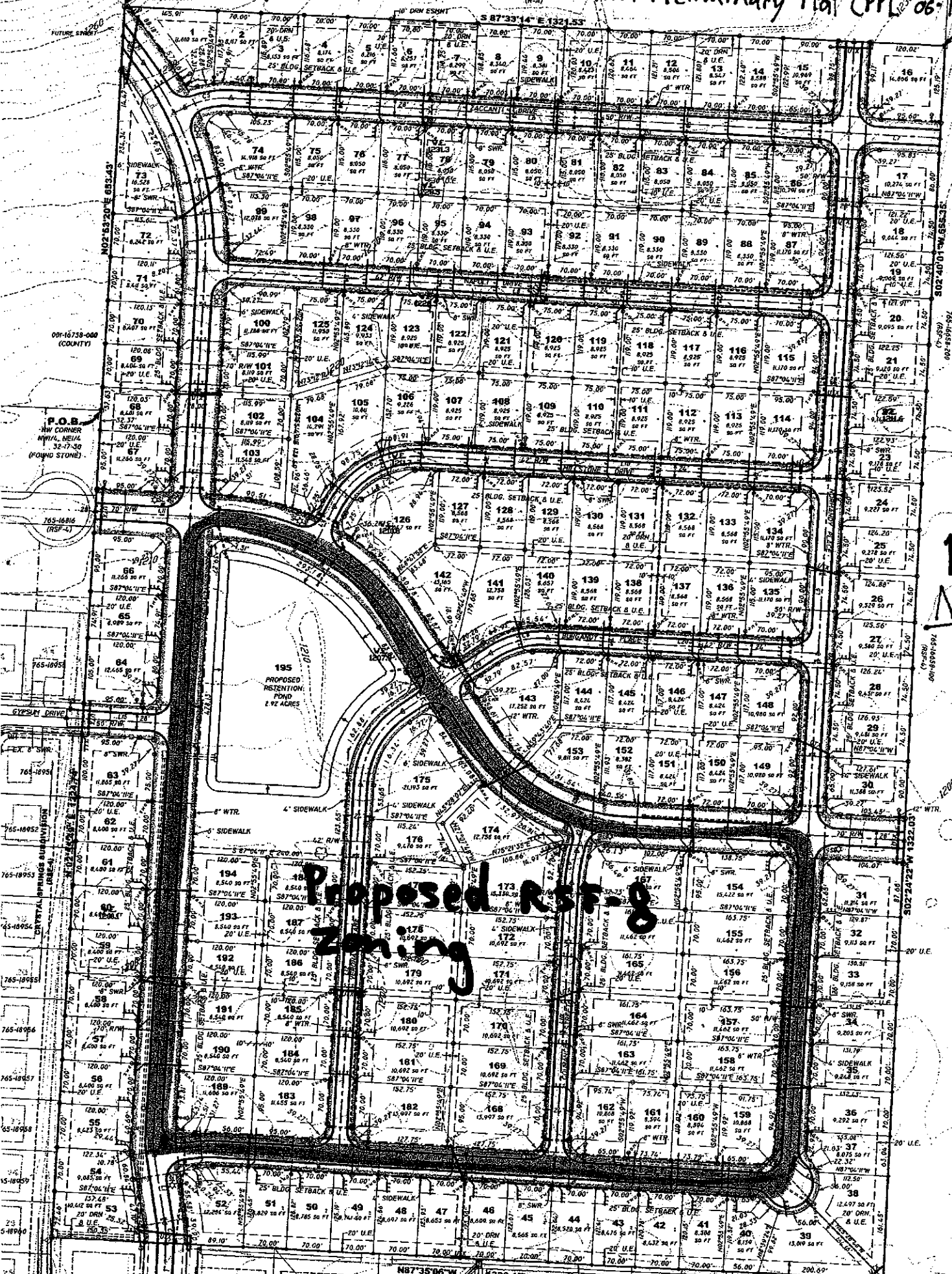
Sincerely;


Christopher B. Brackett, P.E.



Approved Cobblestone Subdivision Preliminary Plat (CPL) 06-1940

STATE PLANE
COORDINATES
N 200000.02
E 694826.80



Proposed R.S.F-g
Zoning



Cobblestone Subdivision Layout With RSF-8 Zoning

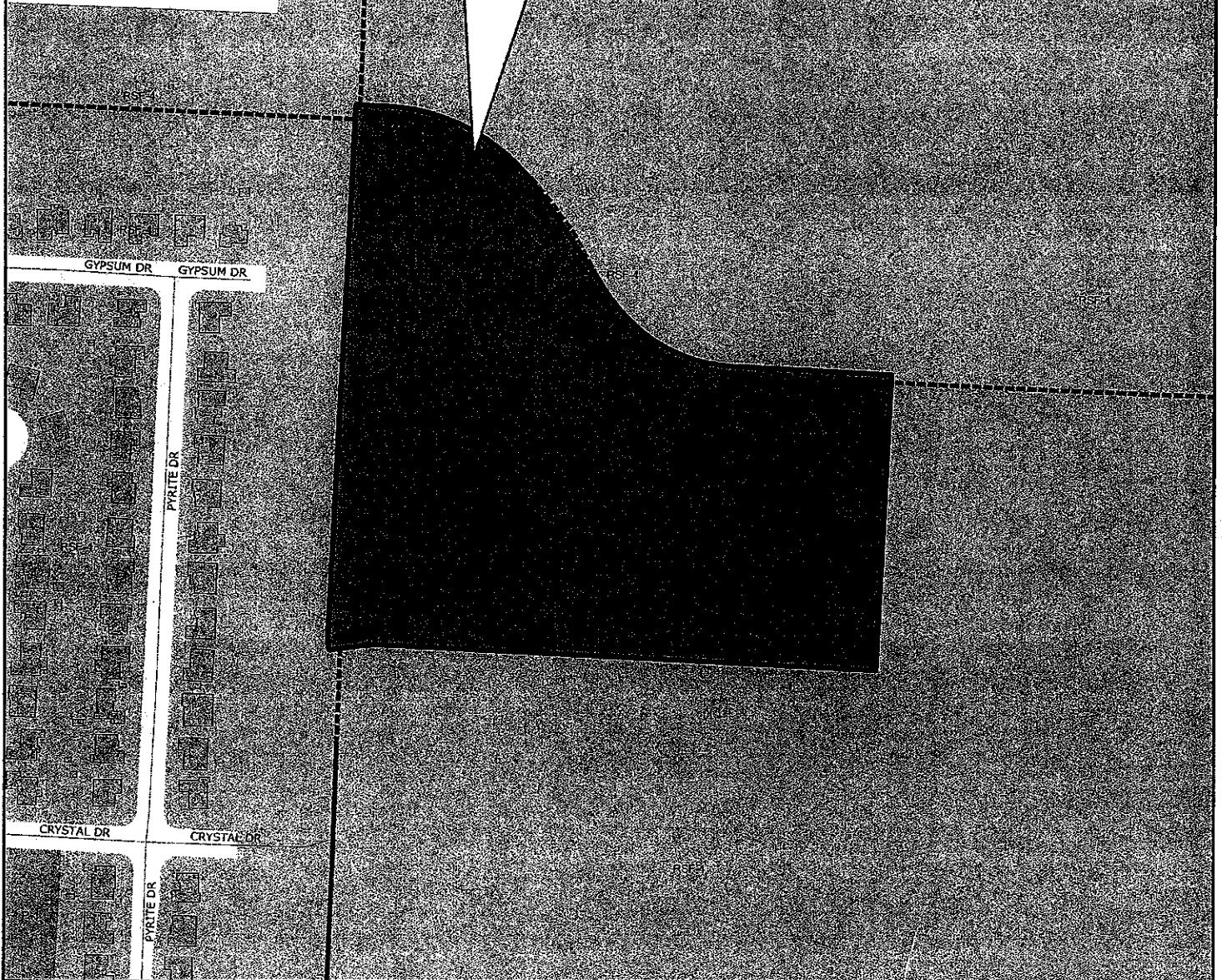
RZN07-2504

Close Up View

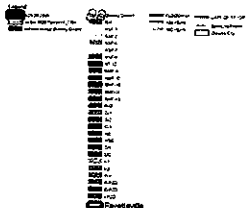
SLOAN/COBBLESTONE SUBDIVISION



SUBJECT PROPERTY



Overview

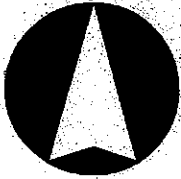


0 125 250 500 750 1,000 Feet

RZN07-2404

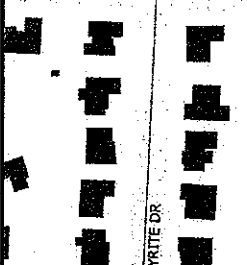
SLOAN

Future Land Use



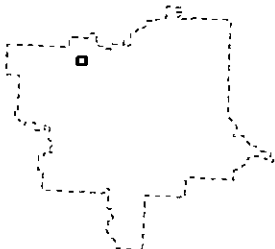
SUBJECT PROPERTY

GYPSUM DR GYPSUM DR



- Legend**
- Building (2004)
 - Future Land Use 2025 CLASS**
 - Industrial
 - Non-Municipal Government
 - Complete Neighborhood
 - Natural Area
 - Rural Area
 - Residential Neighborhood Area
 - General Urban/City Neighborhood Area
 - Urban Center Area
 - Civic and Private Open Space/Parks
 - Civic Institutional
 - Unclassified
 - ROW

Overview



Legend
Subject Property

RZN07-2404

Streets

Existing

Planned

Boundary

Planning Area

Overlay District

Outside City

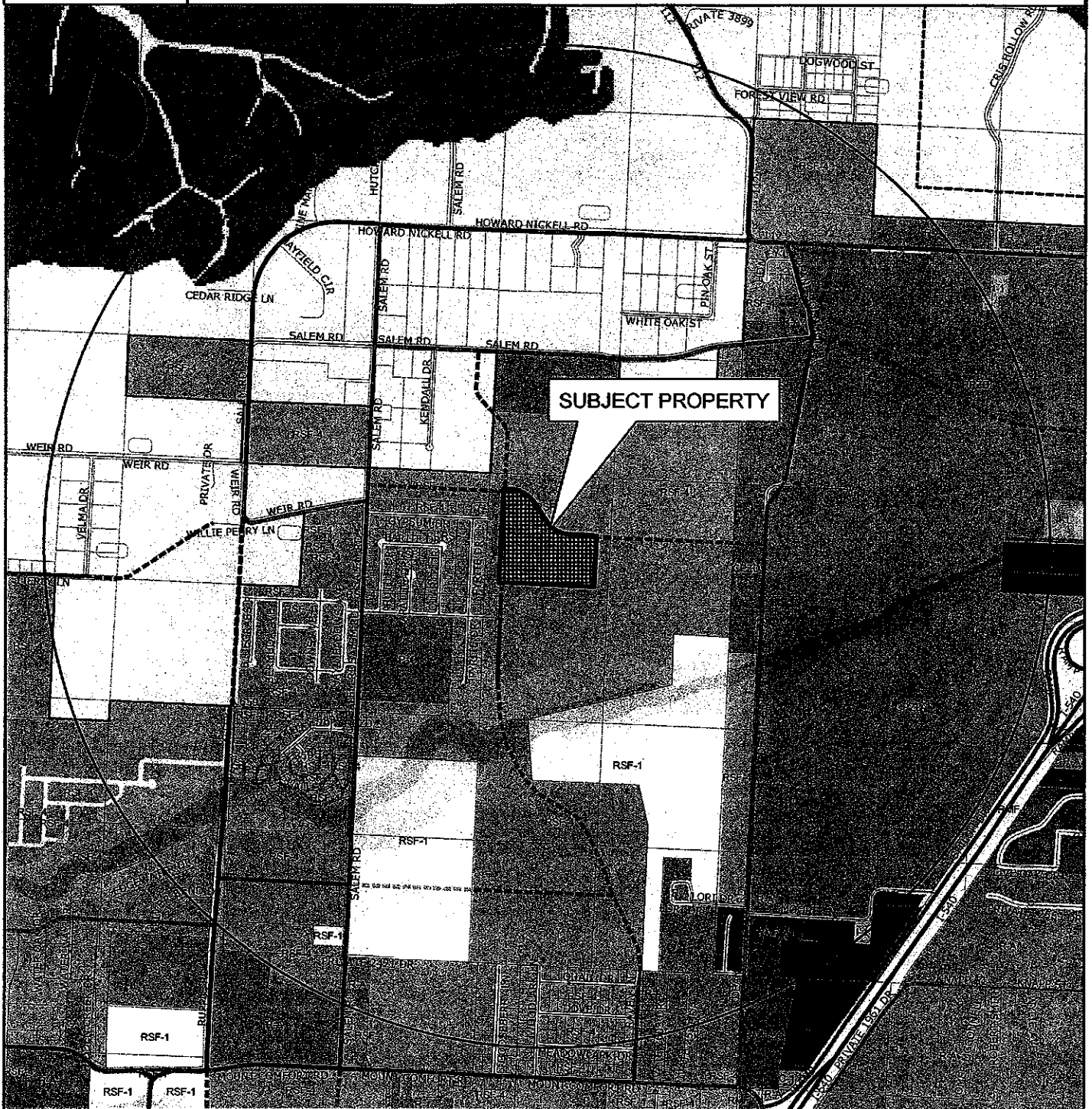
Legend

0 125 250 500 750 1,000 Feet

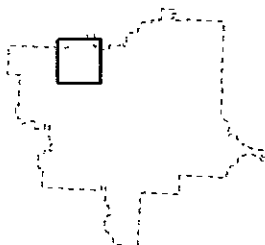
RZN07-2504

One Mile View

SLOAN/COBBLESTONE SUBDIVISION



Overview



Legend

Subject Property

RZN07-2504

Boundary

Planning Area

Overlay District

Outside City

Legend

Hillside-Hilltop Overlay District

0 0.25 0.5 1 Miles

City of Fayetteville
Staff Review Form
City Council Agenda Items
or
Contracts

B. 3
Roll Off Service, Inc.
Page 1 of 36

April 3, 2007

City Council Meeting Date

John Nelson
Submitted By

Solid Waste & Recycling
Division

Operations
Department

the renewal
Action Required:

A resolution denying an agreement between the City of Fayetteville, Arkansas and Roll Off Service, Inc. to haul and dispose of solid waste in the City of Fayetteville.

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

Budgeted Item

☐

Budget Adjustment Attached

☐

John Nelson
Department Director

3-9-07
Date

Previous Ordinance or Resolution #

Original Contract Date:

Original Contract Number:

D.P. White
City Attorney

3/17/07
Date

Received in City Clerk's Office



Paul A. Bush
Finance and Internal Service Director

3-14-07
Date

Received in Mayor's Office



Sam Corley
Mayor

3/14/07
Date

Comments:

Tabled to May 1, 2007 City Council Mtg 4/17/07



OPERATIONS DEPARTMENT

Interdepartmental Correspondence

To: Mayor and City Council

From: Gary Dumas, Director of Operations

Date: March 6, 2007

Subject: Agreement with Roll Off Service, Inc. to haul and dispose of solid waste in the City of Fayetteville

Recommendation: A resolution denying an agreement between the City of Fayetteville, Arkansas and Roll Off Service, Inc. to haul and dispose of solid waste in the City of Fayetteville.

Background: Roll Off Service, Inc. has requested to renew their contract to haul and dispose of waste within the City of Fayetteville. The contract will permit Roll Off Service, Inc. to continue to haul and dispose of waste in containers twenty (20) cubic yards and greater in size. The agreement requires Roll Off Service, Inc. to pay a monthly fee to the City of Fayetteville of ten (10%) percent of the gross revenue. This is the standard agreement authorized by City Council in implementing the contract fee. In addition, Roll Off Service, Inc. requests to collect source separated recyclables and or scrap metals. Section 3 of the Agreement states no un-separated recyclables collected in any type container shall be hauled from any customer within the corporate limits of the City of Fayetteville. The collection of scrap metal, cardboard and other source-separated recyclables are not controlled or affected by this contract.

Discussion: Roll Off Service, Inc. entered into this agreement in March 2004. The term of this agreement was three years. Staff requests this agreement renewal be denied for the following reason(s): Roll Off Service, Inc. has consistently been in non-compliance with the agreement by failing to remit monthly fees by the deadline stated and by failing to remit the required supporting information. An audit was conducted in December 2004 which uncovered a magnitude of discrepancies and understated gross revenues reported to the City. The month of September 2004 was selected as the sample month. The auditor and Roll Off Service, Inc. reviewed documents for September 1 through September 16, 2004 in which a significant underpayment was revealed. The auditor was **not** permitted by Roll Off Service, Inc. to continue the review of documents for September 17 through 30, 2004. As a result of the incomplete audit, Roll Off Service, Inc. was assessed \$17,256.91 in underpaid fees to the City.

The City issued ten violation letters to Roll Off Service, Inc. during 2005 for non payment of fees and/or failure to pay penalties. Letters specifically instruct that a two (2%) percent penalty be applied. A second letter was needed to collect the penalty on six occasions.

Roll Off Service, Inc. regularly remitted monthly fees through August 2006. A letter was mailed in January 2007 to collect remaining fees for 2006. The letter informed Roll Off Service, Inc. the contract would terminate on January 31, 2007 if remaining fees were not remitted. Those fees were collected, but another letter was needed in February to collect January fees.

A Required Supporting Information Form was mailed to all haulers contracted with the City of Fayetteville in July 2006. The form was developed by the Internal Auditor in an effort to seek compliance with the agreement and to ensure conformity of the required supporting information. Roll Off Service, Inc. does not remit this form and continues to supply backup without sufficient information.

As a result of these and ongoing issues, a great deal of staff time is devoted to monitoring compliance with the agreement, preparing letters, and calculating penalties.

The Staff does not recommend renewal of this agreement with Roll Off Service, Inc. or any subsidiary or renamed or reconstituted company with the same principles due to the continuing noncompliance issues.

RESOLUTION NO. _____

**A RESOLUTION DENYING RENEWAL OF THE CONTRACT
WITH ROLL OFF SERVICE, INC. TO HAUL AND DISPOSE OF
SOLID WASTE WITHIN THE CITY LIMITS OF FAYETTEVILLE.**

**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 denies renewal of the contract with Roll Off Service, Inc. to haul and
dispose of solid waste within the city limits of Fayetteville.

PASSED and APPROVED this 3rd day of April, 2007.

APPROVED:

ATTEST

By:

DAN COODY, Mayor

By:

SONDRA SMITH, City Clerk/Treasurer

Roll Off Service, Inc.

Post Office Box 1700

Lowell AR 72745

Phone 479-872-9098

Fax 479-872-0848

February 26, 2007

City of Fayetteville

Attn: Gary Dumas

113 West Mountain

Fayetteville, AR 72701

Dear Mr. Dumas,

This letter is a request for the ability of Roll Off Service, Inc. to continue our service of 20 yard or greater roll off containers containing waste generated from industrial, large commercial or construction/demolition activities or which is classified as Special Waste, Hazardous Waste, grease or any other type Solid Waste which requires special handling or disposal from within the city limits of the City of Fayetteville. In addition we also request to collect source separated recyclables and or scrap metals.

I appreciate your consideration of this request.

Sincerely,



Bob Mager

General Manager

Roll Off Service, Inc.

AGREEMENT TO HAUL AND DISPOSE OF SOLID WASTE IN THE CITY OF FAYETTEVILLE

This Agreement (the "Agreement"), is entered into on this ____ day of _____, 2007, between the City of Fayetteville, Arkansas, a municipal corporation (the "City"), and _____ (the "Hauler"), and shall be in full force and effect on the date first written above. City and Hauler agree as follows:

1. Hauler agrees that from and after the original date of this Agreement, all customer service Agreements for facilities within the corporate limits of the City entered into before or after the effective date of this Agreement, or renewed shall have terms of no more than two (2) years and any subsequent extensions shall be for terms of no more than one (1) year.
2. The term of this Agreement shall be for three (3) years, unless otherwise terminated pursuant to the terms hereof.
3. Hauler agrees and understands that it may only collect and haul Solid Waste using the type equipment commonly referred to as open-top roll-off style containers with capacities of twenty (20) cubic yards or greater, or roll-off style compactor containers with capacities of twenty (20) cubic yards or greater, containing waste generated from industrial, large commercial or construction/demolition activities, or which is classified as Special Waste, Hazardous Waste, grease or any other type Solid Waste which requires special handling or disposal. Hauler shall not collect any Class 1 or Class 4 material in other containers. No unseparated recyclables collected in any type container shall be hauled from any customer within the corporate limits of the City of Fayetteville. The collection of scrap metal, cardboard and other source-separated recyclables are not controlled or affected by this contract.
4. Hauler agrees and understands that it may utilize the City's transfer station for all Class 1 waste collected pursuant to this Agreement and shall deliver all Class 4 waste to a properly licensed landfill facility. Hauler shall pay all transfer station fees to the transfer station operator and all Class 4 landfill fees to the landfill operator, as they may be established and amended, from time to time.
5. Hauler shall pay all fees due hereunder, along with the required supporting information, on or before the 15th of each calendar month for the immediately preceding calendar month. Payments of fees received after the due date shall be assessed a 2% penalty per month. If Hauler failed to pay the fees within forty-five (45) days of the due date, the City may revoke this Agreement upon delivery of written notice to the Hauler. The supporting information shall be sufficient to demonstrate the accuracy of the fee calculation, and shall include the following information: (i) Hauler's worksheet calculating the fees remitted; (ii) a blind list of payments received from customers within the City; (iii) such list shall clearly indicate whether each payment was from a permanent or temporary customer, and (iv) the fee shall be based upon all activity from each customer account within the City, and shall include the normal billing charges for all free or discounted services (excluding those for non-profit organizations) including but not limited to delivery, pull charges, disposal charges, transportation charges, final pull charges, and return charges. The City shall have the right to conduct an audit of Hauler's customer files and records for all customers located within the City, provided that such audit privilege shall be limited to once per calendar quarter. If such audit reveals the

hauler should have paid at least 5% more than reported, the cost of the audit shall be paid by the Hauler to the City. During such audit, the City may review certain trade secret information, including rates, frequency of service, customer lists, and other customer information provided that such trade secret information may not be copied or removed by the City. Nor shall such information be divulged to any third party by the City, its employees, officers, or elected officials without the express written consent of the Hauler.

6. Hauler agrees and understands that it shall submit to the City on an annual basis a list of all commercial vehicles used to provide services in the City, proof of appropriate vehicle registration, and proof of the insurance required under Section 16.
7. Hauler agrees and understands that it shall provide a list of vehicle operators collecting and hauling waste in the City of Fayetteville, along with proof of their valid and appropriate commercial drivers' licenses issued by the State of Arkansas. The Hauler shall also provide, maintain, and implement a plan to ensure that the vehicle operators maintain their commercial driver's licenses in accordance with applicable federal and state laws.
8. Hauler agrees that it shall comply with all federal, state and local laws applicable to the safety, environmental and transportation matters related to providing solid waste collection services under this Agreement. Hauler agrees that all open-top roll-off style containers will be properly covered during transit on streets and highways within Fayetteville.
9. In consideration of the right to provide the services described under this Agreement, Hauler agrees and understands that it shall be required to pay a monthly fee of ten (10%) percent (the "Fee") of the gross revenue received for all services provided under this Agreement. Upon execution of this Agreement, a deposit shall be paid in advance to the City. The deposit shall be equal to one-half of the total fees that were or would have been paid by the Hauler within to the City during the previous twelve (12) months. Such deposit shall be reviewed on an annual basis. Any reasonable disagreement in estimated gross revenue will be decided in the favor of the City. The deposit shall be refunded, less any unpaid fees, when the Hauler ceases operation within the City or this Agreement is terminated, whichever is earlier.
10. The City reserves the right to inspect all vehicles and containers to ensure that the vehicles are safe and well-maintained and that all containers are well-maintained and water tight, if necessary.
11. Hauler agrees and understands that it shall be required to establish an individual credit or service relationship with the City of Fayetteville transfer station operator and the Tontitown Landfill operator. Hauler agrees that it shall comply with all practices, policies and procedures as established by the transfer station operator from time to time. Any tipping fee deposits required by the transfer station or landfill operators shall be refunded, less any unpaid tipping fees, when the Hauler ceases hauling activities governed by this Agreement.
12. This Agreement has been entered into freely and voluntarily by Hauler which agrees to abide by all of the terms and conditions as a matter of contractual obligation pursuant to applicable city ordinances. This is a contractual Agreement and is not intended to be part

of or related in any way to any license or ordinance created pursuant to A.C.A. §26-77-102.

13. Neither this Agreement, nor any rights or obligations hereunder may be assigned or transferred to any third party or affiliate.
14. For the purpose of this contract, the Point of Contact of the City of Fayetteville shall be Gary Dumas or his successor. The Point of Contact for the Hauler shall be BOB MAGER. Communications pertaining to day-to-day aspects of this contract shall be through these individuals. Either party may change its designated Point of Contact upon ten (10) days prior written notice to the other party.
15. Hauler agrees to protect, indemnify, defend and save harmless the City, its officials, officers, employees, agents, subcontractors, representatives and assigns from any loss, claim, liability, penalty, fine, forfeiture, demand, cause of action, suit and costs and expenses incidental thereto (including costs of defense, settlement and reasonable attorneys' fees), to the extent caused by (i) Hauler's breach of any term, condition, covenant or warranty contained in this Agreement, or (ii) Hauler's negligent act or omission or willful misconduct related to the delivery of waste to the City transfer station or a properly licensed landfill facility.
16. Insurance: Hauler shall maintain the following insurance coverage during the term of this Agreement:
- (a) Hauler shall provide and maintain, during the term of this Agreement, comprehensive general liability insurance, to protect against all claims arising out of the performance of its services hereunder that result in bodily injury, death or property damage. The policy or policies shall contain a clause that the insurer will not cancel or decrease the insurance coverage without first giving the City sixty (60) days notice in writing.
 - (b) Upon written request, Hauler shall furnish the City with evidence that the insurance required of it is in force.
 - (c) The types of coverage and limits of liability of all insurance required herein shall be as follows:

COVERAGE	LIMITS OF LIABILITY
Workmen's Compensation	Statutory
Employer's Liability	\$500,000
Bodily Injury Liability except Automobile	\$1,000,000 each occurrence
Property Damage Liability Except Automobile	\$1,000,000 each aggregate

Automobile Bodily Injury	\$1,000,000 each person
Comprehensive General Liability	\$1,000,000 each occurrence
Automobile Property Damage Liability	\$1,000,000 each occurrence
Excess Umbrella Liability	\$1,000,000 each occurrence

17. Termination:

- (a) Except as otherwise provided herein, if Hauler breaches this Agreement or defaults in the performance of any of the requirements or conditions contained herein, and such breach continues for fifteen (15) days after the City has given the Hauler written notice of such breach or default, the City may: (i) terminate this Agreement fifteen (15) days after the fifteen (15) days in which to cure; or (ii) cure the breach or default at the expense of the Hauler; and (iii) have recourse to any other right or remedy to which it may be entitled by law.
- (b) The City may terminate this Agreement upon written notice to the Hauler if the Hauler makes an assignment for the benefit of creditors, or files a voluntary petition in bankruptcy, receivership or insolvency, or files an answer in any involuntary proceeding of that nature admitting the material allegations of the petition, or if a proceeding in bankruptcy, receivership or insolvency shall be instituted against the offending and such proceeding is not dismissed within sixty (60) days.
- (c) In the event that this Agreement is terminated for any reason, any amounts payable to the City by Hauler for services rendered for any reason whatsoever shall become immediately due and payable as of the date of such termination.

18. All notices required or permitted under this contract shall be submitted in writing to the other party to this contract, by certified mail, return receipt requested, which notice shall be effective three (3) days after deposit therein addressed to the following:

City of Fayetteville
Dan Coody, Mayor
113 West Mountain Street
Fayetteville, AR 72701

Roll Off Service, Inc.
Attn: BOB MAGER
P.O. Box 1700
Lowell, AR 72745

19. Hauler agrees and understands that this Agreement and documents submitted to the City pursuant hereto are subject to the Arkansas Freedom of Information Act. If a Freedom of Information Act request is presented to the City of Fayetteville requesting such documents, Hauler 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.

20. This agreement shall be interpreted according to and enforced under the laws of the State of Arkansas. Capitalized terms herein shall have the same meaning as set forth in ADEQ Reg. No. 22.
21. A waiver by either party of any of the terms or conditions herein shall be limited to that particular instance, and shall not be construed as a general waiver of either party's right to seek appropriate remedies for any other breaches by either party.
22. 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.
23. 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 the Hauler.
24. 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.
25. To the extent a definition or a specific term is not provided herein but is nonetheless required by the context, it is the intention of the parties to incorporate herein the definitions contained in applicable law and regulation in effect as the date hereof, except to the extent subsequent law or regulation shall expressly or implicitly mandate a revised definition.
26. The obligations of the parties to this Agreement, which by their nature would continue beyond the termination, cancellation or expiration of this Agreement, shall survive the termination (for any reason), cancellation or expiration of this Agreement.

IN WITNESS WHEREOF, we have hereunto set our hands on the date first written above.

CITY OF FAYETTEVILLE

By: _____
DAN COODY, as Mayor

ATTEST:

By: _____
SONDRA SMITH, City Clerk

ROLL OFF SERVICE, INC.
By: Tom Smith
TOM SMITH
President



OPERATIONS DIRECTOR

February 23, 2005

Roll-Off Service, Inc.
Attn: Mr. Tom Smith
P.O. Box 1700
Lowell, Arkansas 72745

COPY

Dear Mr. Tom Smith,

The result of the December 1, 2004 audit of Roll-Off Service, Inc. is enclosed.

The audit report includes the following sections: Audit Purpose, Procedures, Results and Remedies. Please pay particular attention to the Remedies section. This section details your options as well as recommendations on how Roll-Off Service and the City of Fayetteville can continue our business arrangement. In addition to the Audit Report there is a calculation worksheet detailing a revenue short fall of \$15,569.99 for 2004 services provided by Roll-Off Service, Inc. with in the City of Fayetteville. This amount is due in addition to any outstanding payments owed to the City of Fayetteville.

As per the contract between Roll Off Service, Inc. and the City of Fayetteville paragraph 5, the audit revealed a significant underpayment; as such a 2% penalty is assessed. This penalty is \$80.38. Additionally, since the underpayment was greater than 5%, the cost of the audit services is also assessed as per paragraph 5. This cost is \$1,309.20. Further the forgone interest due to the City of Fayetteville is \$297.33.

The total due is \$17,256.91.

Roll Off Service, Inc. is in breach of its contract with the City of Fayetteville for not remitting appropriate fees. This letter is your Notice To Cure such breach. As per the contract paragraph 17, you have 15 days to remit the total due the City.

Failure to remit the total due will result in the termination of this contract.

Sincerely Yours,

A handwritten signature in black ink, appearing to read "Gary Dumas", written over a horizontal line.

Gary Dumas

Roll-Off Service, Inc. Audit Report

AUDIT PURPOSE:

An audit was performed by the City of Fayetteville (City) to determine if the City is receiving proper payment from Roll-Off Service (Hauler) in accordance with the terms of the contract dated March 2, 2004. According to the contract, the Hauler agrees to pay a monthly fee of 10% of the gross revenues received for open top trash bin services within the corporate limits of the City.

PROCEDURE #1:

The Hauler was informed that an audit would be performed according to the terms of the contract. The Hauler Accounts Receivable Clerk was interviewed regarding the fees remitted to the City for the month of September. A blind listing of payments received from customers within the City, which is a document required by the contract, was requested. It was determined that the listing did not exist. The Hauler was asked to provide a list of the customers within the City who were included with September's payment, but the Hauler was also unable to provide an accurate list.

As a substitute for the contractual documents, the daily deposit slips for the month of September were obtained, and a sample of invoices was chosen from the receipts on the deposit slips. The invoices were reviewed to determine if the gross revenue should have been included in the contract to the City.

RESULTS:

For the month of September, the City received a fee of \$536.06 from the Hauler, which represents gross revenues of \$5,360.61. The results of the sample showed that gross revenues to the City were understated by at least \$2,760.12. The Hauler underpaid the City by \$276.01, the 10% fee on the gross revenues. Because this represented more than a 50% difference from what the City was paid for the month of September, the cost of the audit, \$1,309.20, is payable by the Hauler to the City.

PROCEDURE #2:

Due to the large difference found in the sample, all payments greater than \$65.00 on the September daily deposit slips were listed to be reviewed for correct payment to the City.

RESULTS:

The auditor and Hauler owner reviewed the invoices for September 1 through September 16, 2004. The review revealed additional gross revenue of \$6,166.67 subject to the fee. The Hauler owner reviewed the invoices for September 17 through 30, 2004, without allowing the auditor to participate. The Hauler review revealed additional gross revenue of \$1,123.09 subject to the fee.

REMEDIES:

Gross revenues reported to the City were understated by at least \$10,049.88 in the month of September 2004, which represents a fee due the City of \$1,004.99. According to the

contract, a 2% penalty is assessed per month on payments received after the due date, which would be \$80.38 for September's unpaid balance due.

Due to the magnitude of the discrepancies discovered, the City has a contractual right for an audit of all months of the contract period, with audit costs paid by the Hauler. To provide an independent and objective review of fees payable to the City, it would be in the best interests of both parties to have the audit performed by a mutually agreeable Certified Public Accounting firm. It is expected that this type of audit would be very costly to the Hauler based on the condition of the Haulers' records as documented above. The City also expects this type of audit could be disruptive to the Hauler's on-going efforts to conduct business. Therefore, in the interest of not wanting to appear punitive, the City is willing to apply the audit results for September 1 through 16, the period the City was able to audit, to the other months of the contract period, in lieu of a full audit. By applying the average daily gross revenues from September 1 through 16 to all days of the contract period through 2004, the City is due an additional \$14,565.00. Interest foregone on the monthly unpaid fees to the City at a 2004 blended interest rate of 4.5% totals \$297.33.

City of Fayetteville
Roll-Off Service, Inc. Audit

Gross revenues per audit for Sept. 1 - 16 12,926.59
Average daily gross revenues (12,926.59/16 days) 807.91

Average daily gross revenues applied to all days of contract period

Month	Days in Month	Gross Revenues	Fee Due City per Audit	Payment Made	Difference
April	30	24,237.36	2,423.74	683.33	1,740.41
May	31	25,045.27	2,504.53	709.03	1,795.50
June	30	24,237.36	2,423.74	689.30	1,734.44
July	31	25,045.27	2,504.53	515.48	1,989.05
Aug	31	25,045.27	2,504.53	612.64	1,891.89
Sept	30	15,410.49	1,541.05	536.06	1,004.99
Oct	31	25,045.27	2,504.53	624.31	1,880.22
Nov	30	24,237.36	2,423.74	689.63	1,734.11
Dec	31	25,045.27	2,504.53	705.12	1,799.41
			21,334.89	5,764.90	15,569.99
					1,004.99
					14,565.00

less Sept.

Interest foregone on unpaid monthly balances

Month	Difference	Interest at 4.5%
April	1,740.41	6.53
May	1,795.50	13.28
June	1,734.44	19.84
July	1,989.05	27.37
Aug	1,891.89	34.57
Sept	1,004.99	38.47
Oct	1,880.22	45.66
Nov	1,734.11	52.34
Dec	1,799.41	59.28
	15,569.99	297.33

\$ 1,004.99 Fees due for month of September
80.38 2% penalty on September fees
1,309.20 September audit costs
14,565.00 Fees for April, May, June, July, August, October, November, December, 2004
297.33 Interest on unpaid fees
\$ 17,256.91 Total due to City

FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

April 2, 2004

*Faxed
4.2.04*

Roll Off Service, Inc.
Tom Smith
P.O. Box 1700
Lowell, AR 72745

Dear Tom:

I have received the certificate of insurance for Roll Off Service, Inc. from Walker Bros. Insurance, Inc.

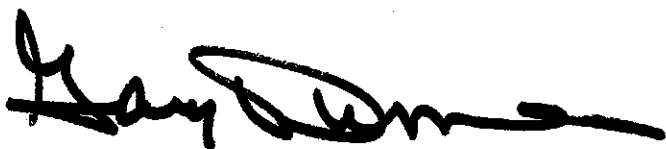
I have not received the list of vehicles with proof of registration, the list of vehicle operators with proof of valid and appropriate commercial driver's licenses, the company's plan to insure that the vehicle operators maintain their commercial driver's licenses, and the deposit required.

Your earlier concern regarding privacy of driver's license numbers can be resolved by marking though the number and providing copies of the driver's license cards with the number obliterated.

Roll Off Service, Inc. is in substantial non-compliance with the Agreement to Haul and Dispose of Waste. As a result Roll Off Service, Inc. vehicles doing business in Fayetteville may be stopped and ticketed effective immediately.

You should resolve these outstanding compliance issues immediately to avoid disruption of you services.

Sincerely,



Gary Dumas
Director of Operations

COPY

Cc: Rick Hoyt, Chief of Police
Dan Coody, Mayor

FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

June 15, 2004

 COPY

To Contracted Waste Haulers:

It is the 15th of the month again.

Please be reminded that there are specific stipulations within contract concerning payment of fees and specific reporting that must be provided monthly with each payment.

Specifically this contract requirement is found within paragraph 5. This timing and reporting requirement reads in part (emphasis added):

Hauler shall pay all fees due hereunder, along with the required supporting information, on or before the 15th of each calendar month for the immediately preceding calendar month. Payments of the fees received after the due date shall be assessed a 2% penalty per month. If Hauler failed to pay the fees within forty-five (45) days of the due date, the City may revoke this Agreement upon delivery of written notice to the Hauler. *The supporting information shall be sufficient to demonstrate the accuracy of the fee calculation, and shall include the following information: (i) Hauler's worksheet calculating the fees remitted; (ii) a blind list of payments received from customers within the City; (iii) such list shall clearly indicate whether each payment was from a permanent or temporary customer, and (iv) the fee shall be based upon all activity from each customer account within the City, and shall include the normal billing charges for all free or discounted services (excluding those for non-profit organizations) including but not limited to delivery, pull charges, disposal charges, transportation charges, final pull charges, and return charges.*

All contracted haulers must provide the above described activity report each month.

Payments should be made by check payable to the City of Fayetteville. The check and supporting information should be delivered together to Gary Dumas, Director of Operations, 113 West Mountain, Fayetteville, Arkansas 72701.

113 WEST MOUNTAIN
FAYETTEVILLE, ARKANSAS 72701
479-575-8330
FAX 479-575-8257



OPERATIONS DIRECTOR

March 24, 2005

Roll-Off Service, Inc.
Attn: Mr. Tom Smith
P.O. Box 1700
Lowell, Arkansas 72745

 **COPY**

Dear Mr. Tom Smith,

This letter is to service as notice that the City of Fayetteville has not received Roll-Off Service's contract payments for January or February of 2005. Per the contract, please include a 2% per month penalty with your payment. Your attention to this matter is greatly appreciated.

Sincerely

Gary Dumas



COPY

OPERATIONS DIRECTOR

April 14, 2005

Roll-Off Service, Inc.
Attn: Mr. Tom Smith
P.O. Box 1700
Lowell, Arkansas 72745

Dear Mr. Tom Smith,

This letter serves as a notice that the City of Fayetteville has not received contract payments from Roll-Off Service, Inc. for October 2004. Per the contract, please include a 2% per month penalty with your payment. I want to thank you for your payments of January 2005 and February 2005 services. Regrettably, the payments were received on April 12, 2005 without the required penalty. Please submit the 2% per month penalty payment of \$77.65 for January 2005 and \$47.16 for February 2005 services.

Your attention to these matters is greatly appreciated.

Sincerely,

A handwritten signature in black ink, appearing to read "Gary Dumas", written over a horizontal line.

Gary Dumas

 **COPY**



OPERATIONS DIRECTOR

May 25, 2005

Roll-Off Service, Inc.
Attn: Mr. Tom Smith
P.O. Box 1700
Lowell, Arkansas 72745

Dear Mr. Tom Smith,

On about April 16, you received my letter to you dated April 14, 2005 informing you that the City of Fayetteville had not received the contract payment from Roll Off Services, Inc. for the month of October, nor the contractual late payment fees for the months of January and February.

Additionally, no contract payment has now been received for the month of April.

Roll Off Service, Inc. is in breach of its contract with the City of Fayetteville for not remitting appropriate fees.

This letter is your Final Notice To Cure such breach.

As per the contract paragraph 17, you have 15 days to remit the total due including all late payment fees due the City.

Failure to remit the total amount due will result in the termination of this contract on June 14, 2005.

Effective June 15, 2005 the City will use any right or remedy to which it may be entitled by law to enforce the provisions of the contract and collect any amounts owed the City.

Sincerely Yours,

A handwritten signature in black ink, appearing to read "Gary Dumas", written over a horizontal line.

Gary Dumas

Fayetteville
ARKANSAS
OPERATIONS DIRECTOR

FILE COPY

July 25, 2005

Tom Smith
Roll-Off Service Inc
PO Box 1700
Lowell, AR 72745

Dear Tom Smith,

This letter serves as a reminder there are specific stipulations of the Agreement to Haul and Dispose of Solid Waste in the City of Fayetteville contract regarding payment of fees and specific reporting required monthly with each payment. Specifically, this contract requirement is found in paragraph 5. Payment deadline and reporting requirements read in part (emphasis added):

Hauler shall pay all fees due hereunder, along with the required supporting information, on or before the 15th of each calendar month for the immediately preceding calendar month. Payments of the fees received after the due date shall be assessed a 2% penalty per month. If Hauler failed to pay the fees within forty-five (45) days of the due date, the City may revoke this Agreement upon delivery of written notice to the Hauler. *The supporting information shall be sufficient to demonstrate the accuracy of the fee calculation, and shall include the following information: (i) Hauler's worksheet calculating the fees remitted; (ii) a blind list of payments received from customers within the City; (iii) such list shall clearly indicate whether each payment was from a permanent or temporary account within the City, and shall include the normal billing charges for all free or discounted services (excluding those for non-profit organizations) including but not limited to delivery, pull charges, disposal charges, transportation charges, final pull charges, and return charges.*

All contracted Haulers must provide the above described activity report each month. If no activity occurred, e-mail gdumas@ci.fayetteville.ar.us stating as such.

Payments should be made by check payable to the City of Fayetteville. The check and supporting documents should be delivered to Gary Dumas, Director of Operations, 113 W. Mountain St., Fayetteville, Arkansas 72701.

I greatly appreciate your immediate attention to this matter and anticipate hearing from you soon. Please disregard this notice if your check is in the mail.

Sincerely Yours,



Gary Dumas, Director of Operations

113 West Mountain
Fayetteville, Arkansas 72701
Office phone - 479-575-8330
Fax - 479-575-8257
e-mail - gdumas@ci.fayetteville.ar.us

mailed 7/27/05



FILE COPY

July 26, 2005

Tom Smith
Roll-Off Service Inc
PO Box 1700
Lowell, AR 72745

Dear Tom Smith,

This letter serves as a reminder there are specific stipulations of the Agreement to Haul and Dispose of Solid Waste in the City of Fayetteville contract regarding container capacity size for the collection and hauling of solid waste. Specifically, this contract requirement is found in paragraph 3:

Hauler agrees and understands that it may only collect and haul Solid Waste using the type equipment commonly referred to as open-top roll-off style containers with capacities of twenty (20) cubic yards or greater, or roll-off style compactor containers with capacities of twenty (20) cubic yards or greater, containing waste generated from industrial, large commercial or construction/demolition activities, or which is classified as Special Waste, Hazardous Waste, grease or any other type Solid Waste which requires special handling or disposal. Hauler shall not collect any Class 1 or Class 4 material in other containers. No unseparated recyclables collected in any type container shall be hauled from any customer within the corporate limits of the City of Fayetteville. The collection of scrap metal, cardboard and other source-separated recyclables are not controlled or affected by this contract.

Containers less than twenty (20) cubic yards are in violation of the agreement entered into with the City of Fayetteville and should be removed immediately. Please resolve the above compliance issue within fifteen (15) days from the date of this letter. Your prompt attention to this matter is greatly appreciated.

Sincerely Yours,


Gary Dumas
Director of Operations

mailed 7/27/05

Fayetteville

ARKANSAS
OPERATIONS DIRECTOR

COPY

August 10, 2005

Tom Smith
Roll-Off Service Inc
PO Box 1700
Lowell, AR 72745

Dear Tom Smith,

Thank you for your payment of June 2005 franchise fees in the amount of \$1,610.82. Unfortunately, the payment was received on August 5, 2005 without the required penalty assessed on fees remitted after the due date of July 15, 2005. Please remit a 2% penalty of \$32.22 to bring your account up to date.

As a reminder, July 2005 franchise fees will be due on or before August 15, 2005. To avoid additional penalties, please remit your payment promptly.

Payments should be made by check payable to the City of Fayetteville. The check and supporting documents should be delivered to Gary Dumas, Director of Operations, 113 W. Mountain St., Fayetteville, Arkansas 72701.

I greatly appreciate your immediate attention to this matter and anticipate hearing from you soon.

Sincerely,



Gary Dumas
Director of Operations

mailed 8/10/05



CERTIFIED MAIL
VIOLATION NOTICE

August 22, 2005

Tom Smith
Roll-Off Service Inc
PO Box 1700
Lowell, AR 72745

 **COPY**

Subject: Notice of Violation

Dear Tom Smith,

On July 26, 2005 the City of Fayetteville issued a letter notifying you that containers less than twenty (20) cubic yards are not permitted by your **Agreement to Haul and Dispose of Solid Waste in the City of Fayetteville** ("Agreement") and must be removed immediately.

Roll Off Service, Inc. is in substantial non-compliance with the Agreement.

This letter is your Final Notice To Cure this breach of contract.

As per the contract paragraph 17, you have 15 days to cure this breach of contract.

Failure to cure this breach of contract will result in the termination of this contract on September 6, 2005.

Effective September 7, 2005 the City will use any right or remedy to which it may be entitled by law to enforce the provisions of the contract.

Sincerely Yours,



Gary Dumas
Director of Operations



CERTIFIED MAIL
VIOLATION NOTICE

September 23, 2005

Tom Smith
Roll-Off Service Inc
PO Box 1700
Lowell AR 72745

A rectangular stamp with the word "COPY" in a bold, sans-serif font. To the left of the word is a small icon of a document with a checkmark.

Dear Mr. Smith:

On August 10, 2005 I sent you a letter informing you that June 2005 franchise fees were received on August 5, 2005 without the required two percent (2%) penalty of \$32.22. I also reminded you that July fees were due on or before August 15. Unfortunately you did not respond and no contract payment has been received for July or August.

Roll-Off Service, Inc. is in breach of its contract with the City of Fayetteville for not remitting appropriate fees.

This letter is your Final Notice To Cure such breach.

As per the contract paragraph 17, you have 15 days to remit the total due including all late payment fees due the City.

Failure to remit the total amount due will result in the termination of this contract on October 10, 2005.

Effective October 11, 2005 the City will use any right or remedy to which it may be entitled by law to enforce the provisions of the contract and collect any amounts owed the City.

Sincerely,

A handwritten signature in black ink, appearing to read "Gary Dumas".

Gary Dumas
Director of Operations

113 West Mountain
Fayetteville, Arkansas 72701
Office phone - 479-575-8330
Fax - 479-575-8257
e-mail - gdumas@ci.fayetteville.ar.us

714261

Fayetteville

ARKANSAS
OPERATIONS DIRECTOR

October 31, 2005

Tom Smith
Roll-Off Service Inc
PO Box 1700
Lowell, AR 72745

Dear Tom Smith,

Thank you for your payment of July, August, and September 2005 franchise fees in the amount of \$6,767.10. Unfortunately, the payment was received on October 25, 2005 without the required penalty assessed on fees remitted after the due date. Please remit a 2% penalty, in the amount of \$262.07, for the months of July, August, and September to bring your account up to date.

As a reminder, October 2005 franchise fees will be due on or before November 15, 2005. Penalties will accrue at a rate of 2% per month for payments received after the 15th day of each month. To avoid additional penalties, please remit your payment promptly.

Payments should be made by check payable to the City of Fayetteville. The check and supporting documents should be delivered to Gary Dumas, Director of Operations, 113 W. Mountain St., Fayetteville, Arkansas 72701.

I greatly appreciate your immediate attention to this matter and anticipate hearing from you soon.

Sincerely,



Gary Dumas
Director of Operations



CERTIFIED MAIL
VIOLATION NOTICE

December 7, 2005

Tom Smith
Roll-Off Service Inc
PO Box 1700
Lowell AR 72745

A rectangular stamp with the word "COPY" in a bold, sans-serif font. To the left of the word is a small square icon containing the letter "C".

Dear Mr. Smith:

On October 31, 2005 I sent you a letter informing you that late penalties were due on franchise fees remitted for the months of July, August, and September. On November 22, 2005 the franchise fee payment for the month of October was received past the due date of November 15, 2005. Penalties accrue at a rate of two percent (2%) per month for payments received after the 15th day of each month. **Roll-Off Service has accrued penalties in the amount of \$408.58.** If these fees are not received by December 15, 2005, an additional \$178.93 in penalties will be applied along with a two percent (2%) penalty for November fees.

Roll-Off Service, Inc. is in breach of its contract with the City of Fayetteville for not remitting appropriate fees.

This letter is your Final Notice To Cure such breach.

As per the contract paragraph 17, you have 15 days to remit the total due including all late payment fees due the City.

Failure to remit the total amount due will result in the termination of this contract on December 26, 2005.

Effective December 27, 2005 the City will use any right or remedy to which it may be entitled by law to enforce the provisions of the contract and collect any amounts owed the City.

Sincerely,

A handwritten signature in dark ink, appearing to read "Gary Dumas".

Gary Dumas
Director of Operations



THE CITY OF FAYETTEVILLE, ARKANSAS

July 14, 2006

To: All Haulers contracted with the City of Fayetteville to collect and haul solid waste within the corporate limits of the City

According to your agreement with the City of Fayetteville, you are required to pay a monthly fee of 10% of the gross revenue received for all services provided under the agreement. Covered services include the collection and hauling of solid waste using the type equipment commonly referred to as open-top roll-off style containers with capacities of 20 cubic yards or greater, or roll-off style compactor containers with capacities of 20 cubic yards or greater, containing waste generated from industrial, large commercial or construction/demolition activities, or which is classified as special waste, hazardous waste, grease or any other type solid waste which requires special handling or disposal within the corporate limits of the City.

You are required to pay all fees, along with the required supporting information specified in section 5 of the agreement, on or before the 15th of each calendar month for the immediately preceding calendar month.

In an effort to seek compliance with the agreement and to ensure conformity of the required supporting information specified in section 5 of the agreement to be provided with your payment, the City has prepared a *Required Supporting Information Form* to be completed and remitted with each monthly payment of fees. The completed forms will be reviewed each month, and if necessary, the City will request further documentation or conduct an audit as allowed in section 5 of the agreement.

If you have any questions pertaining to the completion of the form, you may contact me or John Nelson, Operations Management Accounting Coordinator, jnelson@ci.fayetteville.ar.us. Thank you for your cooperation.

Vicki Deaton, CISA
City of Fayetteville Internal Auditor
vdeaton@ci.fayetteville.ar.us

Rev. 07/06

Required Supporting Information For Monthly Payment of Fees

Due on or before the 15th of each calendar month for the immediately preceding calendar month. Payments of the fees received after the due date shall be assessed a 2% penalty per month.

Hauler: _____

Month: _____

1. Please give the number of permanent customer accounts you have within the corporate limits of the City of Fayetteville for the month reported.

2. Please give the number of temporary customer accounts you have within the corporate limits of the City of Fayetteville for the month reported.

3. Please give the total number of containers placed with all your customer accounts within the corporate limits of the City of Fayetteville for the month reported.

4. For each account identified above, please complete the attached form showing your unique account identifier which is blind to the City, the account type, the total number of containers with that account, the total number of pulls with that account, and the monthly revenues collected by container for that account. (A form is required for each customer account identified in item #1 and item #2. The container total from all the forms should equal the container total specified in item #3.)

5. The forms completed for item #4 above should include all normal billing charges for free, donated, or discounted services. These normal billing charges should include but not be limited to delivery, pull charges, disposal charges, transportation charges, final pull charges, and return charges. Only donated or discounted services to non-profit organizations may be excluded from fees but are to be reported.

6. Total fee remitted to the City of Fayetteville for the month reported.
(This should equal the total of all the account fees calculated on the attached forms.)

\$

Submitted by: _____

Phone # _____

Customer Account Identifier

(use your unique identifier that is blind to the City) _____

Customer Account Type

(permanent or temporary) _____

Total containers with account _____

Total number of pulls with account _____

Container #	Monthly Revenues
1	
2	
3	
4	
5	
6	
7	
8	
9	
10	
Total:	
Donated or Discounted Containers	Normal Billing Charge
1	
2	
3	
4	
5	
Total:	
Grand Total:	
10% of Grand Total:	

Fee to be remitted to City
for this account

FILE COPY



VIOLATION NOTICE

January 9, 2007

Tom Smith
Roll-Off Service Inc
PO Box 1700
Lowell AR 72745

Dear Mr. Smith:

This letter is a reminder that your payment is past due.

The last payment received was \$2,256.60 on August 7, 2006 for July 2006 franchise fees. We have not received franchise fee payments for the months of August 2006, September 2006, October 2006, November 2006, or December 2006. Penalties will continue to accrue at 2% per month. Please remit your payment promptly.

Roll-Off Service, Inc. is in breach of its contract with the City of Fayetteville for not remitting appropriate fees.

This letter is your Final Notice To Cure such breach.

As per the contract paragraph 17, you have 15 days to remit the total due including all late payment fees due the City.

Failure to remit the total amount due will result in the termination of this contract on January 31, 2006.

Effective February 1, 2007 the City will use any right or remedy to which it may be entitled by law to enforce the provisions of the contract and collect any amounts owed the City.

Sincerely,

A handwritten signature in black ink, appearing to read "Gary Dumas", written over a large, diagonal "FILE COPY" watermark.

Gary Dumas
Director of Operations

C. 6.
Roll off Service, Inc.

Handed out at
Agenda Session 4/10/07

**AGREEMENT TO HAUL AND DISPOSE OF SOLID WASTE
IN THE CITY OF FAYETTEVILLE**

This Agreement (the "Agreement"), is entered into on this ____ day of _____, 2007, between the **City of Fayetteville, Arkansas**, a municipal corporation (the "City"), and _____ (the "Hauler"), and shall be in full force and effect on the date first written above. City and Hauler agree as follows:

1. Hauler agrees that from and after the original date of this Agreement, all customer service Agreements for facilities within the corporate limits of the City entered into before or after the effective date of this Agreement, or renewed shall have terms of no more than two (2) years and any subsequent extensions shall be for terms of no more than one (1) year.
2. The term of this Agreement shall be for three (3) years, unless otherwise terminated pursuant to the terms hereof.
3. Hauler agrees and understands that it may only collect and haul Solid Waste using the type equipment commonly referred to as open-top roll-off style containers with capacities of twenty (20) cubic yards or greater, or roll-off style compactor containers with capacities of twenty (20) cubic yards or greater, containing waste generated from industrial, large commercial or construction/demolition activities, or which is classified as Special Waste, Hazardous Waste, grease or any other type Solid Waste which requires special handling or disposal. Hauler shall not collect any Class 1 or Class 4 material in other containers. No unseparated recyclables collected in any type container shall be hauled from any customer within the corporate limits of the City of Fayetteville. The collection of scrap metal, cardboard and other source-separated recyclables are not controlled or affected by this contract.
4. Hauler agrees and understands that it may utilize the City's transfer station for all Class 1 waste collected pursuant to this Agreement and shall deliver all Class 4 waste to a properly licensed landfill facility. Hauler shall pay all transfer station fees to the transfer station operator and all Class 4 landfill fees to the landfill operator, as they may be established and amended, from time to time.
5. Hauler shall pay all fees due hereunder, along with the required supporting information, on or before the 15th of each calendar month for the immediately preceding calendar month. Payments of fees received after the due date shall be assessed a 2% penalty per month. If Hauler failed to pay the fees within forty-five (45) days of the due date, the City may revoke this Agreement upon delivery of written notice to the Hauler. The supporting information shall be sufficient to demonstrate the accuracy of the fee calculation, and shall include the following information: (i) Hauler's worksheet calculating the fees remitted; (ii) a blind list of payments received from customers within the City; (iii) such list shall clearly indicate whether each payment was from a permanent or temporary customer, and (iv) the fee shall be based upon all activity from each customer account within the City, and shall include the normal billing charges for all free or discounted services (excluding those for non-profit organizations) including but not limited to delivery, pull charges, disposal charges, transportation charges, final pull charges, and return charges. The City shall have the right to conduct an audit of Hauler's customer files and records for all customers located within the City, provided that such audit privilege shall be limited to once per calendar quarter. If such audit reveals the

hauler should have paid at least 5% more than reported, the cost of the audit shall be paid by the Hauler to the City. During such audit, the City may review certain trade secret information, including rates, frequency of service, customer lists, and other customer information provided that such trade secret information may not be copied or removed by the City. Nor shall such information be divulged to any third party by the City, its employees, officers, or elected officials without the express written consent of the Hauler.

6. Hauler agrees and understands that it shall submit to the City on an annual basis a list of all commercial vehicles used to provide services in the City, proof of appropriate vehicle registration, and proof of the insurance required under Section 16.
7. Hauler agrees and understands that it shall provide a list of vehicle operators collecting and hauling waste in the City of Fayetteville, along with proof of their valid and appropriate commercial drivers' licenses issued by the State of Arkansas. The Hauler shall also provide, maintain, and implement a plan to ensure that the vehicle operators maintain their commercial driver's licenses in accordance with applicable federal and state laws.
8. Hauler agrees that it shall comply with all federal, state and local laws applicable to the safety, environmental and transportation matters related to providing solid waste collection services under this Agreement. Hauler agrees that all open-top roll-off style containers will be properly covered during transit on streets and highways within Fayetteville.
9. In consideration of the right to provide the services described under this Agreement, Hauler agrees and understands that it shall be required to pay a monthly fee of ten (10%) percent (the "Fee") of the gross revenue received for all services provided under this Agreement. Upon execution of this Agreement, a deposit shall be paid in advance to the City. The deposit shall be equal to one-half of the total fees that were or would have been paid by the Hauler within to the City during the previous twelve (12) months. Such deposit shall be reviewed on an annual basis. Any reasonable disagreement in estimated gross revenue will be decided in the favor of the City. The deposit shall be refunded, less any unpaid fees, when the Hauler ceases operation within the City or this Agreement is terminated, whichever is earlier.
10. The City reserves the right to inspect all vehicles and containers to ensure that the vehicles are safe and well-maintained and that all containers are well-maintained and water tight, if necessary.
11. Hauler agrees and understands that it shall be required to establish an individual credit or service relationship with the City of Fayetteville transfer station operator and the Tontitown Landfill operator. Hauler agrees that it shall comply with all practices, policies and procedures as established by the transfer station operator from time to time. Any tipping fee deposits required by the transfer station or landfill operators shall be refunded, less any unpaid tipping fees, when the Hauler ceases hauling activities governed by this Agreement.
12. This Agreement has been entered into freely and voluntarily by Hauler which agrees to abide by all of the terms and conditions as a matter of contractual obligation pursuant to applicable city ordinances. This is a contractual Agreement and is not intended to be part

- of or related in any way to any license or ordinance created pursuant to A.C.A. §26-77-102.
13. Neither this Agreement, nor any rights or obligations hereunder may be assigned or transferred to any third party or affiliate.
 14. For the purpose of this contract, the Point of Contact of the City of Fayetteville shall be Gary Dumas or his successor. The Point of Contact for the Hauler shall be _____. Communications pertaining to day-to-day aspects of this contract shall be through these individuals. Either party may change its designated Point of Contact upon ten (10) days prior written notice to the other party.
 15. Hauler agrees to protect, indemnify, defend and save harmless the City, its officials, officers, employees, agents, subcontractors, representatives and assigns from any loss, claim, liability, penalty, fine, forfeiture, demand, cause of action, suit and costs and expenses incidental thereto (including costs of defense, settlement and reasonable attorneys' fees), to the extent caused by (i) Hauler's breach of any term, condition, covenant or warranty contained in this Agreement, or (ii) Hauler's negligent act or omission or willful misconduct related to the delivery of waste to the City transfer station or a properly licensed landfill facility.
 16. **Insurance:** Hauler shall maintain the following insurance coverage during the term of this Agreement:
 - (a) Hauler shall provide and maintain, during the term of this Agreement, comprehensive general liability insurance, to protect against all claims arising out of the performance of its services hereunder that result in bodily injury, death or property damage. The policy or policies shall contain a clause that the insurer will not cancel or decrease the insurance coverage without first giving the City sixty (60) days notice in writing.
 - (b) Upon written request, Hauler shall furnish the City with evidence that the insurance required of it is in force.
 - (c) The types of coverage and limits of liability of all insurance required herein shall be as follows:

COVERAGE	LIMITS OF LIABILITY
Workmen's Compensation	Statutory
Employer's Liability	\$500,000
Bodily Injury Liability except Automobile	\$1,000,000 each occurrence
Property Damage Liability Except Automobile	\$1,000,000 each aggregate

Automobile Bodily Injury	\$1,000,000 each person
Comprehensive General Liability	\$1,000,000 each occurrence
Automobile Property Damage Liability	\$1,000,000 each occurrence
Excess Umbrella Liability	\$1,000,000 each occurrence

17. Termination:

- (a) Except as otherwise provided herein, if Hauler breaches this Agreement or defaults in the performance of any of the requirements or conditions contained herein, and such breach continues for fifteen (15) days after the City has given the Hauler written notice of such breach or default, the City may: (i) terminate this Agreement fifteen (15) days after the fifteen (15) days in which to cure; or (ii) cure the breach or default at the expense of the Hauler; and (iii) have recourse to any other right or remedy to which it may be entitled by law.
- (b) The City may terminate this Agreement upon written notice to the Hauler if the Hauler makes an assignment for the benefit of creditors, or files a voluntary petition in bankruptcy, receivership or insolvency, or files an answer in any involuntary proceeding of that nature admitting the material allegations of the petition, or if a proceeding in bankruptcy, receivership or insolvency shall be instituted against the offending and such proceeding is not dismissed within sixty (60) days.
- (c) In the event that this Agreement is terminated for any reason, any amounts payable to the City by Hauler for services rendered for any reason whatsoever shall become immediately due and payable as of the date of such termination.

18. All notices required or permitted under this contract shall be submitted in writing to the other party to this contract, by certified mail, return receipt requested, which notice shall be effective three (3) days after deposit therein addressed to the following:

City of Fayetteville
Dan Coody, Mayor
113 West Mountain Street
Fayetteville, AR 72701

Attn: _____

19. Hauler agrees and understands that this Agreement and documents submitted to the City pursuant hereto are subject to the Arkansas Freedom of Information Act. If a Freedom of Information Act request is presented to the City of Fayetteville requesting such documents, Hauler 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.

20. This agreement shall be interpreted according to and enforced under the laws of the State of Arkansas. Capitalized terms herein shall have the same meaning as set forth in ADEQ Reg. No. 22.
21. A waiver by either party of any of the terms or conditions herein shall be limited to that particular instance, and shall not be construed as a general waiver of either party's right to seek appropriate remedies for any other breaches by either party.
22. 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.
23. This contract and the Addendum below constitute 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 the Hauler.
24. 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.
25. To the extent a definition or a specific term is not provided herein but is nonetheless required by the context, it is the intention of the parties to incorporate herein the definitions contained in applicable law and regulation in effect as the date hereof, except to the extent subsequent law or regulation shall expressly or implicitly mandate a revised definition.
26. The obligations of the parties to this Agreement, which by their nature would continue beyond the termination, cancellation or expiration of this Agreement, shall survive the termination (for any reason), cancellation or expiration of this Agreement.
27. This Agreement, referred to as the "Main Agreement," is hereby modified to the extent that should any of the following provisions, referred to as the "Addendum," be found to be in conflict with those contained in the Main Agreement, the requirements of the Addendum shall be deemed controlling.

ADDENDUM

WHEREAS, Roll Off Service, Inc. ("Roll Off") is a solid waste disposal company which operates within the city of Fayetteville, Arkansas ("City").

WHEREAS, Roll Off operations are conducted pursuant to the above Agreement to Haul and Dispose of Solid Waste in the City of Fayetteville ("Contract").

WHEREAS, certain differences have arisen between Roll Off and the City concerning late payment, by Roll Off, of contractually-required fees, resulting in the possibility of Roll Off losing the privilege to operate within the City.

WHEREAS, the parties herein desire to reach an agreement by which Roll Off can continue operating within the City pursuant to the terms of the Main Agreement.

NOW THEREFORE, in consideration of the mutual promises and conditions set forth herein, the parties hereto agree as follows:

1. **Probationary Term:** This Addendum is intended to provide a probationary term of one (1) year, during which Roll Off agrees to comply with certain provisions as stated below.
2. **Fee Payments:** Roll Off agrees to make all required fee payments in accordance with the requirements of the Main Agreement, i.e. all payments must be made on or before the 15th day of each calendar month for the immediately preceding calendar month.
3. **Late Payments:** During the probationary term, Roll Off will be assessed penalties according to the following schedule if the required payments are untimely:
 - a) **First Occurrence:** Roll Off will be assessed a 25% penalty
 - b) **Second Occurrence:** Roll Off will be assessed a 50% penalty
4. **Termination:** The Main Agreement will be terminated upon the third (3rd) occurrence of a late payment within the probationary term.
5. **Main Agreement Reinstatement:** In the event Roll Off complies with the terms of the agreement herein during the probationary term, its probationary status will be removed and the payment terms contained in the Main Agreement will once again apply.
6. **Merger Clause:** This Addendum, together with the Main Agreement, when executed by both the City and Roll Off, shall contain the entire understanding and agreement between the parties with respect to all matters referred to herein and shall supersede all prior or contemporaneous agreements, representations, discussions and understandings, oral or written, with respect to such matters. All the terms of the Main Agreement not specifically addressed herein shall remain in full force and effect and this Addendum is not intended to replace said terms.

IN WITNESS WHEREOF, we have hereunto set our hands on the date first written above.

CITY OF FAYETTEVILLE

ATTEST:

By: _____
DAN COODY, Mayor

By: _____
SONDRA E. SMITH, City Clerk/Treasurer

ROLL OFF SERVICE, INC.

WITNESS:

By: _____
TOM SMITH,

By: _____

Lindsey Management Co., Inc.

1200 E. Joyce Boulevard ■ P.O. Box 13000 ■ Fayetteville, AR 72703 ■ (479) 521-6686 ■ Fax (479) 527-8840

RECEIVED

MAR 27 2007

**CITY OF FAYETTEVILLE
CITY CLERK'S OFFICE**

March 27, 2007

City of Fayetteville
ATTN: City Clerk
113 W. Mountain Street
Fayetteville, AR 72701

RE: Links at Fayetteville
R-PZD 07-2452

Dear City Clerk:

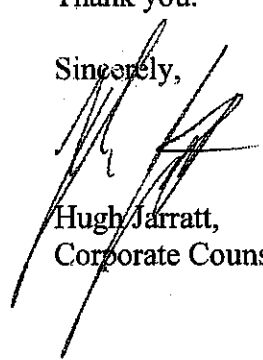
Please treat this letter as a formal request on behalf of The Links at Fayetteville, a Limited Partnership to appeal the Fayetteville Planning Commission decision regarding R-PZD 07-2452, The Links at Fayetteville.

Please place R-PZD 07-2452 The Links at Fayetteville on the agenda for consideration by the Fayetteville City Council. The next available meeting, I believe, is April 17, 2007.

If there are any additional materials or information which you require, please let me know.

Thank you.

Sincerely,


Hugh Jarratt,
Corporate Counsel

Left on the second reading 4/17/07

CITY COUNCIL AGENDA MEMO

To: Mayor and City Council

Thru: Gary Dumas, Director of Operations 

From: Jeremy C. Pate, Director of Current Planning 

Date: March 27, 2007

Subject: Residential Planned Zoning District for Links at Fayetteville (R-PZD 07-2452)

RECOMMENDATION

The Planning Commission voted to deny the subject Residential Planned Zoning District request, R-PZD 07-2452 Links at Fayetteville. A motion to approve failed with a vote of 3-3-2 (Commissioners Myres, Anthes, Oster voting 'No', commissioners Harris and Clark recusing). The applicant has appealed the Planning Commission decision to the City Council.

Planning Staff also recommends denial for an ordinance to create a Residential Planned Zoning District for Links at Fayetteville. If this ordinance is approved, the action would establish a unique zoning district for a residential development with a maximum of 1,258 dwelling units and 120,888 square feet of nonresidential space on a 152.33-acre tract located at the northeast corner of Wedington Drive and Ruppel Road, a proposed density of 8.26 dwelling units per acre.

BACKGROUND

The subject property consists of approximately 152.23 acres located on the north side of Wedington Drive and east of Ruppel Road with frontage on both of these streets. The site is zoned R-PZD 05-1636 Wellspring. The existing zoning allows for a total of 1,175 dwelling units and a maximum of 548,000 square feet of nonresidential space. The property is undeveloped, primarily agricultural pasture. Surrounding land uses consist of developing subdivisions and single family homes to the west, agricultural uses to the north, commercial strip center and mini-storage to the south, and single and multi-family homes to the east. Zoning criteria identifying permitted and conditional uses, building setbacks, bulk and area requirements and architectural guidelines are included within the project booklet provided by the applicant.

DISCUSSION

On March 26, 2007, the Planning Commission voted 3-3-2 on a motion to approve this request with commissioners Myres, Anthes, and Oster voting 'No', commissioners Trumbo, Lack and Bryant voting 'Yes', commissioners Harris and Clark recusing, and commissioner Graves was absent. The motion to approve failed and the applicant has appealed this request to the City Council. The main issues of Planning Commission concern centered on this R-PZD not complying with the purpose and intent of the R-PZD ordinance and the City's land use planning objectives, principles, and policies, in particular the City Plan 2025 and Future Land Use Plan that have been adopted by City Council in the past year.

BUDGET IMPACT

None.

ORDINANCE NO.

AN ORDINANCE ESTABLISHING A RESIDENTIAL PLANNED ZONING DISTRICT TITLED R-PZD 07-2452, THE LINKS AT FAYETTEVILLE, LOCATED AT THE NORTHEAST CORNER OF WEDINGTON AND RUPPLE ROAD; CONTAINING APPROXIMATELY 152.23 ACRES; AMENDING THE OFFICIAL ZONING MAP OF THE CITY OF FAYETTEVILLE; AND ADOPTING THE ASSOCIATED MASTER DEVELOPMENT PLAN

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-PZD 05-1636, Residential Planned Zoning District, WellSpring to R-PZD 07-2452 as shown in Exhibit "A" and depicted in Exhibit "B" attached hereto and made a part hereof.

Section 2: That the change in zoning classification is based upon the approved master development plan, development standards, statement of commitments and the conditions of approval as submitted, determined appropriate and approved by the City Council; further, that the conditions of approval shall be filed and available for viewing in the office of the City Clerk/Treasurer of the City of Fayetteville.

Section 3: That this ordinance shall take effect and be in full force at such time as all of the requirements of the master development plan have been 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 , 2007.

APPROVED:

ATTEST:

By: _____
DAN COODY, Mayor

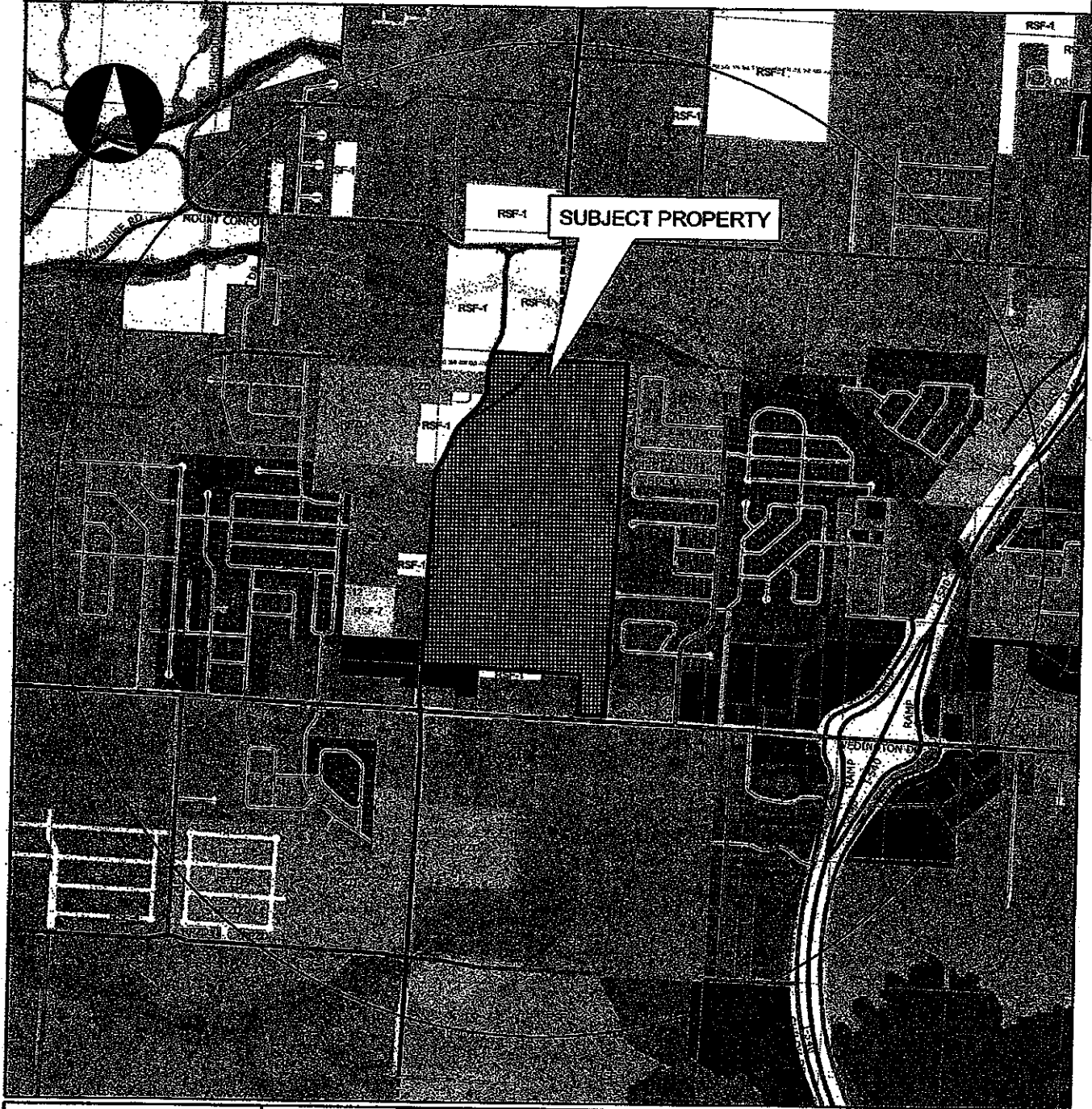
By: _____
SONDRA SMITH, City Clerk/Treasurer

EXHIBIT "A"

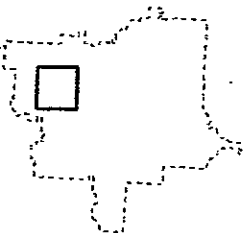
RPZD07-2452

One Mile View

THE LINKS AT FAYETTEVILLE



Overview



Legend

Subject Property

RPZD07-2452

Boundary

Planning Area

Overlay District

Outside City

Legend

Hillside-Hilltop Overlay District

0 0.25 0.5 1
Miles

EXHIBIT "B"
R-PZD 07-2452

A PART OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 6, TOWNSHIP 16 NORTH, RANGE 30 WEST, AND A PART OF THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 1, TOWNSHIP 16 NORTH, RANGE 31 WEST, AND A PART OF THE WEST HALF OF THE NORTHWEST QUARTER OF SECTION 7, TOWNSHIP 16 NORTH, RANGE 30 WEST, AND A PART OF THE EAST HALF OF THE NORTHEAST QUARTER OF SECTION 12, TOWNSHIP 16 NORTH, RANGE 31 WEST, ALL IN WASHINGTON COUNTY, ARKANSAS, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS, TO-WIT: BEGINNING AT A POINT WHICH IS S87°42'05"E 617.60' AND N03°03'08"E 102.59' FROM THE SOUTHWEST CORNER OF THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION 7 AND RUNNING THENCE S87°03'27"E 93.41' TO A SET IRON PIN, THENCE N02°40'05"E 1716.06' TO A FOUND IRON PIN, THENCE N02°40'00"E 2143.06' TO A FOUND IRON PIN, THENCE N87°46'42"W 715.35' TO A FOUND IRON PIN, LOCATED AT THE NORTHWEST CORNER OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 7, THENCE N02°27'56"E 46.74' TO A FOUND IRON PIN, LOCATED AT THE NORTHEAST CORNER OF THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SAID SECTION 1, THENCE N86°58'50"W 751.69' TO THE CENTERLINE OF RUPPLE ROAD, THENCE ALONG SAID CENTERLINE S20°20'50"W 44.46', S14°10'34"W 65.18', S09°16'42"W 44.03', S06°40'25"W 54.50', S05°18'51"W 54.60', S04°54'39"W 54.72', S04°57'12"W 59.85', S07°17'28"W 55.76', S13°38'10"W 52.31', S23°24'21"W 49.39', S32°18'04"W 47.75', S36°38'10"W 37.75', S40°31'21"W 59.19', S44°51'16"W 60.06', S46°48'24"W 67.32', S44°39'19"W 56.83', S39°09'37"W 55.03', S30°55'13"W 66.99', S24°56'32"W 57.82', S22°38'12"W 58.87', S22°23'40"W 54.61', S22°23'30"W 58.25', S23°21'56"W 55.44', S27°27'36"W 58.17', S31°39'13"W 58.36', S31°28'21"W 57.48', S21°21'38"W 54.39', S09°23'27"W 60.29', S02°47'11"W 51.61', S01°55'43"W 51.38', S02°08'41"W 57.15', S02°26'03"W 49.97', S02°30'26"W 51.03', S02°49'34"W 51.91', S02°57'05"W 54.52', S02°54'57"W 52.46', S02°50'56"W 55.16', S02°43'15"W 48.89', S02°33'25"W 54.35', S02°31'07"W 51.57', S02°25'23"W 56.41', S02°19'43"W 50.93', S02°27'09"W 38.77', S02°34'15"W 44.03', S03°12'55"W 52.16', S02°57'10"W 49.78', S02°33'54"W 51.59', S02°57'20"W 63.38', S03°10'04"W 52.97', S02°59'07"W 52.35', S02°31'09"W 51.19', S03°12'19"W 54.91', S02°13'15"W 33.15', S02°14'57"W 49.48', S02°42'49"W 48.61', S02°37'18"W 50.94', S02°42'26"W 49.47', S02°18'12"W 48.56', S02°45'16"W 52.85', S02°38'45"W 52.94', S02°54'55"W 41.80', S02°54'55"W 360.64', THENCE LEAVING SAID CENTERLINE S87°30'27"E 629.81' TO A CORNER POST, THENCE S03°09'47"W 7.60' TO A SET IRON PIN, THENCE S86°50'13"E 1088.84', THENCE S03°03'08"W 434.54', THENCE ALONG SAID RIGHT-OF-WAY S87°02'59"E 209.22' TO THE POINT OF BEGINNING, CONTAINING 152.23 ACRES MORE OR LESS. SUBJECT TO EASEMENTS AND RIGHTS-OF-WAY OF RECORD.

CONDITIONS OF APPROVAL:

R-PZD 07-2452

Page 1 of 5

The Planning Commission and Staff recommend the following conditions of approval associated with R-PZD 07-2452 (Links at Fayetteville).

1. Planning Commission determination of street improvements. Street improvements at the time of development shall include those determined necessary by the Planning Commission, based upon the development proposed. A traffic study shall be prepared based on the proposed development. Staff will recommend street improvements warranted with development of the subject property. *Based on the traffic study for the Wellspring PZD on the property which is close in residential trips generated, staff will likely recommend the following street improvements:*
 - a. *Installation of new traffic signals on Ruppel Road and on Wedington, as determined through development review;*
 - b. *Constructing the eastern half of Ruppel Road to its Master Street Plan designation along the project frontage (two travel lanes and half of a boulevard);*
 - c. *Construction of street improvements south of Ruppel to Wedington with appropriate transition lanes and relocation of existing signal to accommodate additional lanes.*
2. Planning Commission determination of adequate connectivity. Four points of access are provided to the west on Ruppel Road. The existing street stub-out in the subdivision to the east will be connect to this development and pedestrian and park connection to the east. The property would access Wedington Drive in the southeast corner of the property. No access to the north is provided due to the location of the golf course.
3. Planning Commission determination of a waiver of minimum street design standards. The applicant requests a waiver to allow a different street cross section than are required by the current Master Street Plan standard (UDC §166.06 (K)(10)(a) and 166.08(C)(14)). The applicant proposes a 60' public right-of-way for the three public streets. This street section would provide for two traffic lanes and parallel parking on either side of the street. This street section is currently not included in the City's Master Street Plan and would require a waiver of the street design standards. *Staff is in support of the requested 60' street section finding that parallel parking along either side of the street and two travel lanes would provide for safe ingress/egress through the development. Additional design review and recommendations regarding the Town Center "square" will occur at the time of development, and may require revision after a detailed evaluation.*
4. This project is required to go through Large Scale Development and/or subdivision review and approval prior to construction.
5. The applicant shall dedicate right-of-way a minimum of 55' from centerline of Ruppel Road and Wedington Drive. Right-of-way width for the internal public streets would be 60' to accommodate the on-street parallel parking. Right-of-way shall be dedicated by easement plat for Ruppel Road and the internal public streets, and by separate document for Wedington Drive (State Highway 16).
6. The project is subject to the project phasing listed in the project booklet and noted below. All permits required for development within these phases are required to be obtained within

CONDITIONS OF APPROVAL:

R-PZD 07-2452

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the specified timeframe. A one-year extension may be permitted, subject to Planning Commission approval.

<u>Phase No.</u>	<u>Year</u>
Phase 1	2008
Phase 2	2014
Phase 3	2018

7. All trash enclosure locations and dimensions shall be fully reviewed and approved by the Solid Waste Division at the time of development.
8. No portion of any structure (i.e., porches, overhangs, etc.) shall encroach into building setbacks or utility easements.
9. Buildings shall be constructed to be consistent with the elevations and concepts depicted in the building elevations in the booklet as specified. Building elevations will be reviewed at the time of large scale development and building permit.
10. The Park and Recreation Advisory Board (PRAB) recommended on January 8, 2007 to accept a combination of land and money in lieu of land for this project. The developer has agreed to the following:
 - a. The developer shall dedicate approximately 17.32 acres of land adjacent to Bryce Davis Park. In addition, the developer would pay the City \$138,000 money in lieu for the remaining 3.45 acres of required land dedication (20.77 acres required – 17.32 acres dedicated = 3.45 acres short/0.017 acres = 202.94 units X \$680.00 = \$138,000.00).
 - b. The developer shall construct a 6' high wrought iron fence between the proposed golf course and the proposed park area.
 - c. The existing lake located within the proposed park land area shall remain with the following conditions:
 - a) Overflow from said lake shall flow to a second lake to be constructed off park land from which the developer will draw irrigation waters.
 - b) A well shall be constructed off park land and maintained by the developer from which water will be deposited into the existing lake to maintain an elevation to be agreed upon by the developer and Parks Board. Said well will also provide water to the "lower" irrigation lake via a second line.
 - c) The existing lake shall be altered only to the degree necessary to provide storm water detention for the drainage area it now serves.
 - d) If requested by the City, a "shelf" shall be constructed in the existing lake that is 1' below the established water level indicated in above and extends 3' – 5' from the existing shoreline at the developer's expense.
 - d. An agreement will be necessary to provide the flow of water from the pond on the park property to the irrigation pond.
 - e. On-street parking shall be constructed by the developer along a section of public street bordering the proposed park land. A minimum of eight spaces shall be

CONDITIONS OF APPROVAL:

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provided.

11. Signs shall be permitted in accordance with Chapter 174 of the Fayetteville Unified Development Code.
12. Depending on the time of development, the developer may be responsible for contributing to the interim solution for wastewater capacity issues in the Hamestring basin, as determined by Engineering staff and Planning Commission at the time of development.
13. The Master Development Plan, Statement of Commitments and Architectural Standards submitted by the applicant shall be considered binding and tied to the zoning of the property. Conditions of approval as noted herein and other requirements placed upon the project with review of the Master Development Plan – Planned Zoning District by the City Council shall also be binding.
14. This development shall be required to comply with the Tree Preservation requirements as set forth in the Unified Development Code at the time of development.
15. Street trees shall be provided along public streets pursuant to city codes at the time of development.
16. The booklet and plats should be revised globally for consistency throughout, prior to City Council submittal. For example the booklet on page 4 states that the total amount of residential units is 1,220, however sheet C1.03 lists the total amount of non-residential units at 1,258.
17. Single family residences and townhouses on Ruppel Road shall have front façade facing Ruppel Road. Single family residences on the northern public street shall have the front façade facing the public street, with the attached garages along the rear of the houses away from the street.
18. The attached garages on the single family dwellings shall be one-car garages, and shall be setback a minimum of 20' from the required front façade of the structure.
19. There shall be a maximum of three single family dwellings connected in a row with attached garages.
20. Driveways for the single family homes that are not shared shall be a maximum of 16' wide per City codes. Driveways for the single family homes that are shared shall be a maximum of 24' wide per City codes.
21. Evaluate the southern private street/drive aisle at the time of development for potential public street connection.
22. In order to ensure compatibility and transition between the townhouses and the existing large lot single family residences to the west, the architectural design of the townhouses shall be

CONDITIONS OF APPROVAL:

R-PZD 07-2452

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subject to the following guidelines:

- (a) The townhouses shall be limited to a maximum of 6 units connected in a group without a substantial break.
 - (b) The townhouses units shall utilize a variety of front facades, and shall be articulated through the incorporation of two or more of the following on each connected group/structure of townhouses:
 - (1) Balconies;
 - (2) Bay or box windows;
 - (3) Insets or other relief in the wall plane;
 - (4) Porches;
 - (5) Dormers;
 - (6) Variations in materials; or
 - (7) Variations in roof forms
 - (c) Roof form and roof height of the townhouses should be varied to complement the building's mass and articulation.
23. Expand the proposed park land dedication in the northeast corner of the project an additional 150' along the existing east edge of Planning Area IV with a line narrowing to meet where the north property makes a jog near the creek as shown on the original Parks Board submittal.
24. Include a raised trail crossing at the crossing of the Public Street going east. The trail crossing should be continuous across the street at the level of the top curb. Similar to a speed table with the trail crossing over.

Standard Conditions of Approval:

- 25. 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).
- 26. Trash enclosures shall be screened on three sides with materials compatible with the surrounding structures, with access not visible from the street.
- 27. 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.
- 28. All overhead electric lines 12kv and under shall be relocated underground. All proposed utilities shall be located underground.

CONDITIONS OF APPROVAL:

R-PZD 07-2452

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29. Street lights shall be installed adjacent to all public and private streets (not alleys), with a separation of no greater than 300 feet.
30. All exterior lighting is required to comply with the City's lighting ordinance. A lighting plan and cut-sheets of the proposed exterior light fixtures shall be required to be approved by Planning Staff prior to building permit.
31. Prior to the issuance of a building permit the following is required:
 - a. Grading and drainage permits
 - b. An on-site inspection by the Landscape Administrator of all tree protection measures prior to any land disturbance.
 - c. Separate easement plat for this project that shall include the tree preservation area.
 - d. Project Disk with all final revisions
 - e. Completion of all required improvements or the placement of a surety with the City (letter of credit, bond, escrow) as required by Section 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.



THE CITY OF FAYETTEVILLE, ARKANSAS

Planning Commission Meeting
March 26, 2007

PLANNING DIVISION CORRESPONDENCE

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

TO: Fayetteville Planning Commission
FROM: Jeremy Pate, Director of Current Planning
DATE: March 20, 2007 Updated March 28, 2007

R-PZD 07-2452: Planned Zoning District (THE LINKS AT FAYETTEVILLE, 400.401.361.362): Submitted by CRAFTON, TULL, SPARKS & ASSOCIATES for property located at THE NORTHEAST CORNER OF WEDINGTON AND RUPPLE ROAD. The property is zoned R-PZD, RESIDENTIAL PLANNED ZONING DISTRICT 05-1636 (WELLSPRING) and contains approximately 152.23 acres. The request is for zoning and land use approval only for a new R-PZD. The proposed R-PZD would allow 1,258 residential dwelling units, 120,888 square feet of non-residential/commercial space, and 16,388 square feet of recreational buildings. The non-residential and recreational portions of the development would contain a golf course, a commercial 'market' area, green space, park, and associated parking.

Property Owner: Lindsey Management Company, Inc.
Planner: Andrew Garner

The staff report that was presented to the Planning Commission on March 12, 2007 has been attached to this memorandum (Attachment A). The following memorandum summarizes the changes to the proposed R-PZD since the March 12, 2007 Planning Commission, and provides staff's recommendation to the Planning Commission based upon the revised plans.

March 12, 2007 Planning Commission Meeting: This item was tabled by the Planning Commission on March 12, 2007. The main issues of concern to be addressed in the next submittal included: breaking up the long rows of townhouses along Ruppel Road into smaller blocks and a greater variety of facades, providing increased connectivity in the commercial area, providing meaningful detached single family residences, and providing more variety in the facades throughout the site.

Revised Plans for March 26, 2007 Planning Commission Meeting:

The applicant revised the proposed Master Development Plan with the following items:

1. Added 74 single family residences in the northern portion of the site along the public street and on the western portion of the site along Ruppel Road. These residences will be single family structures attached together by a garage at the rear of the house (see elevations provided in PZD booklet).
2. The addition of the single family residences resulted in the removal of two apartment

- buildings (there were previously 69 apartment buildings now there are 67), and the removal of 91 townhouses (there were previously 166 townhouses, now there are 75).
3. The townhouses along Ruppel Road are described in the PZD booklet as being connected in groups of up to 12 units, which is the same as previously proposed, although the footprint of the townhouses on the plat appears to show the footprints as broken up in smaller groups.
 4. The zoning criteria for Planning Areas I and II (Market District) were combined into one, as these areas are essentially the same.
 5. The number of units in the apartment buildings and zoning criteria has changed somewhat resulting in the addition of 38 more multi-family dwellings in the apartment planning area.
 6. Increased the amount of non-residential square feet allowed in the commercial planning areas by 8,200 square feet.
 7. These overall changes increased the number of residential units from 1,220 to 1,258, and increased the number of non-residential square feet from 112,888 to 120,888. *Attachment B* provides an overall development summary.

Staff Discussion and Recommendation:

The applicant has made numerous changes to the plans throughout the review process in response to comments from Planning staff and the Planning Commission. However the plans before the Planning Commission must be reviewed on their own merits and not compared with other plans in making the decision to approve or deny the rezoning request, based on the established criteria for Planned Zoning District and rezoning applications.

Staff recommended denial of this R-PZD at the two previous Planning Commission meetings based on the findings that this project did not comply with the requirements of the UDC and the City Plan 2025. The R-PZD findings listed in the UDC are based largely upon the determination of whether or not a project is consistent with the land use policies and goals of the City's General Plan – City Plan 2025 and the R-PZD ordinance, as a policy decision to rezone the project with the Master Development Plan as presented.

Staff's previous findings discuss that this project does not meet many of the City's primary land use planning objectives, principles, and policies. Although the introduction of 74 single family residences starts to provide some variety in the residential units in this project, staff's primary concerns as stated in the March 12, 2007 still exist, with the exception of surrounding land use compatibility as discussed below.

Compatibility with Surrounding Land Use. Staff had concerns with this project being compatible with the large lot single/family residences on the west side of Ruppel Road. The revisions to the Master Development Plan show the footprints of the townhouses as being broken up to reduce the scale of these buildings, and also provide single family residences along Ruppel Road. These changes have changed the use, and reduced the scale and mass of the development along this frontage considerably. Staff finds that the project now provides adequate compatibility along the west and with all surrounding land uses.

Traditional Neighborhood Form. As adopted by the City Council, Goal 3 of the City Plan

2025 is to *"Make traditional town form the standard."* The location of neighborhoods should *"...contain not just houses, but a mix of uses that are adaptable for change over time;...a range of housing types that occur on a variety of lot sizes, creating the ability to live, work, shop and having daily needs and services within walking distance."* New growth should be required to result in compact, complete and connected neighborhoods. The form of this project is not a traditional neighborhood development in contrast to one of the primary goals of City Plan 2025. Due to the large scale of this site (152 acres), it is reasonable and feasible to develop in more of a traditional neighborhood form. A golf course community as proposed with a mix of multi-family, single-family, townhouses, and commercial and civic space is possible in a traditional neighborhood form. There are several elements of a traditional neighborhood that are lacking in this development and should be provided when a PZD is proposed on a site of this scale. The impact of a zoning and subsequent development of 152 acres will greatly exceed that of smaller projects the Planning Commission typically reviews. These smaller projects are held to the same standard of detail and review through the PZD process. Some of these elements are discussed in the following two paragraphs about the vehicular circulation system and the purpose and intent of the R-PZD ordinance.

Vehicular Circulation System. The proposed vehicle circulation system is composed of four three very long streets and long blocks. The revised PZD provides an additional private alley/street (approximately 500' long) for rear access between single family residences along Ruppel Road. This alley/street provides more of a public vehicular connection than the previous parking lot drive aisle between two rows of townhouses. The overall vehicular circulation system still lacks adequate connectivity and the 1,258 residential units are still primarily accessed and connected by parking lot drive aisles.

City Neighborhood Areas. The subject proposal is found within the Future Land Use designation of "City Neighborhood Area". These areas are denser and primarily residential, with non-residential uses at corner locations to serve surrounding residents. There is a wide range of building types associated with these areas: single family detached, sideyard, rowhouses, and apartments. Streets typically define medium-sized blocks with a higher level of connectivity; development is encouraged to utilize a block-and-street layout that promotes walkable, cyclist-friendly road designs with slow design speeds.

It is staff's finding that the subject property could more readily meet the goals associated with City Neighborhood Areas, while retaining the primary uses residential and a golf course environment. This would include small to medium-sized blocks with a higher level of connectivity than currently proposed; a wider, more diverse range of building types than proposed; a block and street layout that promotes adaptable reuse of the structures over time, and slow road design speeds.

Purpose and Intent of R-PZD Ordinance. Staff's previous findings had concerns that this project did not provide variety and flexibility, and was not consistent with the City Plan 2025 as referenced in UDC Section 161.29 (C)(1)(a). The project provides 1,108 apartment units in 67 apartment buildings and four mixed use buildings (88% of the units), provides 75 townhouses in various attached footprints (6% of the units), and provides 74 single family dwellings (6% of the units). The single family residences included in this latest submittal help add to the variety and

flexibility of the residential units. However the bulk and scale of the 67 apartment buildings without integration of other residential dwelling types or non-residential uses throughout a majority of this property does not meet the intent of the R-PZD ordinance to achieve variety and flexibility, or to provide for a complete, compacted, and connected community as indicated in the City Plan 2025. In addition UDC Section 161.29 (C)(1)(b) specifies that an R-PZD should provide an "...*effective relationship of different land uses and activities within a single development*..." . The proposal of primarily apartment buildings on a scale of this magnitude without adequate street connectivity, and without meaningful greenspace for the residents to utilize is a concern on a scale of this magnitude. There is a large amount of greenspace provided, but a majority of it is in a golf course and will not be able to be enjoyed for activity other than by paying a fee to play golf. Staff does acknowledge the aesthetic and recreational value of a public golf course for the general public, and the fact that this land will be 'green, though to a different degree. This project also provides a large amount of onsite parkland, however this area is cut-off from the this development by the golf course, and is not integrated into the neighborhood or readily accessible to the residents.

Request: The request is for Planning Commission to forward the R-PZD to the City Council with a recommendation for approval of the submitted Master Development Plan and zoning criteria for zoning and land use approval only.

Recommendation: Finding that pursuant to Fayetteville Unified Development Code Section 166.29, the proposed R-PZD does not meet the purpose and intent of the R-PZD ordinance, and does not meet some of the primary goals and policies of City Plan 2025 as referenced in that ordinance; staff recommends denial of R-PZD 07-2452 Links at Fayetteville. It is the charge of the Planning Commission to determine if the project meets with current ordinance requirements and the goals and policies of City Plan 2025 for this R-PZD proposal. Staff's rationale for this finding is discussed in this memorandum and the attached staff report dated March 12, 2007.

PLANNING COMMISSION ACTION:	Required	<u>YES</u>
	☐ Approved	☒ Denied
Date: <u>March 26, 2007</u>		
Motion: <u>Lack (motion to approve)</u>		
Second: <u>Trumbo</u>		
Vote: <u>3-3-2 (Myres, Anthes, Ostner voted 'No'; Harris, Clark abstained; Graves was absent)</u>		
CITY COUNCIL ACTION:	Required	<u>YES</u>
	☐ Approved	☐ Denied
Date: <u>April 17, 2007 (1st reading if recommended)</u>		

Should the Planning Commission choose to recommend in favor of this project to City Council, staff would recommend the following conditions of approval be added to the conditions of approval already listed in the previous staff report:

Additional Conditions of Approval:

1. The booklet and plats should be revised globally for consistency throughout, prior to City Council submittal. For example the booklet on page 4 states that the total amount of residential units is 1,220, however sheet C1.03 lists the total amount of non-residential units at 1,258.
2. Single family residences and townhouses on Ruppel Road shall have front façade facing Ruppel Road. Single family residences on the northern public street shall have the front façade facing the public street, with the attached garages along the rear of the houses away from the street.
3. The attached garages on the single family dwellings shall be one-car garages, and shall be setback a minimum of 20' from the required front façade of the structure.
4. There shall be a maximum of three single family dwellings connected in a row with attached garages.
5. Driveways for the single family homes that are not shared shall be a maximum of 16' wide per City codes. Driveways for the single family homes that are shared shall be a maximum of 24' wide per City codes.
6. Evaluate the southern private street/drive aisle at the time of development for potential public street connection.
7. In order to ensure compatibility and transition between the townhouses and the existing large lot single family residences to the west, the architectural design of the townhouses shall be subject to the following guidelines:
 - a. The townhouses shall be limited to a maximum of 6 units connected in a group without a substantial break.
 - b. The townhouses units shall utilize a variety of front facades, and shall be articulated through the incorporation of two or more of the following on each connected group/structure of townhouses:
 - (1) Balconies;
 - (2) Bay or box windows;
 - (3) Insets or other relief in the wall place;
 - (4) Porches;
 - (5) Dormers;
 - (6) Variations in materials; or
 - (7) Variations in roof forms
 - c. Roof form and roof height of the townhouses should be varied to complement the building's mass and articulation.
8. Expand the proposed park land dedication in the northeast corner of the project an additional 150' along the existing east edge of Planning Area IV with a line narrowing to meet where the north property makes a jog near the creek as shown on the original Parks Board submittal.
9. Include a raised trail crossing at the crossing of the Public Street going east. The trail crossing should be continuous across the street at the level of the top curb. Similar to a speed table with the trail crossing over.

ATTACHMENT A

**STAFF REPORT
MARCH 12, 2007 PLANNING COMMISSION**



Planning Commission Meeting
March 12, 2007

THE CITY OF FAYETTEVILLE, ARKANSAS

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

PLANNING DIVISION CORRESPONDENCE

TO: Fayetteville Planning Commission
FROM: Andrew Garner, Senior Planner
Matt Casey, Assistant City Engineer
THRU: Jeremy Pate, Director of Current Planning
DATE: ~~March 7, 2007~~ *Conditions of Approval Updated March 28, 2007*

R-PZD 07-2452: Planned Zoning District (THE LINKS AT FAYETTEVILLE, 400.401.361.362): Submitted by CRAFTON, TULL, SPARKS & ASSOCIATES for property located at THE NORTHEAST CORNER OF WEDINGTON AND RUPPLE ROAD. The property is zoned R-PZD, RESIDENTIAL PLANNED ZONING DISTRICT 05-1636 (WELLSPRING) and contains approximately 152.23 acres. The request is for zoning and land use approval only for a new R-PZD. The proposed R-PZD would allow 1,221 residential dwelling units, 91,800 square feet of non-residential/commercial space, and 16,388 square feet of recreational buildings. The non-residential and recreational portions of the development would contain a golf course, a commercial 'market' area, green space, park, and associated parking.

Property Owner: Lindsey Management Company, Inc.
Planner: Andrew Garner

Findings:

February 26, 2007 Planning Commission Meeting: This item was tabled by the Planning Commission on February 26, 2007. The main issues of concern to be addressed in the next submittal included: additional public street connections in the northwest and southwest corners of the site; address how the retail/commercial interacts with surrounding and proposed onsite residences; scale, mass, buildings, and unit types should be more varied; and commercial out-lots on the southern end of Rupple Road would be encouraged.

March 12, 2007 Planning Commission Revisions: The applicant has revised the proposed Master Development Plan with the following items:

1. Eliminated the mixed use and apartment buildings along Rupple Road and provided 166 townhouses/rowhouses, and three commercial/retail buildings.
2. Introduced a 4-story version of the "Churchill Building" to provide alternative massing throughout the development with the 3-story "Churchill Building".
3. Thirty percent of the multi-family units will be offered for sale as condominiums for each phase of the development.

4. Revised the layout of the tennis court and clubhouse area to provide additional tree preservation.
5. Added a public street connection from the northern portion of the public street, west to Ruppel Road.
6. Added a private street connection between the two private parking lots in the southern portion of the site. These parking lots connect the public street with Ruppel Road.
7. These changes reduced the number of dwelling units from 1,420 to 1,221 and reduced the amount of non-residential square feet from 140,013 to 108,188.

Background: This property was rezoned from RSF-1, Single-Family One Units Per Acre and R-A, Residential-Agricultural to Residential Planned Zoning District (R-PZD) 05-1636, Wellspring on March 7, 2006. The approved R-PZD zoning criteria allows for a mixed use residential development in seven Planning Areas, each with its own unique permitted and conditional uses, building setbacks, lot width and area, density, intensity of nonresidential space, maximum number of dwelling units, phasing density, intensity of nonresidential space, maximum number of dwelling units, and phasing for construction. The approved zoning allows for a total of 1,175 dwelling units for the site, a maximum of 548,000 square feet of nonresidential space. Approximately 40 acres (26% of the site) has been designated for city parks, community greenspace, trail systems and/or tree preservation and undisturbed areas. The approved Master Development Plan is centered on a pedestrian-friendly, traditional urban design approach utilizing a mixture of uses in the same area, while providing for a variety of home styles and types. The applicant for this project proposes an entirely new R-PZD Master Development Plan and zoning criteria.

Property: The subject property contains 152.23 acres. The property is located on the north side of Wedington Drive and east of Ruppel Road, with frontage on both of those streets. The property is undeveloped, with primarily agricultural pasture land. There are large groupings of high priority/significant trees located in areas on the site, but a majority of the property exists in pasture, with a few remaining single family homes. A creek enters the property from the east and travels north to Hamstring Creek. Bryce Davis Park is located directly adjacent to the east, as well as some single family subdivisions and multi-family development. To the north is undeveloped farmland. Surrounding land use and zoning are listed in *Table 1*.

**Table 1
Surrounding Land Use and Zoning**

Direction	Land Use	Zoning
North	Largely agricultural	RSF-1, RSF-4, R-A
South	Commercial strip center, mini-storage	C-2, R-A
East	Single family, multi-family homes	RSF-4, R-O, C-1
West	Developing subdivisions and single family homes	RSF-4, RSF-1

Proposal: The request is rezoning and land use approval only for a Master Development Plan of a Residential Planned Zoning District with 1,221 attached dwellings as well as 91,800 square feet of non-residential/commercial space, and 16,388 square feet of recreational buildings. If the PZD be approved as proposed the project would be required to go through Large Scale Development and/or subdivision approval prior to development.

Master Development Plan: The proposed uses over the site are listed in *Table 2*.

Table 2
Master Development Plan

TYPE OF USE	PLANNING AREA	RESIDENTIAL DENSITY (UNITS/ACRE)	RESIDENTIAL UNITS	NON-RESIDENTIAL INTENSITY (SQ.FT./ACRE)	NON-RESIDENTIAL SQUARE FEET	ACRES	% OF SITE
Multi-family/Golf Course	PA-4	9.12	978	NA	9 hole golf course (49.18 acres)	107.27	70.47%
Dedicated parks	PA-6	NA	NA	NA	NA	17.32	11.38%
Club House	PA-3	0.19	1	3,170	16,388	5.17	3.40%
Mixed Use	PA-5	25.00	76	8,651	26,300	3.04	2.00%
Commercial	PA-1, 2	N/A	N/A	8,260	65,500	7.93	5.21%
Town Homes	PA-7	15.00	166	NA	NA	11.5	7.55%
TOTAL		8.02	1,221	711	108,188	152.23	100.00%

The mixture of uses on the project provides for multi-family buildings, mixed use buildings with commercial/retail space at the street level and residences in the upper levels, townhouses, and solely commercial buildings. The project also proposes a nine-hole golf course, a swimming pool, a tennis court, and a club house. Additional amenities include lakes, playgrounds, and picnic areas.

The Master Development Plan generally clusters the development along Ruppel Road and interior to the site, with the nine-hole golf course and park area around the perimeter. Zoning Criteria for each Planning Area is provided in duplicate on the PZD booklets and plats submitted. The structures are generally located facing either onto the three main public streets or the golf course around the perimeter of the development.

Adjacent Master Street Plan Streets: Ruppel Road (Principal Arterial), Wedington Drive (Principal Arterial).

Access: Access to the site is provided from Ruppel Road and Wedington Drive (State Highway 16). There is also a stub-out to the property from a subdivision to the northeast that would be connected with this R-PZD. Primary access points are to be by way of public streets into the development, which will become primary entrances in two locations, one on Wedington Drive and one on Ruppel Road. There are also three other proposed entrances onto Ruppel Road in the 0.7 miles of frontage, with the potential for traffic signalization on Ruppel Road, and at the project's entrance onto Wedington Drive, subject to city approval. The developer will be responsible for significant improvements to Ruppel Road and signalization as permitted to be at the cost of the developer, based on the traffic generated by this development. A detailed,

updated traffic study will be required at the time of development.

A Master Street Plan Amendment to re-align Ruppel Road at the north end of the site was approved by City Council as part of the Wellspring project. The approved re-alignment is consistent with the configuration of Ruppel Road as indicated on the proposed plats.

Interior to the project, three primary public streets are proposed, one off of Wedington Drive and one off of Ruppel Road, and a third connecting to an existing stub-out in the neighborhood to the northeast. These three streets connect around a traffic circle in the central portion of the site. Parking lot drive aisles provide access to a majority of the multi-family buildings, as well as interior connectivity throughout the development. Since the previous submittal, a public street connection from the northern portion of main north-south street west to Ruppel Road has been added. There is also a private street connection between two private parking lots in the southwestern portion of the site

Right-of-way to be dedicated: 55' from centerline right-of-way along the project's Ruppel Road and Wedington Drive frontages. Dedication by warranty deed is required along Wedington Drive as it is a State Highway (Hwy. 16), dedication of right-of-way for interior streets.

Connectivity: Four points of access are provided to the west on Ruppel Road. The existing street stub-out in the subdivision to the east will be connected to this development and pedestrian and park connection will be provided to the east. The property would access Wedington Drive in the southeast corner of the property. No connection is currently being provided to the north, due to the design of the golf course.

Parking: Parallel parking for the mixed use, residential, and commercial areas is proposed along the public streets interior to the project. In addition, parking lots are located interior to the project. The majority of off-street parking lots are located behind the buildings so that they are screened from public view.

Phasing: Three phases are planned for Links at Fayetteville over the next several years as listed below and provided in the PZD Booklet. All permits required for development within these phases are required to be obtained within the specified timeframe. A one-year extension may be permitted, subject to Planning Commission approval.

<u>Phase No.</u>	<u>Year</u>
Phase 1	2008
Phase 2	2014
Phase 3	2018

Water & Sewer: Water and sewer lines would be extended to serve the development.

Parks: The Park and Recreation Advisory Board (PRAB) recommended on January 8, 2007 to accept a combination of land and money in lieu of land for this project. The developer has agreed to the following:

- The developer shall dedicate approximately 17.32 acres of land adjacent to Bryce Davis

Park. In addition, the developer would pay the City \$138,000 money in lieu for the remaining 3.45 acres of required land dedication (20.77 acres required – 17.32 acres dedicated = 3.45 acres short/0.017 acres = 202.94 units X \$680.00 = \$138,000.00).

- The developer shall construct a 6' high wrought iron fence between the proposed golf course and the proposed park area.
- The existing lake located within the proposed park land area shall remain with the following conditions:
 - Overflow from said lake shall flow to a second lake to be constructed off park land from which the developer will draw irrigation waters.
 - A well shall be constructed off park land and maintained by the developer from which water will be deposited into the existing lake to maintain an elevation to be agreed upon by the developer and Parks Board. Said well will also provide water to the "lower" irrigation lake via a second line.
 - The existing lake shall be altered only to the degree necessary to provide storm water detention for the drainage area it now serves.
 - If requested by the City, a "shelf" shall be constructed in the existing lake that is 1' below the established water level indicated in above and extends 3' – 5' from the existing shoreline at the developer's expense.
- An agreement will be necessary to provide the flow of water from the pond on the park property to the irrigation pond.
- On-street parking shall be constructed by the developer along a section of public street bordering the proposed park land. A minimum of eight spaces shall be provided.

Solid Waste Service: In its review of this R-PZD, the Solid Waste Division recommended considering compactor service, and also stated that if dumpsters are used they must all be angled in the same way on each street.

Tree Preservation: The R-PZD indicates the general location of several tree preservation areas throughout the site. This development will be required to comply with the Tree Preservation requirements as set forth in the Unified Development Code at the time of development.

Public Comment: City staff has not received public comment on this R-PZD.

Recommendation: Finding that the proposed rezoning and development approval does not meet some of the primary goals of the Planned Zoning District ordinance and policies adopted within the City Plan 2025 as noted herein, staff recommends denial of **R-PZD 07-2452**.

Should the Planning Commission forward this project to the City Council with a recommendation for approval, staff recommends the following conditions of approval:

Conditions of Approval:

1. Planning Commission determination of street improvements. Street improvements at the time of development shall include those determined necessary by the Planning Commission, based upon the development proposed. A traffic study shall be prepared

based on the proposed development. Staff will recommend street improvements warranted with development of the subject property. *Based on the traffic study for the Wellspring PZD on the property which is close in residential trips generated, staff will likely recommend the following street improvements:*

- a. *Installation of new traffic signals on Ruppel Road and on Wedington, as determined through development review;*
 - b. *Constructing the eastern half of Ruppel Road to its Master Street Plan designation along the project frontage (two travel lanes and half of a boulevard);*
 - c. *Construction of street improvements south of Ruppel to Wedington with appropriate transition lanes and relocation of existing signal to accommodate additional lanes.*
2. Planning Commission determination of adequate connectivity. Four points of access are provided to the west on Ruppel Road. The existing street stub-out in the subdivision to the east will be connect to this development and pedestrian and park connection to the east. The property would access Wedington Drive in the southeast corner of the property. No access to the north is provided due to the location of the golf course.
3. Planning Commission determination of a waiver of minimum street design standards. The applicant requests a waiver to allow a different street cross section than are required by the current Master Street Plan standard (UDC §166.06 (K)(10)(a) and 166.08(C)(14)). The applicant proposes a 60' public right-of-way for the three public streets. This street section would provide for two traffic lanes and parallel parking on either side of the street. This street section is currently not included in the City's Master Street Plan and would require a waiver of the street design standards. *Staff is in support of the requested 60' street section finding that parallel parking along either side of the street and two travel lanes would provide for safe ingress/egress through the development. Additional design review and recommendations regarding the Town Center "square" will occur at the time of development, and may require revision after a detailed evaluation.*
4. This project is required to go through Large Scale Development and/or subdivision review and approval prior to construction.
5. The applicant shall dedicate right-of-way a minimum of 55' from centerline of Ruppel Road and Wedington Drive. Right-of-way width for the internal public streets would be 60' to accommodate the on-street parallel parking. Right-of-way shall be dedicated by easement plat for Ruppel Road and the internal public streets, and by separate document for Wedington Drive (State Highway 16).
6. The project is subject to the project phasing listed in the project booklet and noted below. All permits required for development within these phases are required to be obtained within the specified timeframe. A one-year extension may be permitted, subject to Planning Commission approval.

<u>Phase No.</u>	<u>Year</u>
Phase 1	2008
Phase 2	2014
Phase 3	2018

7. All trash enclosure locations and dimensions shall be fully reviewed and approved by the Solid Waste Division at the time of development.
8. No portion of any structure (i.e., porches, overhangs, etc.) shall encroach into building setbacks or utility easements.
9. Buildings shall be constructed to be consistent with the elevations and concepts depicted in the building elevations in the booklet as specified. Building elevations will be reviewed at the time of large scale development and building permit.
10. The Park and Recreation Advisory Board (PRAB) recommended on January 8, 2007 to accept a combination of land and money in lieu of land for this project. The developer has agreed to the following:
 - a. The developer shall dedicate approximately 17.32 acres of land adjacent to Bryce Davis Park. In addition, the developer would pay the City \$138,000 money in lieu for the remaining 3.45 acres of required land dedication (20.77 acres required – 17.32 acres dedicated = 3.45 acres short/0.017 acres = 202.94 units X \$680.00 = \$138,000.00).
 - b. The developer shall construct a 6' high wrought iron fence between the proposed golf course and the proposed park area.
 - c. The existing lake located within the proposed park land area shall remain with the following conditions:
 - i. Overflow from said lake shall flow to a second lake to be constructed off park land from which the developer will draw irrigation waters.
 - ii. A well shall be constructed off park land and maintained by the developer from which water will be deposited into the existing lake to maintain an elevation to be agreed upon by the developer and Parks Board. Said well will also provide water to the "lower" irrigation lake via a second line.
 - iii. The existing lake shall be altered only to the degree necessary to provide storm water detention for the drainage area it now serves.
 - iv. If requested by the City, a "shelf" shall be constructed in the existing lake that is 1' below the established water level indicated in above and extends 3' – 5' from the existing shoreline at the developer's expense.
 - d. An agreement will be necessary to provide the flow of water from the pond on the park property to the irrigation pond.
 - e. On-street parking shall be constructed by the developer along a section of public street bordering the proposed park land. A minimum of eight spaces shall be provided.
11. Signs shall be permitted in accordance with Chapter 174 of the Fayetteville Unified

Development Code.

12. Depending on the time of development, the developer may be responsible for contributing to the interim solution for wastewater capacity issues in the Hamstring basin, as determined by Engineering staff and Planning Commission at the time of development.
13. The Master Development Plan, Statement of Commitments and Architectural Standards submitted by the applicant shall be considered binding and tied to the zoning of the property. Conditions of approval as noted herein and other requirements placed upon the project with review of the Master Development Plan – Planned Zoning District by the City Council shall also be binding.
14. This development shall be required to comply with the Tree Preservation requirements as set forth in the Unified Development Code at the time of development.
15. Street trees shall be provided along public streets pursuant to city codes at the time of development.
16. ~~Plat/booklet revisions:~~
 - a. ~~Add Use Unit No. 4 to PA III~~
 - b. ~~Reconcile build to zone in PA IV with stated minimum building setbacks. One solution may be to change the front setback to a build to zone.~~
 - c. ~~Booklet: Page 24 revise reference to General Plan 2020 to City Plan 2025
Page 25 No private solid waste in City of Fayetteville remove reference.
Page 6 Delete the comma at the end of the first paragraph.
Page 20 Permitted Uses. Delete Use Units 8, 9, and 10 and single family, two family, and three family dwellings are not proposed. Incorporate this change on the zoning criteria provided on the plat as well.
Cover Change the date to reflect the current date of revision.~~
 - d. ~~Can PA I and II be combined? What is the difference?~~
 - e. ~~Plat and booklet: change the total number of residential units, non-residential square footage, intensity, density, etc. to reflect the Table 2 in the staff report, based on the numbers provided in the zoning criteria information. It appears that the land use table on sheet C1.03 has some addition errors, which are reflected elsewhere in the application.~~
 - f. ~~Revise tree preservation canopy percentage reference to a minimum of 25% canopy requirement.~~

The items in this condition have been addressed in the revised plats and booklets.

Standard Conditions of Approval:

17. 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).
18. Trash enclosures shall be screened on three sides with materials compatible with the surrounding structures, with access not visible from the street.
19. 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.
20. All overhead electric lines 12kv and under shall be relocated underground. All proposed utilities shall be located underground.
21. Street lights shall be installed adjacent to all public and private streets (not alleys), with a separation of no greater than 300 feet.
22. All exterior lighting is required to comply with the City's lighting ordinance. A lighting plan and cut-sheets of the proposed exterior light fixtures shall be required to be approved by Planning Staff prior to building permit.
23. Prior to the issuance of a building permit the following is required:
 - a. Grading and drainage permits
 - b. An on-site inspection by the Landscape Administrator of all tree protection measures prior to any land disturbance.
 - c. Separate easement plat for this project that shall include the tree preservation area.
 - d. Project Disk with all final revisions
 - e. Completion of all required improvements or the placement of a surety with the City (letter of credit, bond, escrow) as required by Section 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.

Planning Commission Action:

☒ Tabled Forwarded to C.C. (recommendation for approval) Denied

Motion: Anthes

Second: Ostner

Vote: 4-3 (Graves, Trumbo, Lack voted 'No')

Meeting Date: March 12, 2007

Comments: _____

The "Conditions of Approval" listed in the report above are accepted in total without exception by the entity requesting approval of this development item.

Signature

Date

Findings associated with R-PZD 07-2452 (Links at Fayetteville)

Sec. 166.06. Planned Zoning Districts (PZD).

(E) Approval or Rejection Criteria for Planned Zoning Districts

The following criteria shall be considered by the Planning Commission and City Council in the review of a planned zoning district application based on the proposed master development plan:

- (1) Whether the application is in compliance with the requirements of the UDC and the City Plan 2025;

FINDING: Staff finds portions of the application to be in compliance with the Planned Zoning District criteria and City Plan 2025 policies established by the City Council, but finds that some aspects of the application to be in conflict with these criterion and policies. The application for this development was thoroughly completed and PZD booklets and plats were submitted consistent with the format required by ordinance and the PZD application. The applicant conducted pre-application meetings with City Planning staff, who advised the applicant against some aspects of this development. Some of the primary staff concerns included a development in a traditional town form, based on the City's adopted policies and the size and impact of this 152-acre site. Some of the issues discussed with the applicant in pre-application meetings included the need for a wider variety of residential dwellings, uses, and building types, and a larger number of public streets and parking lot drive aisles connecting the multi-family buildings.

The project meets several of the City Plan 2025 Goals. The project site is designated as a City Neighborhood Area on the Future Land Use Plan map. This project provides 1,221 multi-family units and 108,188 square feet of non-residential uses (commercial, retail, office, recreation, etc.) over the 152.23 acres. The residential density would be 8.02 units per acre, and the non-residential intensity would be 711 square feet of non-residential use per acre. These general uses and density proposed are consistent with a more intense and urban development indicated in the City Neighborhood designation. However the form of the Master Development Plan proposed is not consistent with a traditional town form pattern that is adopted as part of City Plan 2025. A traditional town form pattern would have a wider range of residential building types: single, sideyard, and rowhouses, along with multi-family residences. The current plan proposed 100% multi-family residences, with the vast majority being an apartment style development. Nonresidential uses are usually confined to corner locations, as opposed to generally segregating the non-residential uses along Ruppel Road as proposed. The proposed development proposes one type of residential dwelling in a fairly homogenous footprint and building elevation generally repeated throughout the site with slight variations. A traditional town form generally has streets that are divided into small to medium-sized blocks with a high level of connectivity between neighborhoods. The proposed development has very long linear blocks, although there is a town center around a traditional town square. The streets are not well connected with other streets, but are rather accessed by private parking lot drive aisles.

Rezoning this property to R-PZD 07-2452 for apartment/townhouse types of residential structures, a mixed-use structure, commercial buildings, and a building footprint repeated numerous times over the 152-acre site is not completely consistent with the six major goals of the City Plan 2025 as discussed in *Table 4*.

**Table 4
Links at Fayetteville – City Plan 2025 Compliance**

City Plan 2025 Goals	Links at Fayetteville Compliance With City Plan 2025
Goal 1: We will make appropriate infill and revitalization our highest priorities.	This project is somewhat an infill project in a developing area of Fayetteville. The largely under-developed property is generally surrounded by both developing or existing development and infrastructure, and is located along two designated principal arterial streets. However, it was just annexed in 2005, and much of the surrounding property is greenfield and open pasture.
Goal 2: We will discourage suburban sprawl.	By being in close proximity to existing arterials, the project is able to take advantage of proximity to a larger existing pool of potential employees, transit, and utility infrastructures.
Goal 3: We will make traditional town form the standard.	This project is not designed in a traditional town form as discussed in Finding No. 1.
Goal 4: We will grow a livable transportation network.	This project concentrates development near the intersections of two principal arterials. The density and intensity of this development would help define a node, or concentration of development in this vicinity of the City, helping towards the goal of public transit. However, the lack of public streets and lack of block-and-street layout does not encourage a well-connected and livable transportation network that supports multiple types of vehicular and pedestrian movement, especially those identified within a neighborhood development pattern.
Goal 5: We will assemble an enduring green network.	This project provides a nine-hole golf course (49.18 acres), parkland dedication (17.17 acres), and other greenspace throughout the development (39.12 acres) for a total of 103.50 acres of greenspace. Assuming the golf course counts toward greenspace, the total amount of greenspace would be 68% of the property. This project would be consistent with the intent of this policy to protect the natural landscape, increase parks and trails, and preserve long views across open green spaces.
Goal 6: We will create attainable housing.	The multi-family apartment buildings and townhouses proposed are a relatively affordable housing product. However, the lack of variety of lot sizes and residential uses provided by this development misses the opportunity for a more mixed-income neighborhood/community, with a majority of the residences not available for home ownership. Inconsistent with the intent of this goal, this project provides primarily two types of housing products (apartment/townhouse), and does not reflect a traditional urban neighborhood with households of varying economic means, including the single family detached or small lot single family attached housing typology.

- (2) Whether the application is in compliance with all applicable statutory provisions;

FINDING: As discussed in Finding No. 1 above, the application has been reviewed and found to be inconsistent with several of the applicable City policies.

- (3) Whether the general impact of the rezoning would adversely impact the provision of public facilities and services;

FINDING: The impact of the rezoning and subsequent development would require the provision of public facilities, at the cost of the developer. Without improvements to existing infrastructure, the proposal would certainly adversely affect public facilities and services. However, as indicated in the submittal and the staff report, certain measures are to be taken to ensure adequate infrastructure improvements are made by the developer to ensure the level of service does not decline due to the proposed development.

- (4) Whether the rezoning is compatible with the surrounding land uses;

FINDING: The proposed zoning criteria in the western portion of the site would provide for large rows of townhouses and commercial buildings along Ruppel Road. Staff finds that while the uses and footprints of the buildings indicated in the Master Development Plan and PZD booklet help to vary the typology found in the 152-acre site, it does not incorporate a sense of compatibility and scale with surrounding properties. Staff finds that the scale, volume, and uses of the buildings proposed along Ruppel Road would not be compatible with the existing uses to the west. Reducing the size of the buildings, the number of combined units, and providing for more lot/block-style development patterns with single family detached units would provide more compatibility with surrounding land uses. This project provides large undeveloped areas of greenspace and/or golf course adjacent to the north and eastern boundaries and would not pose land use conflicts with the adjacent single family residences in those directions. The southern boundary abuts the Wedington Drive corridor and the proposed commercial buildings would be compatible with the mix of commercial and residential uses along Wedington.

- (5) Whether the subject land is suitable for the intended use and is compatible with the natural environment;

FINDING: The subject property is remnant farm land that has been mostly cleared. There are areas, especially along the on-site creek, that contain considerably-sized trees. Approximately 68% of the site is proposed to remain in either developed or undeveloped greenspace, and the proposal attempts to respect the natural environment where possible.

- (6) Whether the intended land use would create traffic congestion or burden the existing road network;

FINDING: A traffic study was completed for the approved Wellspring project on this site.

The proposed development is different in intensity, uses, and density than the Wellspring project. Prior to development of the Links at Fayetteville, the traffic study would be required to be revised to reflect actual traffic generation and resulting impacts to the surrounding street system from the proposed development.

Based on the traffic study completed for the previously approved Wellspring project on this site, there would be considerable traffic increase generated by the development, and considerable street improvements were mandated. As noted by the Police and Fire Department in their comments for the approved Wellspring project, leaving Ruppel Road in situ is not an option. As with the Wellspring project, the developer for the Links at Fayetteville will be expected to make significant improvements to Ruppel Road in order to alleviate and mitigate any burdens placed upon the street infrastructure. These will likely include new traffic signals, construction of at least half of Ruppel Road (28-foot width, ½ boulevard, curb and gutter, storm drainage, sidewalks, streetlights, etc.), as well as other improvements to ensure safe and adequate vehicular and pedestrian movement. The applicant has indicated that these improvements are anticipated, and agrees to meet the requirements placed upon the project by the City of Fayetteville in order to develop this project. Improvements will likely need to extend beyond the frontage of the subject property, to allow for safe and adequate access to the property.

- (7) Whether the planned development provides for unified development control under a unified plan;

FINDING: The booklet and master development plans submitted provide for said unified development control.

- (8) Whether any other recognized zoning consideration would be violated in this PZD.

FINDING: No other zoning considerations are proposed to be violated.

(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 proposed Planned Zoning District has been reviewed in light of all applicable development and zoning ordinances. The Master Development Plan sets out the basic guidelines, development and zoning criteria, commitments and design standards offered by the applicant. As discussed under Findings No. 1 and No. 4, staff finds that the proposal will not achieve a high level of compatibility with adjacent properties to the west. Staff finds that the overall density is appropriate, however the site layout, building mass and footprints, vehicular circulation system, and overall development pattern is not the form that is outlined and encouraged in the City Plan 2025 for a traditional neighborhood. The site planning incorporates environmental design features such as the golf course, tree preservation areas, park and trail areas. The public streets are generally developed with buildings close to the street and parking areas behind the buildings, screening the parking from the street and helping establish a more pedestrian friendly environment. However, the lack of a lot-and-block layout and utilization of principles of traditional residential urban design to create compatible, livable and accessible neighborhoods, wherein a variety of socioeconomic conditions co-exist, is a departure from the development form directed by City Council in the City Plan 2025. While other uses existing surrounding this property, a tenant of a rezoning request is providing compatibility to adjacent properties within the property being requested for a rezoning. Staff finds this proposal does not meet that test and does not preserve and enhance the neighborhood to further the health, safety, amenity and welfare of the community.

- (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: No additional screening is proposed from the public streets, as there are not large surface parking areas facing streets. Many structures are oriented toward the streets hiding the parking. However a majority of the structures are not oriented toward public streets but towards private parking lot drive aisles and parking lots, which is generally inconsistent with traditional urban forms of development. The development proposes several tree preservation areas throughout the site, in addition to a 17.17 acre parkland dedication area in the northeast portion of the site. The project also incorporates a 49.18 acre golf course which provides large contiguous blocks of greenspace along the north, east, and central portions of the site. A landscape plan will be required at the time of large scale development.

- (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 vehicular circulation system is comprised of a system of three main public streets leading into the town center in the central portion of the project, and private parking lot drive aisles providing access off of those streets to a majority of the multi-family dwellings. There is also a public street connecting Ralpin Road to the interior public street in the northern portion of the site. The mixed-use and commercial buildings face onto the public streets, and the multi-family dwellings face onto either public streets or the golf course, and are generally accessed off of internal parking lot drive aisles. As stated under Finding No. 1, staff does not recommend in favor of the orientation of a large majority of the multi-family dwellings off of public streets, and forcing a large majority of the circulation through private parking lots. Due to the amount of dwellings proposed and vehicle trips generated there-from, staff finds that additional public streets are necessary to adequately handle the capacity of traffic. This would include a public street in the southwest corner of the site, as well as interior to the project.

- (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: Standard parking ratios for the proposed uses shall apply. All parking areas shall conform to City of Fayetteville standard specifications, unless approved otherwise by the Planning Commission.

- (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: The development provides a great deal of open space to be retained for community and recreation use. Open spaces are indicated to be met with development of each Planning Area, and all buffering, screening and landscaping required by city code will be applicable.

(6) *Sidewalks.* As required by §166.03.

FINDING: Sidewalks and other pedestrian connections will be evaluated at the time of development to ensure compliance. In general the Master Development Plan provides for sidewalks along public streets, and interior along the parking lot drive aisles and multi-family units.

(7) *Street Lights.* As required by §166.03.

FINDING: Street lights are to be provided adjacent to all public and private streets at a separation of no greater than 300 feet.

(8) *Water.* As required by §166.03.

FINDING: Public water will be provided to the project site, pursuant to city code.

(9) *Sewer.* As required by §166.03.

FINDING: Public sewer will be provided to the project site, pursuant to city code. The developer may be responsible for contributing to the interim solution for wastewater capacity issues in the Hamstring basin, as determined by Engineering staff and Planning Commission at the time of development.

(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: The Planned Zoning District process allows an applicant to propose alternative street cross-sections, sidewalk width and location, etc., with the approval of the Planning Commission. Public and Private streets shall not be gated, unless permitted by express approval from the City Council. The Master Development Plan for the Links at Fayetteville indicates a 60' public right-of-way for the three public streets. This street section would provide for two traffic lanes and parallel parking on either side of the street. This street section is currently not included in the City's Master Street Plan and would require a waiver of the street design standards. Staff is in support of the requested 60' street section. A more detailed review of the Town Center "square" will be necessary at the time of development and may require revisions. Also proposed is a 50' public right-of-way for the newly proposed street to the northeast.

- (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: All development on the site shall be phased according to the phasing plan and conditions herein.

- (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: A tree preservation plan shall be submitted at the time of development. It is anticipated that a large tree preservation/undisturbed area will be protected. The Master Development Plan indicates several areas for tree preservation. Canopy calculations shall be based upon minimum 25% canopy preservation required.

- (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: All commercial structures shall be evaluated as set forth in the code, at the time of development. Though strict adherence is not essential, submitted concept drawings will be utilized as templates for the future buildings.

- (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: Staff finds no specific scenic views to be protected on the subject property.

(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. The association must be able to adjust the assessment to meet changing needs.

FINDING: The applicant shall comply with these requirements.

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: Staff finds this proposal does not meet the intent of some of the parameters of the City Plan 2025, as discussed in Staff Finding No. 1. The project does not meet the

intent of some of the parameters of some of the above ten criteria, including flexibility in density, compatibility and transition of land use, and provision of a variety of housing types. The following guiding policies within City Neighborhood Areas are applicable to this development, and help to achieve the six primary goals of the City Plan 2025:

City Neighborhood Areas:

- a. *Protect adjoining properties from the potential adverse impacts associated with non-residential uses adjacent to and within residential areas with proper mitigation measures that address scale, massing, traffic, noise, appearance, lighting, drainage, and effects on property values.*
- b. *Provide non-residential uses that are accessible for the convenience of individuals living in residential districts and where compatibility with existing desirable development patterns occurs.*
- c. *Reduce the length and number of vehicle trips generated by residential development by enhancing the accessibility to these areas; encourage walkability as part of the street function. Neighborhood shopping should be within walking distance of residential use, or approximately one-quarter mile.*
- d. *Encourage developers to designate and plan for mixed-use corners at the time of approval to properly plan for accessibility to these areas.*
- e. *Encourage pedestrian-friendly, mixed-use buildings through the use of transparent glass for commercial uses at street level and building entrances that address the street.*

(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: The subject described real property is proposed to be rezoned to R-PZD 07-2452, with seven (7) unique Planning Areas. The development standards, statement of commitments and Master Development Plan approved shall be adopted with the rezoning.

(C) ***R – PZD, Residential Planned Zoning District.***

- (1) ***Purpose and intent.*** The R-PZD is intended to accommodate mixed-use or clustered residential developments and to accommodate single-use residential developments that are determined to be more appropriate for a PZD application than a general residential rezone. The legislative purposes, intent, and application of this district include, but are not limited to, the following:

- (a) To encourage a variety and flexibility in land development and land use for predominately residential areas, consistent with the city's City Plan 2025 and the orderly development of the city.
- (b) To provide a framework within which an effective relationship of different land uses and activities within a single development, or when considered with abutting parcels of land, can be planned on a total basis.
- (c) To provide a harmonious relationship with the surrounding development, minimizing such influences as land use incompatibilities, heavy traffic and congestion, and excessive demands on planned and existing public facilities.
- (d) To provide a means of developing areas with special physical features to enhance natural beauty and other attributes.
- (e) To encourage the efficient use of those public facilities required in connection with new residential development.

FINDING: Staff is recommending denial of this application, finding the proposed PZD does not meet the intent of the PZD ordinance as noted above. As discussed in Findings No. 1 and 4, the project does not encourage variety and flexibility, does not provide a framework for an effective relationship of different land uses, and is not compatible with existing land uses to the west. It is staff's finding that the scale of the project demands a greater variety of land uses, most notable the inclusion of single family detached and attached units.

(2) *Permitted Uses.* All permitted uses identified within §162 Use Units of the Unified Development Code shall be allowed as permissible uses, unless otherwise specified, subject to City Council approval of the Planned Zoning District request.

(3) *Conditional Uses.* All conditional uses allowed within (Residential, Commercial, Industrial) zoning Districts established in the Unified Development Code shall be allowed with Planning Commission approval, unless otherwise specified, subject to the code governing Conditional Use requests.

FINDING: Permitted and Conditional uses are outlined in both the Master Development Plan booklets and plats.

(4) *Condition.* In no instance shall the residential use area be less than fifty-one percent (51%) of the gross floor area within the development.

FINDING: The residential uses on this property will be at least fifty-one percent of the gross floor area within the development.

(F) *Bulk and area regulations*

(1) *Residential density.* Residential densities shall be determined on the basis of the following considerations:

- (a) The densities of surrounding development;
- (b) the densities allowed under the current zoning;
- (c) the urban development goals and other policies of the city's General Plan;
- (d) the topography and character of the natural environment; and
- (e) the impact of a given density on the specific site and adjacent properties.

FINDING: Surrounding development is generally single family with rural residential-type density to the west, more standard suburban subdivision density to the east, with a mix of commercial and residential uses along the Wedington Drive corridor to the south. As discussed in Findings No. 1 and No. 4, staff finds that the lack of variety in the density proposed, and repetitious building footprint and building type throughout the 152-acre site are not compatible with existing surrounding land uses to the west, and do not create a complete neighborhood over this 152-acre site. Staff does not take issue with the overall density of 8 units per acre; the city's development goals and infrastructure for this area supports a higher density is designed appropriately. However, the lack of variety and transition in density throughout the site is not consistent with city planning policies. The immensity of the development proposed (152 acres, 1,221-unit residential development) eclipses most projects within and surrounding Fayetteville, without much change in the building type over the property. In that regard, the proposal of a primarily rental apartment dwelling is of concern on a scale on this magnitude. Also see Staff Findings Nos. (E)(1), (E)(4), (E)(5), and (B)(1).

(2) *Lot area and setback requirements.* Taking into consideration the unique aspects of each project, preliminary development plans for Planned Zoning Districts shall conform as closely as possible to the existing standards for lot area minimums and setback requirements under this chapter.

FINDING: Lot area minimums and setbacks are not varied on this project. This project would leave the entire 152-acre site under one lot (unless out-lots are created in the future), and would not provide for a great variety in the size or mass of structures. The structures are located either oriented to the street with minimal front setbacks, or oriented to the golf course on the perimeter of the development. Due to the unique nature of this development desiring to create a pedestrian-friendly streetscape along the public streets, it is not possible to conform to existing standards for lot area minimums and setback requirements.

(3) *Building height.* There shall be no maximum building height except as may be determined by the Planning Commission during the review of the preliminary

development plan based on the uses within the development and the proximity of the development to existing or prospective development on adjacent properties. A lesser height may be established by the Planning Commission when it is deemed necessary to provide adequate light and air to adjacent property and to protect the visual quality of the community.

FINDING: Building heights proposed for this project range from 1-4 stories, and are typical of commercial and multi-family development. These heights are consistent with the height requirements of the surrounding zoning.

- (4) *Building area.* The Planning Commission shall review specific proposed lot coverages which generally correspond to the guidelines for lot coverage in the respective residential, office, commercial or industrial district which most depicts said development scheme.

FINDING: The lot coverage over the entire 152-acre site is relatively low, given the density and mix of commercial uses. The lot coverages are appropriate given the more urban environment proposed.

***Required Findings for Rezoning Request.**

Land Use Plan: *The City Plan 2025 Future Land Use Plan designates this site as a City Neighborhood Area. Rezoning this property to R-PZD 07-2452, with the associated Master Development Plan, is not consistent with the land use plan as the proposed development proposes two types of residential dwellings in a fairly homogenous footprint and building elevation generally repeated throughout the site with slight variations. This development pattern is not consistent with the City Neighborhood Area guiding policies to create a complete, compact and connected neighborhood. The proposed plan may result in an incompatible development with surrounding land uses in the general vicinity and fails to meet many of the goals of the City Plan 2025 for new development.*

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: Staff finds the proposal is not highly consistent with the land use planning objectives, principles and policies, as evidenced by the number of guiding policies for City Neighborhood Areas this proposal does not meet, and the six major goals of City Plan 2025 as discussed in Staff Finding No. (E)(1). Staff would recommend a similar density and intensity, finding it appropriate and compatible, but with a greater variety of housing types, lot sizes, etc. It is staff's finding that the size and impact of development of this property as it relates to compatibility are undeniably great, and demand transition and compatibility within the bounds of the property itself, and should not solely rely upon surrounding properties for that compatibility.

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

Finding: The developer desires to create a unique development on the property, different than the previously approved R-PZD for the Wellspring project. A re-zoning is needed for any development that does not conform to the approved Wellspring project, which has been indicated by the applicant as not possible to develop.

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

Finding: Staff finds this proposal will not create or appreciably increase traffic danger and congestion, with the street improvements recommended. Without significant improvements staff would recommend denial of this 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: Staff finds that in evaluating this proposal, the population density would undoubtedly increase from that which currently exists, and that the commercial uses proposed would create additional demand on public services. Staff finds, however, that the load created on public services is not an undesirable or detrimental impact, with the improvements as recommended by staff for this project.

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: As discussed in the findings throughout this report, staff recommends denial of the requested R-PZD 07-2452, finding the proposal inconsistent with several adopted goals and policies of the City Plan 2025; finding the primarily single-use multi-family product that utilizes a similar footprint in approximately 70 buildings does not promote or encourage a variety of housing type, attainable home ownership, or a complete neighborhood on this very large tract of land.



THE CITY OF FAYETTEVILLE, ARKANSAS

113 W. Mountain St.
Fayetteville, AR 72701
Telephone: (479) 444-3469

TO: Andrew Garner, Associate Planner
FROM: Alison Jumper, Park Planner
DATE: March 7, 2007
SUBJECT: Planning Commission Comments

Meeting Date: March 12, 2007
Item: R-PZD 07-2532 The Links at Fayetteville, 400,401,361,362
Park District: NW
Zoned: RPZD
Billing Name & Address: The Links at Fayetteville, 1165 Joyce Blvd. Fayetteville, AR 72703

	<u>Land Dedication Requirement</u>	<u>Money in Lieu</u>
Single Family	_____ @ .024 acre per unit = _____ acres	_____ @ \$960 per unit = \$ _____
Multi Family	_____ @ .017 acre per unit = _____ acres	_____ @ \$680 per unit = \$ _____

COMMENTS:

- PRAB recommended accepting a combination of land and money in lieu of land for this project on January 8th, 2007. Additionally the developer has agreed to the following terms:

1) The Developer shall dedicate approximately 17.32 acres of land adjacent Bryce Davis Park. In addition, the Developer shall pay the City \$138,000.00 money in lieu for the remaining 3.45 acres of required land dedication not provided in this proposal. (20.77 acres required - 17.32 acres dedicated = 3.45 short/0.017 acres = 202.94 units X \$680.00 = \$138,000.00).

2) The Developer shall construct a 6' high wrought iron fence between the proposed golf course and the proposed park area.

3) The existing lake located within the proposed park land area shall remain with the following conditions:

- a) Overflow from said lake shall flow to a second lake to be constructed off park land from which the Developer will draw irrigation waters.
 - b) A well shall be constructed off park land and maintained by the Developer from which water will be deposited into the existing lake to maintain an elevation to be agreed upon by the Developer and Parks Board. Said well will also provide water to the "lower" irrigation lake via a second line.
 - c) The existing lake shall be altered only to the degree necessary to provide storm water detention for the drainage area it now serves.
 - d) If requested by the city, a "shelf" shall be constructed in the existing lake that is 1' below the established water level indicated in 3 (b) and extends 3'-5' from the existing shoreline at the Developer's expense.
- 4) On-street parking shall be constructed by the Developer along a section of public street bordering the proposed park land. A minimum of eight spaces shall be provided.
- An agreement will be necessary to provide the flow of water from the pond on the park property to the irrigation pond.
 - Coordinate with the Trails Coordinator for trail connection to the north. The park boundary may need to be adjusted to accommodate an accessible trail due to the steep topography.



THE CITY OF FAYETTEVILLE, ARKANSAS

113 W. Mountain St.
Fayetteville, AR 72701
Telephone: (479) 444-3416
mmihalevich@ci.fayetteville.ar.us

ENGINEERING DIVISION - TRAILS CORRESPONDENCE

To: Crafton, Tull, Sparks & Associates
From: Matt Mihalevich, Trails Coordinator
Date: March 12, 2007
Subject: Planning Commission Comments

ITEM #: R-PZD 07-2452: Planned Zoning District (The Links at Fayetteville)

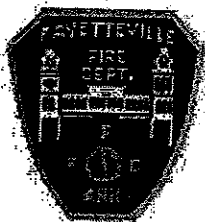
TRAIL COMMENTS

Background:

1. Bryce Davis Trail is identified on the Fayetteville Alternative Transportation and Trails Master Plan to be located along the north and east edge of this property as shown on the plat. The trail will be 8' wide and will provide a connection from the future Hamestring Creek Trail to Bryce Davis Park.
2. The park land dedication area has been modified since the submittal to Parks Board on January 8th, 2007. The modification has narrowed the proposed park land in northeast and is now insufficient for trail construction. In order for the trail to meet the guidelines of the Americans with Disabilities, switchbacks will be necessary and additional width is necessary to accommodate these switchbacks.

Recommendation:

1. Expand the proposed park land dedication in the northeast corner of the project an additional 150' along the existing east edge of area IV with a line narrowing to meet where the north property makes a jog near corner near the creek as shown on the original Parks Board submittal.
2. Include a raised trail crossing at the crossing of the Public Street going east. The trail crossing should be continuous across the street at the level of the top curb. Similar to a speed table with the trail crossing over.



Fayetteville Fire Department

MEMO

To: Suzanne Morgan, Andrew Garner, Jeremy Pate, and Jesse Fulcher
Thru: Chief Tony Johnson
Chief Bud Thompson
From: Captain Dale Riggins
Date: February 21, 2007
Re: February 21, 2007 Zoning Review – Fire Department Comments

RZN 07-2464 (Fowler)

These 1.5 acres are covered by Engine 6 located at 900 S Hollywood. It is .7 miles from the station with an anticipated response time of 2 minutes. The Fire Department does not figure calls for service on properties being re-zoned to C-1, Neighborhood Commercial, but typically this type of development will not increase our call volumes or response times.

R-PZD 07-2452 (The Links at Fayetteville)

These 152 acres are currently covered by Station 7 on Ruppel Road. The property is 0.8 miles from the station with an anticipated response time of 1.5 minutes to the beginning of this subdivision and 2.5 minutes after the maximum build out is completed. We project this development to produce 326 calls for service per year at maximum build out (128 fire/other and 198 EMS). This accounts for the residential properties only. Typically, commercial properties do not greatly affect our call volume within a fire district. The service impact of this development will typically take eighteen months, after the development is started, to occur. Since Ruppel Road is narrow and curvy, the widening of this road will greatly help getting our apparatus to the scene of this development along with any calls north of that area.

If you have any questions concerning these comments please don't hesitate to call me

Captain Dale Riggins
Fayetteville Fire Department



Fayetteville Fire Department





FAYETTEVILLE

B. 4
The Links at Fayetteville Appeal
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THE CITY OF FAYETTEVILLE, ARKANSAS

POLICE DEPARTMENT

RECEIVED

JUL 25 2005

PLANNING DIV.

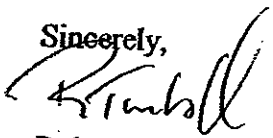
July 25, 2005

Jeremy Pate
Director of Current Planning
City of Fayetteville
125 W. Mountain Street
Fayetteville, AR 72702

Dear Mr. Pate:

This document is in response to your request for estimated implications/expectations the Wellspring Community PZD would place on the Fayetteville Police Department. Based on historical data of similar demographic and geographic commercial and residential areas, estimations can be made regarding an increase in police calls for service. Upon completion of the build out of this PZD, the Fayetteville Police Department can realize an estimated three percent increase in total calls for service. Given the current traffic environment in this area, a development of this size would have an obvious impact on traffic congestion. The Engineering Department may provide more specific information regarding questions about the traffic impact for the Wellspring Community PZD.

Sincerely,


Rob Turberville
Fayetteville Police

*Police Department commented that these comments
are also applicable to the Links at Fayetteville
R-PZD 07-2452. (02/21/07)*



PC Meeting of February 26, 2007

THE CITY OF FAYETTEVILLE, ARKANSAS

113 W. Mountain St.
Fayetteville, AR 72701
Telephone: (479) 444-3470

PARKS AND RECREATION DIVISION CORRESPONDENCE

To: Fayetteville Planning Commission

From: Sarah K. Patterson, Urban Forester

Date: February 21, 2007

ITEM #: MDP 07-2452: Master Development Plan (Links @ Fayetteville)

TREE PRESERVATION PLAN

1. A full Tree Preservation Plan will be required once this development comes through the planning process. This should include but not be limited to:
 - A full tree inventory of all significant trees
 - Canopy calculations including existing canopy, preserved canopy, removed canopy
 - A site analysis report
 - Survey the location of significant trees and those directly affected by the development.
2. At the time of development, staff will assess the plans with a minimum canopy cover of at least 25%. The original rezoning request for this parcel utilized the 25% minimum and it is staff's determination that this project should as well.

LANDSCAPE REGULATIONS

1. At the time of development this project will be assessed for all landscape requirements as defined in Chapter 177 Landscape Regulations. This will include but not be limited to street trees, stormwater plantings, etc.

From: "TRACY HOSKINS" <tkhoskins@paradigmnwa.com>
To: "Jeremy Pate" <jpate@ci.fayetteville.ar.us>, <AGARNER@CI.FAYETTEVILLE.AR.US>
Date: 2/26/07 9:51AM
Subject: RPZD 07-2452 THE LINKS AT FAYETTEVILLE

JEREMY/ANDREW,

GOOD MORNING;

HERE'S THE NEXT ONE; SORRY TO BE A PAIN. I READ THIS WEEKEND THAT LINDSEY IS PUTTING THROUGH A NEW PZD ON RUPPLE ROAD WHERE WELLSPRINGS WAS ONCE TO BE CONSTRUCTED AND THE SAME WAS TO BE REVIEWED BY THE PLANNING COMMISSION TONIGHT.

IT MAY BE THAT I'M BRAIN DEAD, BUT THE APPLICANT IS REQUIRED TO NOTIFY THE ADJACENT/SURROUNDING PROPERTY OWNERS, IS HE NOT? IS THERE ANY WAY OF VERIFYING THAT HE DID INDEED NOTIFY EVERYONE HE WAS REQUIRED TO NOTIFY AND WHETHER OR NOT THAT NOTIFICATION WAS ISSUED APPROPRIATELY? I GUESS IT'S POSSIBLE THAT ONE OF MY STAFF PICKED UP THE CERTIFIED LETTER AND DIDN'T TELL ME ABOUT IT; BUT IT'S NOT LIKELY. I WOULD HAVE LIKED THE OPPORTUNITY TO REVIEW THIS SUBMITTAL.

IN THE EVENT THAT I DID RECEIVE MY NOTIFICATION (AND I'M SURE I DID NOT) AND THE PROJECT WILL BE HEARD THIS EVENING BY THE COMMISSION, I WOULD LIKE TO VOICE MY GENUINE CONCERN WITH THIS SUBMITTAL.

AS YOU ARE AWARE, I HAVE NEVER SPOKE AGAINST ANOTHER DEVELOPER'S PROJECT KNOWING THAT STAFF IS VERY CAPABLE AND I MOST GENERALLY AGREE WITH STAFF'S FINDINGS. I AM PARTICULARLY CONCERNED ABOUT THIS PROJECT BECAUSE OF THE LONG TERM EFFECT IT WILL HAVE ON THE VIABILITY OF OAKBROOKE AND THE NEW DEVELOPMENT TO MY SOUTH BY MARK FOSTER.

I'M AWARE OF THE GOALS OF THE NEW CITYPLAN 2025 REGARDING INFILL, DENSITY, AND THE INTEGRATION OF MIXED USES. AS YOU'LL REMEMBER, I WAS VERY INVOLVED IN THE PROCESS OF CREATING THE POLICY. WHAT CONCERNS ME MOST ABOUT THIS PARTICULAR PROJECT IS THAT I SUSPECT (THOUGH SOMEWHAT DIFFERENT THAN MANY OTHER PROJECTS HE'S DONE IN OUR AREA) THE DEVELOPER HAS GIVEN LITTLE, IF ANY, CONSIDERATION TO TRANSITION OF DENSITY. I'M SURE HE IS LINING RUPPLE ROAD WITH WHAT HE REFERS TO AS "MIXED USE" BUILDINGS, WHICH WILL ONLY BE RETAIL AND OFFICE BUILDINGS LABELED AS SUCH. I'M SURE THE DENSITY OF THE PROJECT HAS NOT TAKEN INTO CONSIDERATION THE DENSITY OF NEIGHBORING DEVELOPMENTS, AND THAT IT REMAINS CONTINUOUS THROUGHOUT THE ENTIRE 152 ACRES. I'M SURE THAT THE "SAME OL'-SAME OL' "LINDSEY" "MOTEL-STYLE APARTMENT BUILDINGS" WILL BE SOLD TO THE PUBLIC UNDER THE CONSIDERATION OF "ALL THE

GREENSPACE AND BUFFERING" THE PSEUDO GOLF COURSE WILL PROVIDE. IN A TRUE MIXED-USE ENVIRONMENT, THERE SHOULD BE MULTIPLE BUILDINGS, OF VARIOUS SIZES, SHAPES, AND MATERIALS. THERE SHOULD ALSO BE CONSIDERATION OF TRANSECT ZONING WHICH IMPLEMENTS TRANSITION OF DENSITY.

FURTHER, IF YOU'LL REVISIT THE DAYS WHEN OAKBROOKE WAS TRUDGING ITS WAY THROUGH THE SYSTEM, THE NEIGHBORS WERE VERY VOCAL IN THEIR OPINIONS OF HIGH DENSITY IN THIS AREA. THE NEIGHBORS WERE CONCERNED ABOUT AN OVER ABUNDANCE OF "RENTAL PROPERTIES" IN THEIR NEIGHBORHOOD AS WELL. THOUGH I HAVEN'T RECEIVED NOTICE OF THIS PROJECT BEING PLACED ON THE COMMISSIONS AGENDA FOR THIS EVENING, I AM NOT OPPOSED TO IT BEING HEARD BY THE COMMISSION TONIGHT IF MY CONCERNS OUTLINED IN THIS LETTER COULD BE PUBLICLY ADDRESSED TONIGHT IN MY ABSENCE.

PLEASE LET ME KNOW IF THE PROJECT WILL BE HEARD AND IF SO, THAT YOU WILL MAKE MY CONCERNS KNOWN TO THE COMMISSION.

THANKS YOU,

TKHOSKINS - PRESIDENT

THE PARADIGM COMPANIES

P.S. DOES THE PZD ZONING OF A PROPERTY REVERT BACK TO ITS ORIGINAL ZONING IF CONSTRUCTION DOES NOT BEGIN WITHIN A SET PERIOD OF TIME?

No virus found in this outgoing message.

Checked by AVG Free Edition.

Version: 7.5.441 / Virus Database: 268.18.4/702 - Release Date: 2/25/2007

3:16 PM

CC: <JGAMBILL@CI.FAYETTEVILLE.AR.US>



PETERS & ASSOCIATES
ENGINEERS, INC.

February 26, 2007

Mr. Jerry Kelso
Crafton, Tull, Sparks & Associates, Inc.
10825 Financial Center Pkwy.
Suite 300
Little Rock, AR 72211

RE: P1258
Trip-Generation Comparison
The Links at Fayetteville vs. Well Springs
Wedington Drive and Ruppel Road
Fayetteville, Arkansas

Dear Mr. Kelso:

As you requested, Peters & Associates Engineers, Inc. has done a comparison of projected traffic volumes relating to the proposed development of The Links at Fayetteville development (as described in a traffic study report dated February 21, 2007 by this consultant) compared to the Well Springs development at the same location, north of Wedington Drive and east of Ruppel Road in Fayetteville, Arkansas.

The Trip Generation, an Informational Report (7th Edition), 2004, published by the Institute of Transportation Engineers (ITE) and The Trip Generation Software (Version 5 by Microtrans), were utilized in calculating the magnitude of traffic volumes expected to be generated by the proposed land-uses in this comparison. These are reliable sources for this information and are universally used in the traffic engineering profession.

Using the selected trip-generation rates, calculations were made as a part of this comparison to provide a reliable estimate of traffic volumes that can be expected to be associated with the development as proposed for The Links at Fayetteville and for Well Springs. The following table, "Trip-Generation Comparison," summarizes the trip-generation for the difference in size of land-uses for the AM peak hour, PM peak hour and 24-hour projected traffic volumes expected to be generated by the proposed uses.

THE LINKS AT FAYETTEVILLE			24-HOUR TWO-WAY WEEKDAY VOLUME	AM PEAK HOUR VOLUME		PM PEAK HOUR VOLUME	
PROPOSED LAND USE	APPROXIMATE SIZE	ITE CODE		ENTER	EXIT	ENTER	EXIT
Retail Market*	25,000 Sq. Ft.	850	2,045	40	26	106	102
Residential Apartments	204 Units	220	1,371	20	84	82	45
Retail*	19,725 Sq. Ft.	820	678	10	6	29	30
General Office	19,725 Sq. Ft.	710	217	27	4	5	24
Residential Apartments	1008 Units	220	6,774	101	413	403	222
Golf Course	9 Holes	430	322	16	4	11	14
Residential Apartments	76 Units	220	511	8	31	30	17
Retail*	13,150 Sq. Ft.	820	452	6	4	19	21
General Office	13,150 Sq. Ft.	710	145	18	2	3	16
Residential Apartments	131 Units	220	880	13	54	52	29
Retail*	16,438 Sq. Ft.	820	565	8	6	24	26
General Office	16,438 Sq. Ft.	710	181	22	3	4	20
TOTALS:			14,141	289	637	768	566
TOTAL ENTERING + EXITING				926		1,334	

*These volumes adjusted to reflect 20% internal capture.

WELL SPRINGS			24-HOUR TWO-WAY WEEKDAY VOLUME	AM PEAK HOUR VOLUME		PM PEAK HOUR VOLUME	
PROPOSED LAND USE	APPROXIMATE SIZE	ITE CODE		ENTER	EXIT	ENTER	EXIT
Residential Apartments	150 Units	220	1,008	15	61	60	33
Residential Townhomes	300 Units	230	1,758	21	111	105	51
Residential Condominiums	500 Units	230	2,930	35	185	175	85
Residential Apartments	225 Units	220	1,512	23	92	90	50
Retail*	230,500 Sq. Ft.	820	7,918	116	74	332	359
General Office	230,500 Sq. Ft.	710	2,538	313	44	58	286
Retail Market*	25,000 Sq. Ft.	850	2,045	40	26	106	102
TOTALS:			19,709	563	593	926	966
TOTAL ENTERING + EXITING				1,156		1,892	

*These volumes adjusted to reflect 20% internal capture.

Trip-Generation Comparison

It was found that trip-generation corresponding to the difference in the sizes and land uses of the developments as follows:

- 24-Hour: Development of The Links at Fayetteville is expected to generate, on a 24-hour basis, 5,568 fewer vehicle trips (combined in and out) than development of Wells Springs. This equates to 28 percent fewer vehicle trips.
- AM Peak Hour: Development of The Links at Fayetteville is expected to generate 230 fewer vehicle trips (combined in and out) than development of Wells Springs during the AM peak hour. This equates to 20 percent fewer vehicle trips.

- **PM Peak Hour:** Development of The Links at Fayetteville is expected to generate 558 fewer vehicle trips (combined in and out) than development of Well Springs during the PM peak hour. This equates to 29 percent fewer vehicle trips.

Please call if you have further questions or require additional information.

Sincerely,
PETERS & ASSOCIATES ENGINEERS, INC.



Ernest J. Peters, P.E.
President

RECOMMENDED
SCHEMATIC LANE GEOMETRY

FAYETTEVILLE, ARKANSAS

THE LINKS AT FAYETTEVILLE
TRAFFIC STUDY

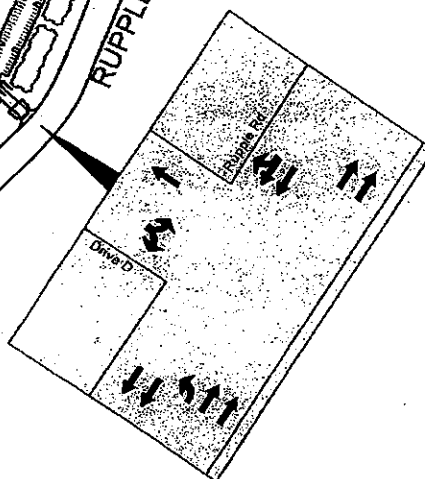
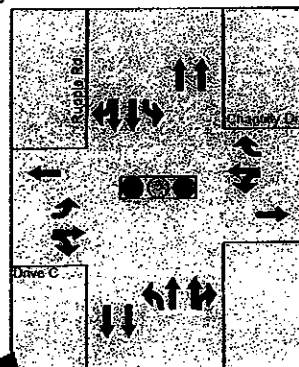
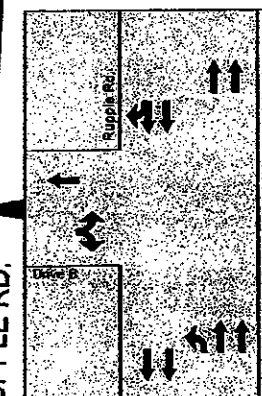
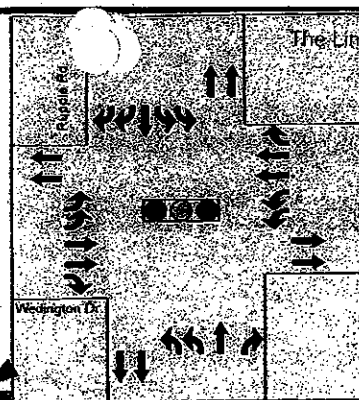
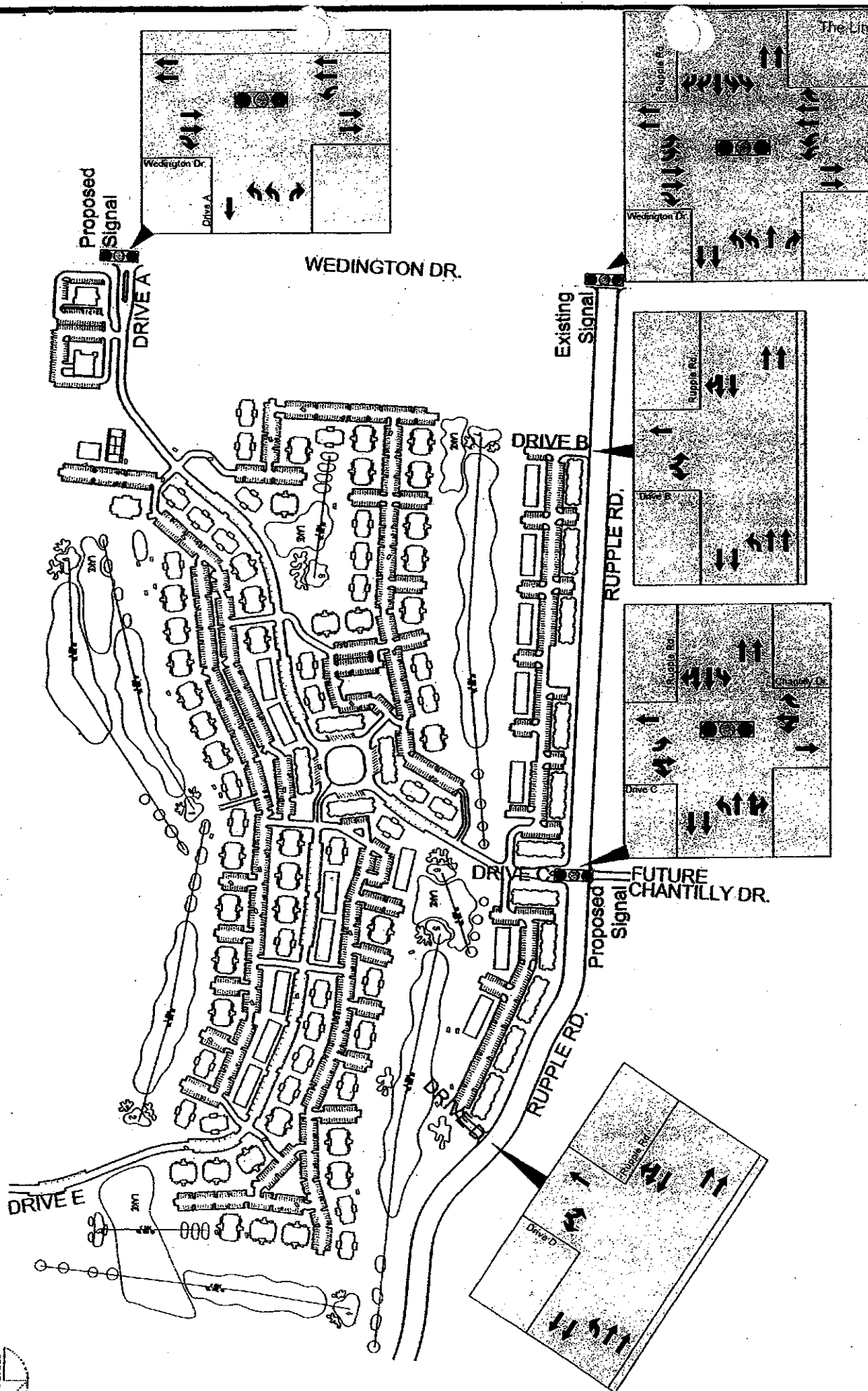
PROJECT NO. P-1258
DATE: 2-14-2007

PETERS & ASSOCIATES
ENGINEERS, INC.

CIVIL & TRAFFIC ENGINEERING



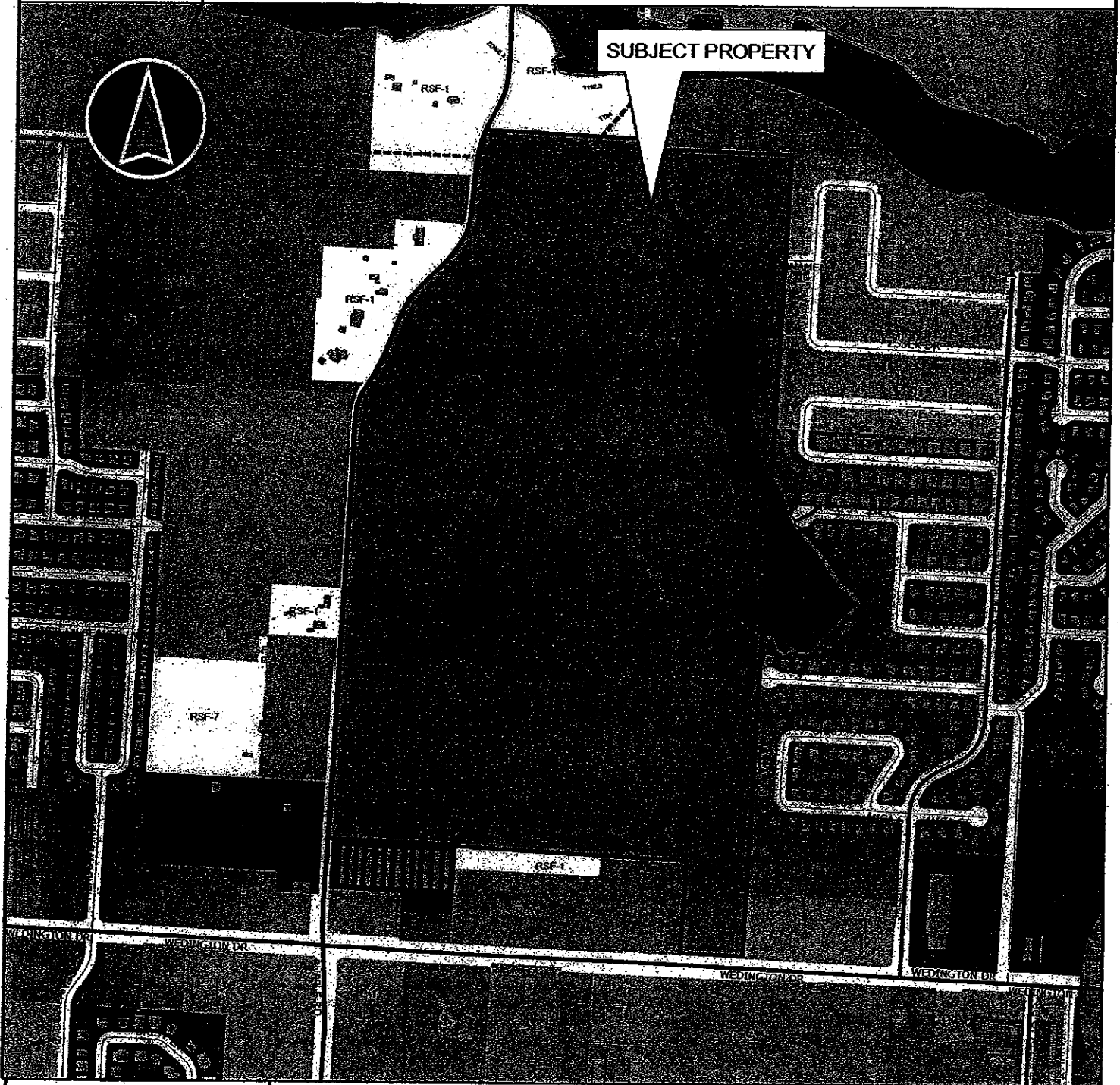
FIGURE
10



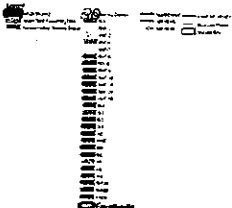
RPZD07-2452

Close Up View

THE LINKS AT FAYETTEVILLE



Overview



0 250 500 1,000 1,500 2,000
Feet

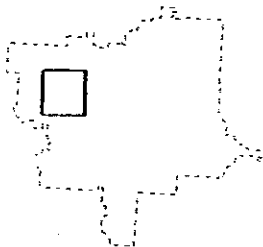
One Mile View

THE LINKS AT FAYETTEVILLE



SUBJECT PROPERTY

Overview



Subject Property

 Planning Area
Overlay District☐ Outside City

Hillside-Hilltop Overlay District

0

0.25

0.5

1

Miles

ATTACHMENT B

LINKS AT FAYETTEVILLE R-PZD

PROJECT SUMMARY TABLE
MARCH 26, 2007 SUBMITTAL

**Links at Fayetteville
Master Development Plan
March 26, 2007 Planning Commission**

TYPE OF USE	PLANNING AREA	RESIDENTIAL DENSITY (UNITS/ACRE)	RESIDENTIAL UNITS	NON-RESIDENTIAL INTENSITY (SQ.FT./ACRE)	NON-RESIDENTIAL SQUARE FEET	ACRES	% OF SITE
Multi-family/Golf	PA-3	12.71	1,000	NA	9 hole golf course	78.66	51.67%
Dedicated parks	PA-5	NA	NA	NA	NA	17.32	11.38%
Club House	PA-2	0.19	1	3,170	16,388	5.17	3.40%
Mixed Use	PA-4	35.53	108	8,651	26,300	3.04	2.00%
Commercial	PA-1	N/A	N/A	10,000	78,200	7.82	5.14%
Town Homes	PA-6	15.00	75	NA	NA	5.28	3.47%
Single Family/Golf Course	PA-6	15.00	74	NA	9 hole golf course	34.94	22.95%
TOTAL		8.26	1,258	794	120,888	152.23	100.00%

Handed
out at
Agenda Session
4/10/07

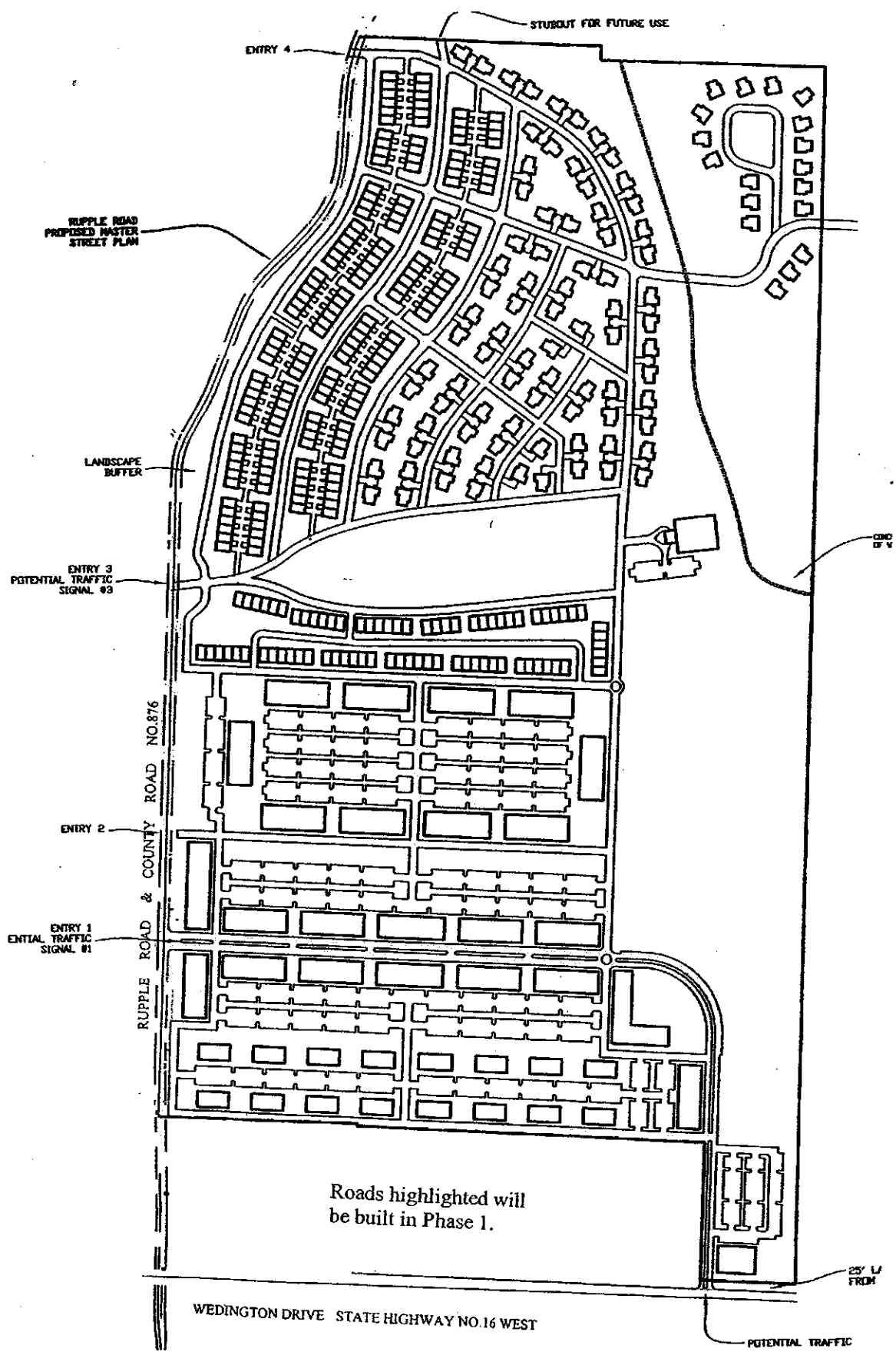
C.7.

The Links at Fayetteville Appeal

B. 4
The Links at Fayetteville Appeal
Page 61 of 68

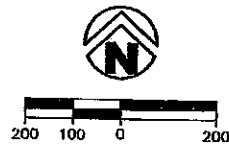
Quick Reference Sheet Wellspring PZD / Links at Fayetteville PZD Comparison 04/10/2007

Item of Comparison		Wellspring PZD	Links at Fayetteville PZD
Acreage		152.23 acres	152.23 acres
Total Dwelling Units		1175	1258
	Single Family	150 (13%)	74 (6%)
	Townhome	300 (26%)	75 (6%)
	Mixed Use	225 (19%)	108 (9%)
	Condo/Apartment	500 (43%)	1000 (79%)
Dedicated Parkland		21 acres (14%)	17.32 acres (11%)
Estimated Vehicle Trips Generated		19,709 vpd	14,141 vpd



Public Streets: Links P20

PLANNING AREA VII
SINGLE FAMILY / GOLF COURSE



SITATION FROM THE CORE TOWN
WIDE AN AFFORDABLE DETACHED

2 BUILDING ELEVATIONS THAT
1 THE DESCRIPTION OF BUILDINGS
BRICK/MASONRY.

PLANNING AREA IV
TOWN CENTER / MIXED USE

PLANNING AREA VI
PARKWAY TOWNHOMES

PLANNING AREA I
MARKET DISTRICT

PLANNIN
PUBLI

PLANNING
CLUBH

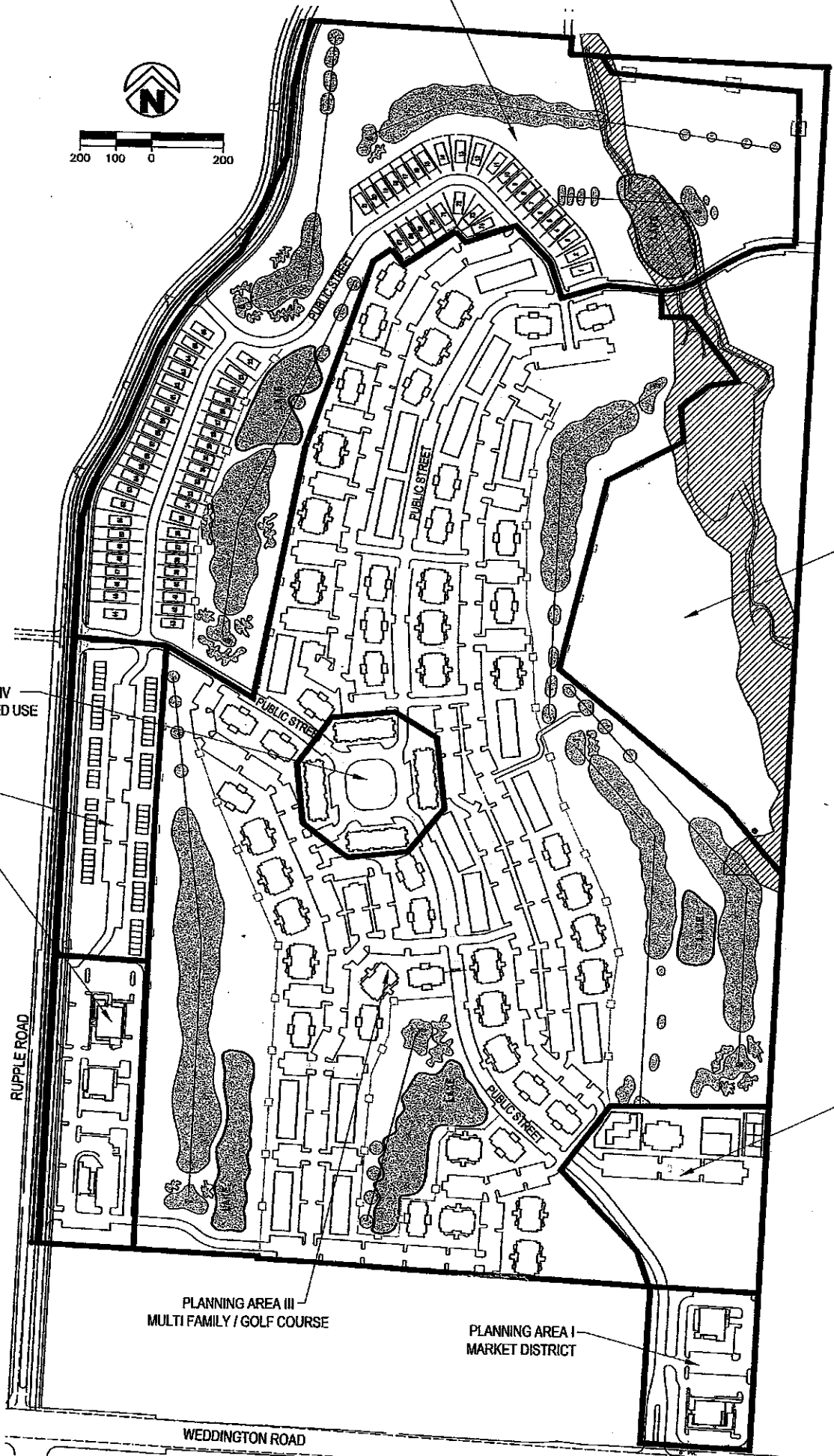
PLANNING AREA III
MULTI FAMILY / GOLF COURSE

PLANNING AREA I
MARKET DISTRICT

WEDDINGTON ROAD

TOWNSHIP 16 NORTH, RANGE 30 WEST,
TOWNSHIP 16 NORTH, RANGE 31
TOWNSHIP 16 NORTH, RANGE 30 WEST,
TOWNSHIP 16 NORTH, RANGE 31 WEST, ALL
1, TO-WIT: BEGINNING AT A POINT
OF THE SOUTHWEST QUARTER OF
TO A SET IRON PIN, THENCE
IRON PIN, THENCE N87°48'42"W
ST QUARTER OF THE SOUTHWEST
ED AT THE NORTHEAST CORNER OF
6°58'50"W 751.69' TO THE
10°34'W 65.18', S09°16'42"W 44.03',
28°W 55.76', S13°38'10"W 52.31',
16°W 60.06', S46°48'24"W 67.32',
8°12'W 58.87', S22°23'40"W 54.61',
7°21'W 57.48', S21°21'38"W 54.39',
03°W 49.97', S02°30'26"W 51.03',
3°15'W 48.89', S02°33'25"W 54.35',
1°15'W 44.03', S03°12'55"W 52.16',
10°7'W 52.35', S02°31'09"W 51.19',
18°W 50.94', S02°42'26"W 49.47',
55°W 360.64', THENCE LEAVING
O A SET IRON PIN, THENCE
S87°02'59"E 209.22' TO THE POINT
RIGHTS-OF-WAY OF RECORD.

RUPPLE ROAD



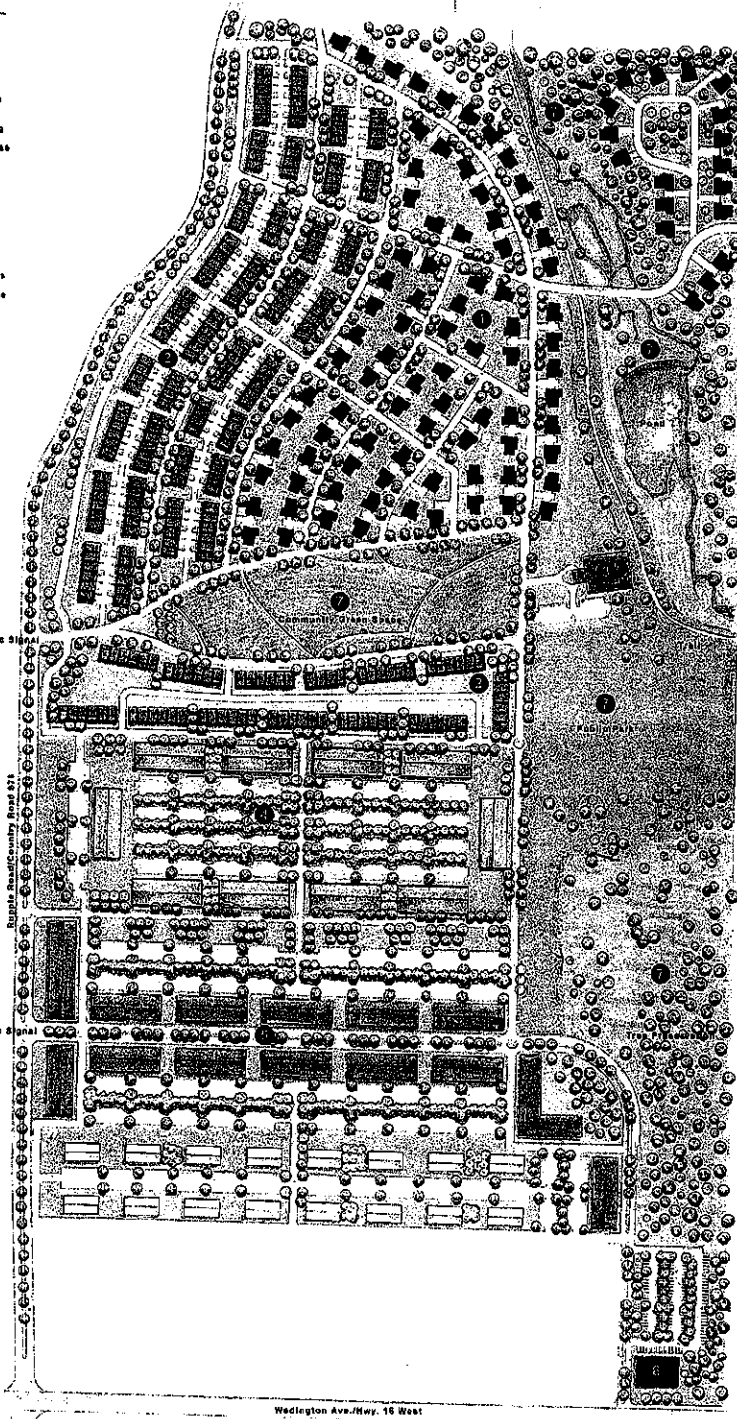
Master Plan

Amenities

A variety of housing styles gives potential residents a wide range of housing choices. Wellspring can accommodate residents with many different lifestyle, economic, or logistical needs.

Large areas of green space and tree preservation, as well as trails and ponds offer a plethora of outdoor activity possibilities to Wellspring residents and the public. Additionally, the development's close proximity to the Fayetteville Boys and Girls Club means the whole family will have access to a wide variety of physical activities.

Wellspring's integration of living spaces and outdoor recreation spaces combined with retail and office areas creates a community which encourages residents to leave their cars at home and bike or walk to work. This means Wellspring encourages health for both its residents and the environment.



Development Plan

- 1 Planning Area 1 - Garden Homes
-Part of Phase 1
- 2 Planning Area 2 - Parkway Town Homes
-Part of Phase 1
- 3 Planning Area 3 - Clubhouses
-Part of Phase 1
- 4 Planning Area 4 - Condominiums
-Part of Phase 3
- 5 Planning Area 5 - Mixed Use Development
-Part of Phase 2
- 6 Planning Area 6 - Market District
-Part of Phase 1
- 7 Planning Area 7 - Parks Area, Community Green Space and Tree Preservation Area
-Part of Phase 1



Wellspring Community

Fayetteville, Arkansas



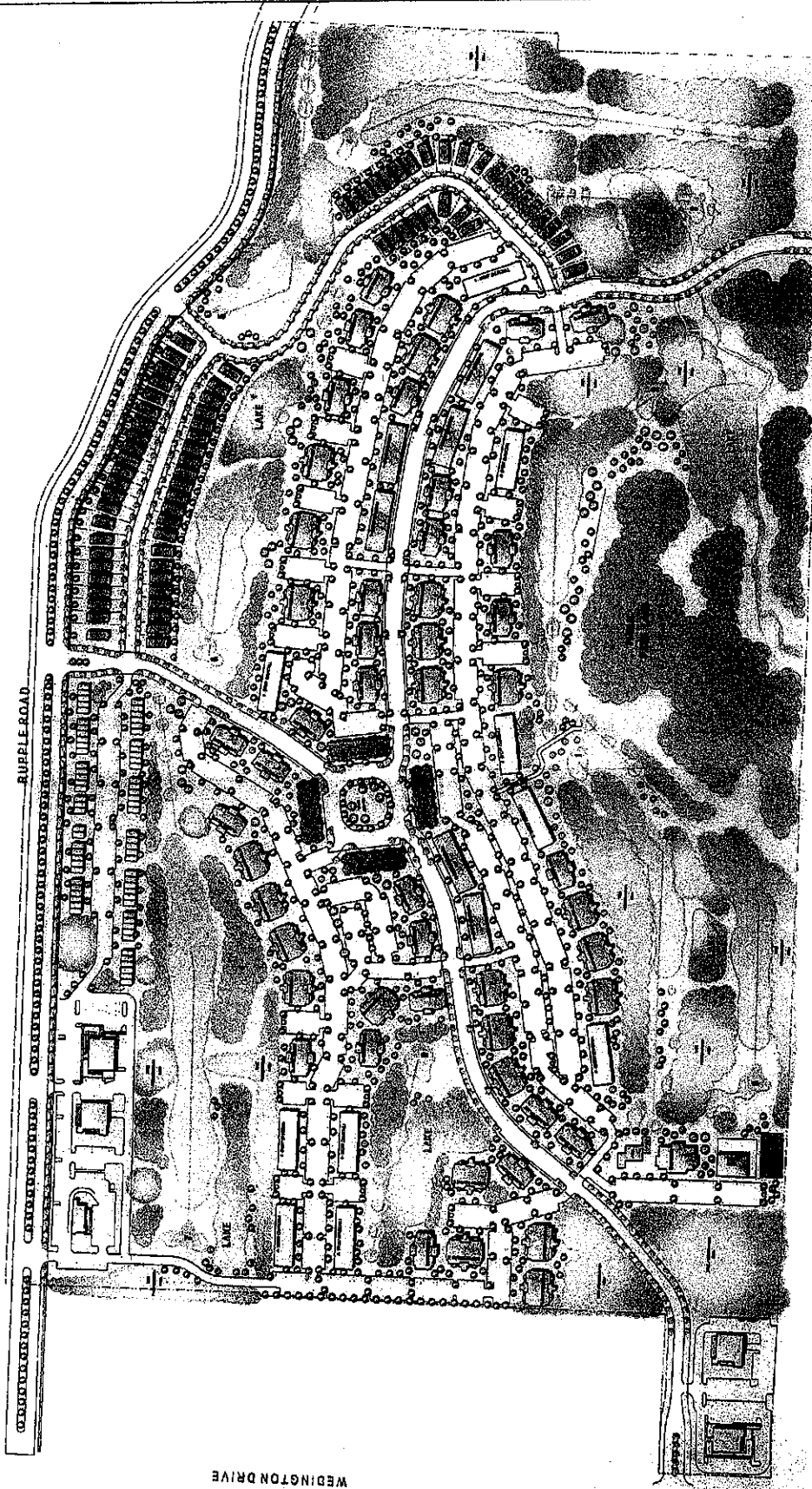
THE HARDER GROUP



NOCK GROUP

Cooper Architects

Critical Path Design



THE LINKS @ FAYETTEVILLE FAYETTEVILLE, ARKANSAS



C. J. Smith & Associates, Inc.
1801 S. Highway 101, Suite 100
Fayetteville, Arkansas 72703
Phone: (479) 781-1111 Fax: (479) 781-1112
www.cjsmith.com

Engineers & Surveyors

UNFINISHED BUSINESS:

R-PZD 07-2452: Planned Zoning District (THE LINKS AT FAYETTEVILLE, 400.401.361.362): Submitted by CRAFTON, TULL, SPARKS & ASSOCIATES for property located at THE NORTHEAST CORNER OF WEDINGTON AND RUPPLE ROAD. The property is zoned R-PZD, RESIDENTIAL PLANNED ZONING DISTRICT 05-1636 (WELLSPRING) and contains approximately 152.23 acres. The request is for zoning and land use approval only for a new R-PZD. The proposed R-PZD would allow 1,258 residential dwelling units, 120,888 square feet of non-residential/commercial space, and 16,388 square feet of recreational buildings. The non-residential and recreational portions of the development would contain a golf course, a commercial 'market' area, green space, park, and associated parking.

Andrew Garner, Senior Planner, gave the staff report. Staff recommended denial of the project, based on findings within the staff report, primarily with inconsistency with the goals of the City's Future Land Use Plan, CityPlan 2025, the PZD ordinance, lack of "town form" as the standard for the development and a lack of public street infrastructure for the project.

Hugh Jarratt (applicant) discussed that if this project meets one of the goals of the City Plan 2025 the Planning Commission has the authority to approve the plan. He also discussed the Planning Commission's general authority for approval of a planned zoning district (PZD).

Kim Fuggitt (applicant) discussed that one of the major problems with the project according to staff is that this project doesn't meet the goal to provide a Traditional Neighborhood Town form. He also discussed how the plan evolved over time and has a streetscape along the street, and provides variety and flexibility in building types.

Jim Lindsey (applicant) discussed that the applicant has revised the plan substantially over the various submittals. He also discussed the benefits of this plan in compliance with all City requirements. He discussed the amenities provided in this development such as golf course, pool, clubhouse, and tennis court. He compared this plan to the existing approved Wellspring PZD on the property.

Jeremy Pate, at the Planning Commission's request, discussed the difference between the Unified Development Code (UDC) and City Plan 2025.

Kit Williams, City Attorney, discussed the requirements for approving or denying a PZD or re-zoning. He stated that a project must meet the requirements of the PZD ordinance. The City Plan 2025 is not a requirement, but a guiding policy.

Commissioner Anthes discussed that the UDC refers to the City Plan 2025, and other policy and ordinance requirements, and that the City Plan 2025 is a shift from the existing ordinance requirements.

Kit Williams determined that any ambiguity in the UDC should be interpreted in favor of the applicant. He also discussed other compliance requirements and the discretion of the Planning Commission.

Jeremy Pate discussed that the overall findings lead to a recommendation of denial although the project has many positive aspects as noted in the staff report.

Commissioner Anthes questioned staff as to whether or not the project met the six primary goals of City Plan 2025.

Jeremy Pate responded that many of those goals are subjective and that this project may meet several of these goals to a certain degree. The staff report provides the discussion and analysis and leaves the conclusion to the reader.

Commissioner Anthes discussed the large volume and scale of the site combined with lack of street connections and lack of unit types is a concern of commissioners. She questioned whether or not the UDC requires a certain amount of variety based on the size of a property.

Jeremy Pate confirmed that the UDC does not specify that a certain size of property has to meet a certain degree of variety, or number of unit types.

Commissioner Ostner questioned how the existing land use and zoning should be compared to the proposed project.

Jeremy Pate explained that the General Plan 2020 under the Wellspring PZD approval and the City Plan 2025 under which the current project is being evaluated are very different, and that comparing the two is difficult, as the City Council has adopted a new policy through the City Plan 2025 that differs greatly from before.

Commissioner Ostner discussed that the approved Wellspring PZD may get a negative recommendation under the current City Plan 2025. There is a different set of rules under which the Wellspring PZD was approved. The City Council decided to change the goals and policies from General Plan 2020 to City Plan 2025.

Commissioner Lack asked the applicant about their reference to hiring an urban planner.

Jim Lindsey responded that he is willing to look at changes to the project and has contacted an urban planner recommended by the Mayor. He stated that the timing of the project needs to move forward and that he has made no real progress with the urban planner he has been talking to.

Commissioner Lack stated that this project does not meet all of the goals of the City Plan 2025, but meets the UDC.

Motion:

Commissioner Lack made a motion to forward the project with a recommendation for approval with staff recommended conditions.

Commissioner Trumbo seconded the motion.

Commissioner Myres stated she will vote against the project for reasons stated in previous meetings.

Commissioner Trumbo stated that development of this project in compliance with the City Plan 2025 has not been proven to be financially viable. The homes for Ruppel Row are now being leased and are too expensive to be sold. He stated that he would like to see an example of a project under City Plan 2025 that would work economically.

Commissioner Anthes discussed how this project has improved throughout the three Planning Commission meetings. However there are too few public streets and connections that result in too much circulation through parking lots, the south access is a private drive and not a public street. She is also concerned with the lack of variety of unit types, however the golf course does provide some buffer to surrounding properties from the large volume of apartments.

Upon roll call the motion failed by a vote of 3-3-2 with Commissioners Anthes, Myres, and Ostner voting 'No', Commissioners Lack, Trumbo, and Bryant voting 'Yes', Commissioners Harris and Clark recusing, and Commissioner Graves was absent.

**City of Fayetteville
Staff Review Form
City Council Agenda Items
or
Contracts**

C. 1
Fayetteville Municipal Property Owners'
Improvement District No. 18 - Woodbury
Page 1 of 12

May 1, 2007

City Council Meeting Date

Sondra Smith

Submitted By

City Clerk

Division

City Clerk

Department

Action Required:

An ordinance to establish Fayetteville Municipal Property Owners' Improvement District No. 18 - Woodbury Municipal Property Owners' Improvement District No. 18 of the City of Fayetteville, Arkansas. This petition is being filed under the Arkansas Municipal Property Owners' Improvement District law. Arkansas Code Ann. Sec. 14-94-101 et seq. The petition is being filed by John Bryant (501-375-1122) on behalf of the Improvement District.

N/A

Cost of this request

N/A

Category / Project Budget

N/A

Program Category / Project Name

N/A

Account Number

N/A

Funds Used to Date

N/A

Program / Project Category Name

N/A

Project Number

N/A

Remaining Balance

N/A

Fund Name

Budgeted Item

N/A

Budget Adjustment Attached

N/A

Sondra E. Smith
Department Director

4/16/07
Date

Previous Ordinance or Resolution #

K. Smith
City Attorney

4-19-07
Date

Original Contract Date:

Original Contract Number:

Paul A. Bueh
Finance and Internal Service Director

4-17-07
Date

Received in City Clerk's Office

ENTERED
4/16/07

Paul A. Bueh
Mayor

4/18/07
Date

Received in Mayor's Office

ENTERED
4/17/07

Comments:



RECEIVED

APR 16 2007

**CITY OF FAYETTEVILLE
MAYOR'S OFFICE**

**113 West Mountain
Fayetteville, AR 72701
Telephone: (479) 575-8323
Fax: (479) 718-7695
city_clerk@ci.fayetteville.ar.us**

City Clerk/Treasurer Division

April 16, 2007

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

RE: Petition to form Fayetteville Municipal Property Owners'
Improvement District No. 18
Woodbury Municipal Property Owners' Improvement District No.18 of the City
of Fayetteville, Arkansas

Dear Mayor:

Pursuant to Arkansas Code Ann. Sec. 14-94-105 (e)(3), you are hereby notified that the enclosed Petition to form Fayetteville Municipal Property Owners' Improvement District No. 18 – Woodbury Municipal Property Owners' Improvement District No.18 of the City of Fayetteville, Arkansas has been filed in the office of the Fayetteville City Clerk. Pursuant to Ark. Code Ann. Sec. 14-94-106 (a)(1), I hereby present you with the Petition.

Sincerely,

Sondra E. Smith
City Clerk/Treasurer

cc: Kit Williams, City Attorney
John Bryant, Improvement District Attorney

ORDINANCE NO. _____

**AN ORDINANCE TO ESTABLISH AND LAY OFF
FAYETTEVILLE MUNICIPAL PROPERTY OWNERS'
IMPROVEMENT DISTRICT NO. 18 – WOODBURY**

WHEREAS, a Petition to form Woodbury Municipal Property Owners' Improvement District No. 18 – of Fayetteville, Arkansas has been filed with the Fayetteville City Clerk; and

WHEREAS, the City Clerk has presented said petition to the Mayor; and

WHEREAS, the Mayor has set May 1, 2007, at 6:00 p.m. as the date and time for a hearing before the Fayetteville City Council for consideration of said petition; and

WHEREAS, the Fayetteville City Council has determined from an abstracter's certificate of property ownership that those signing the petition constitute all the owners of the real property to be located in the district.

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

Section 1: That the real property described in Exhibit "A" attached hereto and made a part hereof is hereby established and laid off as Fayetteville Municipal Property Owners' Improvement District No. 18 – Woodbury for the purpose of constructing, purchasing, accepting as a gift or maintaining facilities for waterworks, recreation, drainage, gas pipelines, underground trenches and excavations necessary for the installation by public utilities or municipal utilities of electric and telephone distribution systems, sanitary sewers, streets and highways including curbs and gutters, and sidewalks, together with facilities related to any of the foregoing, or for more than one of those purposes.

Section 2: The following three individuals are hereby appointed as commissioners of said improvement district: Mike Philip, Jeff Martin and Tom Muccio.

Section 3: The name of said improvement district shall be Fayetteville Municipal Property Owners' Improvement District No. 18 – Woodbury.

Section 4: The district shall not cease to exist upon the acquiring, constructing or completion of the improvements, but it shall continue to exist for the purpose of preserving, maintaining, and operating the improvements, replacing equipment, paying salaries to employees, and performing any other functions or services authorized in Ark. Code Ann., Title 14, Chapter 94.

PASSED and **APPROVED** this 1st day of May, 2007.

APPROVED:

ATTEST:

By: _____
DAN COODY, Mayor

By: _____
SONDRA E. SMITH, City Clerk/Treasurer

RECEIVED
RECEIVED
APR 13 2007
APR 13 2007
CITY OF FAYETTEVILLE
CITY CLERK'S OFFICE

NOTICE

**YOUR SIGNATURE HEREON SHOWS
THAT YOU FAVOR THE ESTABLISHMENT
OF AN IMPROVEMENT DISTRICT. IF THE
DISTRICT IS FORMED, YOU MAY BE
CHARGED FOR THE COST OF THE
IMPROVEMENTS.**

IN RE: WOODBURY MUNICIPAL PROPERTY OWNERS' IMPROVEMENT
DISTRICT NO. 18 OF THE CITY OF FAYETTEVILLE, ARKANSAS

**PETITION FOR FORMATION OF A MUNICIPAL
PROPERTY OWNERS' IMPROVEMENT DISTRICT**

TO THE HONORABLE MAYOR, DAN COODY, AND CITY COUNCIL OF THE CITY OF
FAYETTEVILLE, ARKANSAS:

The undersigned ("Petitioner"), 1611 Holdings, LLC, an Arkansas Limited Liability Company, the record owner of all real property within the area of the proposed municipal property owners' improvement district ("Proposed District"), along with Philip/Martin Development Partners, LLC, an Arkansas Limited Liability Company owned and controlled by the members of the Petitioner ("Philip/Martin"), does hereby petition the City Council of the City of Fayetteville, Arkansas ("City Council"), under Chapter 94 of Title 14 of the Arkansas Code of 1987, as amended, to lay off into a municipal property owners' improvement district the real property described in Exhibit "A," attached hereto and incorporated herein by this reference. It is anticipated that

subsequent to the filing, but prior to the City Council's consideration of this petition, the real property described in Exhibit "A," attached hereto, may be transferred in whole from Petitioner to Philip/Martin. Philip/Martin joins in this petition to evidence its approval of the formation of the Proposed District as the anticipated future owner of all the real property encompassed thereby. Exhibit "B," attached hereto and incorporated herein by this reference, is a map of the area of the Proposed District, which depicts and generally describes the proposed improvements to be constructed or acquired by the Proposed District ("the Improvements"). The Proposed District shall be organized for the following purposes: purchasing, accepting as a gift, constructing, or maintaining facilities for waterworks, recreation, drainage, gas pipelines, underground trenches and excavations necessary for the installation by public utilities or municipal utilities of electric and telephone distribution systems, sanitary sewers, streets and highways, including curbs and gutters, and sidewalks, together with facilities related to any of the foregoing, or for more than one (1) of those purposes, upon and for the benefit of the territory encompassed within the Proposed District; and to exercise any and all or any part of those things enumerated as powers of a municipal property owners' improvement district in Title 14, Subtitle 5, Chapter 94 of the Arkansas Code of 1987, as now or hereafter amended.

Attached hereto as Exhibit "C" and incorporated herein by reference is a certificate prepared by WACO TITLE [INSERT NAME OF TITLE COMPANY], which provides, to the effect, that the Petitioner is the record owner of all of the real property located within the area of the Proposed District.

Petitioner further petitions the City Council to name as commissioners of the Proposed District, Mike Philip, Jeff Martin, and Tom Muccio, each of whom is an individual of integrity and good business ability.

Petitioner further petitions the City Council to select as the Proposed District's name, "Woodbury Municipal Property Owners' Improvement District No. 18 of the City of Fayetteville, Arkansas."

Petitioner further petitions that the Proposed District shall be prolonged and continued after the completion of the acquisition or construction of the Improvements, after the payment in full of any indebtedness incurred for the construction, installation and equipping thereof, and after the term of collection of the original assessment of benefits, for the purpose of maintaining, operating, making alterations and keeping the Improvements in a good state of repair, so long as the Improvements are used for the benefit of the owners and residents of the above-described property. Such maintenance, operation, alteration and repairing of the Improvements shall be made and undertaken in such manner as the commissioners shall deem best for the interests of the Proposed District.

All of the real property in the Proposed District lies within the City of Fayetteville, Arkansas, and none of the real property to be included in the Proposed District lies in more than one (1) municipality.

[Signature page follows]

PETITIONER:

1611 Holdings, LLC

By: 
Mike Philip, Member

By: 
Jeff Martin, Member

ACKNOWLEDGED AND AGREED:

Philip/Martin Development Partners, LLC

By: 
Mike Philip, Member

By: 
Jeff Martin, Member

Exhibit A
Legal Description



SURVEY DESCRIPTION:

A PART OF THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 24, IN TOWNSHIP 17 NORTH AND RANGE 30 WEST, AND PART OF THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 19 IN TOWNSHIP 17 NORTH AND RANGE 29 WEST OF THE FIFTH PRINCIPAL MERIDIAN IN WASHINGTON COUNTY, ARKANSAS, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS TO-WIT: COMMENCING AT A FOUND STONE AT THE SOUTHWEST CORNER OF SAID NORTHEAST QUARTER OF THE SOUTHEAST QUARTER AND RUNNING THENCE S86°47'19"E 653.49 FEET, THENCE N00°31'16"W 227.04 FEET TO THE POINT OF BEGINNING, AND RUNNING THENCE N00°31'16"W 566.75 FEET TO THE SOUTH RIGHT OF WAY OF ZION ROAD, THENCE ALONG SAID RIGHT OF WAY ALONG A NON-TANGENTIAL CURVE, SAID CURVE TURNING TO THE RIGHT THROUGH AN ANGLE OF 17°34'51.6", HAVING A RADIUS OF 724.78 FEET, AND WHOSE LONG CHORD BEARS N81°08'54"E A DISTANCE OF 221.52 FEET TO A POINT OF INTERSECTION WITH A NON-TANGENTIAL LINE, THENCE CONTINUING ALONG SAID RIGHT OF WAY N89°52'32"E 477.01 FEET, THENCE LEAVING SAID RIGHT OF WAY S01°14'05"W 866.33 FEET TO A FOUND 5/8-INCH REBAR, THENCE N88°13'23"W 13.72 FEET TO A FOUND CONCRETE MONUMENT MARKING THE SOUTHEAST CORNER OF SAID NORTHEAST QUARTER, SOUTHEAST QUARTER, THENCE ALONG THE FORTY LINE N86°47'19"W 356.55 FEET, THENCE LEAVING SAID FORTY LINE N01°14'11"W 226.76, THENCE N86°41'48"W 297.96 FEET TO THE POINT OF BEGINNING CONTAINING 11.67 ACRES MORE OR LESS. SUBJECT TO RIGHT OF WAY ALONG ZION ROAD AND ANY OTHER RIGHT OR EASEMENTS OF RECORD.

Exhibit C
Abstracter's Certificate
of Property
Ownership



125 Parkwood, Suite A - P.O. Box 1910

Lowell, AR 72745

(479) 770-6700 Fax: (479) 770-6702

SURVEY DESCRIPTION:

A PART OF THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 24, IN TOWNSHIP 17 NORTH AND RANGE 30 WEST, AND PART OF THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 19 IN TOWNSHIP 17 NORTH AND RANGE 29 WEST OF THE FIFTH PRINCIPAL MERIDIAN IN WASHINGTON COUNTY, ARKANSAS, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS TO-WIT: COMMENCING AT A FOUND STONE AT THE SOUTHWEST CORNER OF SAID NORTHEAST QUARTER OF THE SOUTHEAST QUARTER AND RUNNING THENCE S86°47'19"E 653.49 FEET, THENCE N00°31'16"W 227.04 FEET TO THE POINT OF BEGINNING, AND RUNNING THENCE N00°31'16"W 566.75 FEET TO THE SOUTH RIGHT OF WAY OF ZION ROAD, THENCE ALONG SAID RIGHT OF WAY ALONG A NON-TANGENTIAL CURVE, SAID CURVE TURNING TO THE RIGHT THROUGH AN ANGLE OF 17°34'51.6", HAVING A RADIUS OF 724.78 FEET, AND WHOSE LONG CHORD BEARS N81°08'54"E A DISTANCE OF 221.52 FEET TO A POINT OF INTERSECTION WITH A NON-TANGENTIAL LINE, THENCE CONTINUING ALONG SAID RIGHT OF WAY N89°52'32"E 477.01 FEET, THENCE LEAVING SAID RIGHT OF WAY S01°14'05"W 866.33 FEET TO A FOUND 5/8-INCH REBAR, THENCE N88°13'23"W 13.72 FEET TO A FOUND CONCRETE MONUMENT MARKING THE SOUTHEAST CORNER OF SAID NORTHEAST QUARTER, SOUTHEAST QUARTER, THENCE ALONG THE FORTY LINE N86°47'19"W 356.55 FEET, THENCE LEAVING SAID FORTY LINE N01°14'11"W 226.76, THENCE N86°41'48"W 297.96 FEET TO THE POINT OF BEGINNING CONTAINING 11.67 ACRES MORE OR LESS. SUBJECT TO RIGHT OF WAY ALONG ZION ROAD AND ANY OTHER RIGHT OR EASEMENTS OF RECORD.

Said above described property was acquired by the legal descriptions as follows:

LEGAL DESCRIPTION

A part of the Northeast Quarter of the Southeast Quarter of Section 24, Township 17 North, Range 30 West, Washington County, Arkansas, being more particularly described as follows, to-wit: Beginning at the Southeast corner of said forty acre tract and running thence North 89 degrees 10 minutes 40 seconds West 356.55 feet, thence North 03 degrees 07 minutes 03 seconds West 226.73 feet, thence North 89 degrees 03 minutes 24 seconds West 297.99 feet, thence North 02 degrees 53 minutes 49 seconds West 422.57 feet, thence North 88 degrees 36 minutes 54 seconds East 141.08 feet, thence North 03 degrees 20 minutes 09 seconds West 174.52 feet, thence South 89 degrees 01 minute 14 seconds East 150.39 feet, thence North 86 degrees 06 minutes 47 seconds East 400.66 feet, thence South 00 degrees 36 minutes 28 seconds East 860.60 feet to the point of beginning, containing 11.01 acres, more or less. Subject to that portion in Zion Road located on the North side of herein described tract and subject to easements and right of ways of record.

Also

A part of the Fractional Northwest Quarter of the Southwest Quarter of Section 19, Township 17 North, Range 29 West, being more particularly described as follows, to-wit: Beginning at a point 6.6 feet North of the Southwest corner of said Fractional forty, said point also being the Southeast corner of the Northeast Quarter of the Southeast Quarter of Section 24, Township 17 North, Range 30 West, and running, thence North along the Range line 859.01 feet to the South right of way of Zion Road, thence South 89 degrees 51 minutes East along said right of way 5.92 feet, thence South 0 degrees 32 minutes 22 seconds East 859.03 feet, thence West 14 feet to the point of beginning.

This is to certify that **L1611 Holdings, LLC**, is the sole owner of record title, as reflected by the deed records in the office of the circuit clerk and ex officio recorder of Washington County, of the above described real property. L1611 Holdings, LLC acquired title to the above described real property by virtue of a warranty deed filed October 26, 2006 as Document No. **2006-00044016**, records of Washington County, Arkansas.

LEGAL DESCRIPTION CONTINUED

And

A part of the NE1/4 of the SE1/4 of Section 24, T-17-N, R-30-W, Washington County, Arkansas, being more particularly described as follows, to-wit: Beginning at a point which is 653.40 feet East and 629.16 feet N01 degrees 50'W of the SW corner of said 40 acre tract; thence N 01 degrees 50'W 160.00 feet to the South right of way line of Zion road; thence N 83 degrees 53' E, 140.78 feet along said South right of way line to an iron pin, thence S 01 degrees 50'E 175.00 feet; thence West 140.00 feet to the point of beginning, containing 0.54 acres, more or less. Subject to easements, rights of way and restrictive covenants of record if any.

This is to certify that **L1611 Holdings, LLC**, is the sole owner of record title, as reflected by the deed records in the office of the circuit clerk and ex officio recorder of Washington County, of the above described real property. L1611 Holdings, LLC acquired title to the above described real property by virtue of a warranty deed filed October 31, 2006 as Document No. **2006-00044712**, records of Washington County, Arkansas.

Certified this 11 day of April, 2007.

[TITLE COMPANY]

By:



Printed Name: Linda G. Mefford

Title: Title Agent

**City of Fayetteville
Staff Review Form
City Council Agenda Items
or
Contracts**

1-May-07
City Council Meeting Date

Jeremy Pate
Submitted By

Planning
Division

Operations
Department

Action Required:

VAC 07-2522: (Johnson, 523): Submitted by Bates and Associates for property located at the west side of Gregg Avenue, between 6th and Prairie Streets. The request is to vacate a 20' wide portion of un-constructed right-of-way along the west side of Gregg Avenue between 6th Street and Prairie Street.

\$0.00

n/a

n/a

Cost of this request

Category/Project Budget

Program Category / Project Name

n/a

n/a

n/a

Account Number

Funds Used to Date

Program / Project Category Name

n/a

n/a

n/a

\$

-

Project Number

Remaining Balance

Fund Name

Budgeted Item

☐

Budget Adjustment Attached

☐

[Signature]
Department Director

4-11-07
Date

Previous Ordinance or Resolution # n/a

Original Contract Date: n/a

[Signature]
City Attorney

4-11-07

Original Contract Number: n/a

Paul A. Beck
Finance and Internal Service Director

4-11-07
Date

Received in City Clerk's Office

ENTERED
4/11/07

[Signature]
Mayor

4/12/07
Date

Received in Mayor's Office

ENTERED
4/11/07
PH

Comments:

CITY COUNCIL AGENDA MEMO

To: Mayor and City Council

Thru: Gary Dumas, Director of Operations

From: Jeremy C. Pate, Director of Current Planning *X*

Date: April 10, 2007

Subject: Right-of-way Vacation for Johnson (VAC 07-2522)

RECOMMENDATION

The Planning Commisison and staff recommend approval of an ordinance vacating unconstructed right-of-way located on the west side of Gregg Avenue, between between 6th Street and Prairie.

BACKGROUND

The subject property was originally developed in the 1960's and the original structure currently contains the Johnson Mechanical Contractors building at 513 West Prairie Street.

There is a 20' wide strip of un-constructed right-of-way along the property's Gregg Avenue street frontage that is requested to be vacated (0.20 acres). Gregg Avenue currently has 60' of existing right-of-way and is designated as an ST-40 Street in the Master Street Plan requiring only 40' of right-of-way. The subject area of right-of-way is not anticipated to be needed by the City for transportation purposes because 40' of required right-of-way for Gregg Avenue would remain in accordance with the Master Street Plan's designation of the Gregg as an ST-40 Street.

The applicant requests the City to vacate 0.20 acres of right-of-way along the west side of Gregg Avenue.

DISCUSSION

The Planning Commission voted 8-0-0 on its consent agenda to forward this item to the City Council with a recommendation for approval. Notification was provided to all appropriate utility representatives and property owners. Conditions of approval are recommended in order to satisfy the comments made by utility companies and city representatives.

BUDGET IMPACT

None.

ORDINANCE NO.

AN ORDINANCE APPROVING VAC 07-2522 SUBMITTED BY BATES AND ASSOCIATES FOR PROPERTY LOCATED AT THE WEST SIDE OF GREGG AVENUE, BETWEEN 6TH AND PRAIRIE STREETS, VACATING A 20' WIDE PORTION OF UN-CONSTRUCTED RIGHT-OF-WAY, A TOTAL OF 0.20 ACRES.

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 portion of the platted street right-of-way is not required for corporate purposes;

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

Section 1: That the City Council of the City of Fayetteville, Arkansas hereby vacates and abandons the following described right-of-way:

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

Section 2: That a copy of this Ordinance duly certified by the City Clerk along with the map attached hereto and labeled Exhibit "A" shall be filed in the office of the Recorder of the County and recorded in the Deed Records of the County.

Section 3: That this vacation approval is subject to the Conditions of Approval as follows, and shall not be in effect until all conditions are met herein.

1. Any relocation of existing utilities shall be at the owner/developer's expense including the possible need for additional utility easements.
2. Ten feet of the eastern half of the subject area is required to be retained as a utility easement to protect existing gas facilities.
3. At the time of development of the applicant's property along Gregg Avenue, Gregg Avenue shall be improved to Master Street Plan standards.

Page 2
Ord.

PASSED and **APPROVED** this day of , 2007.

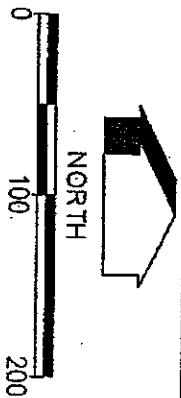
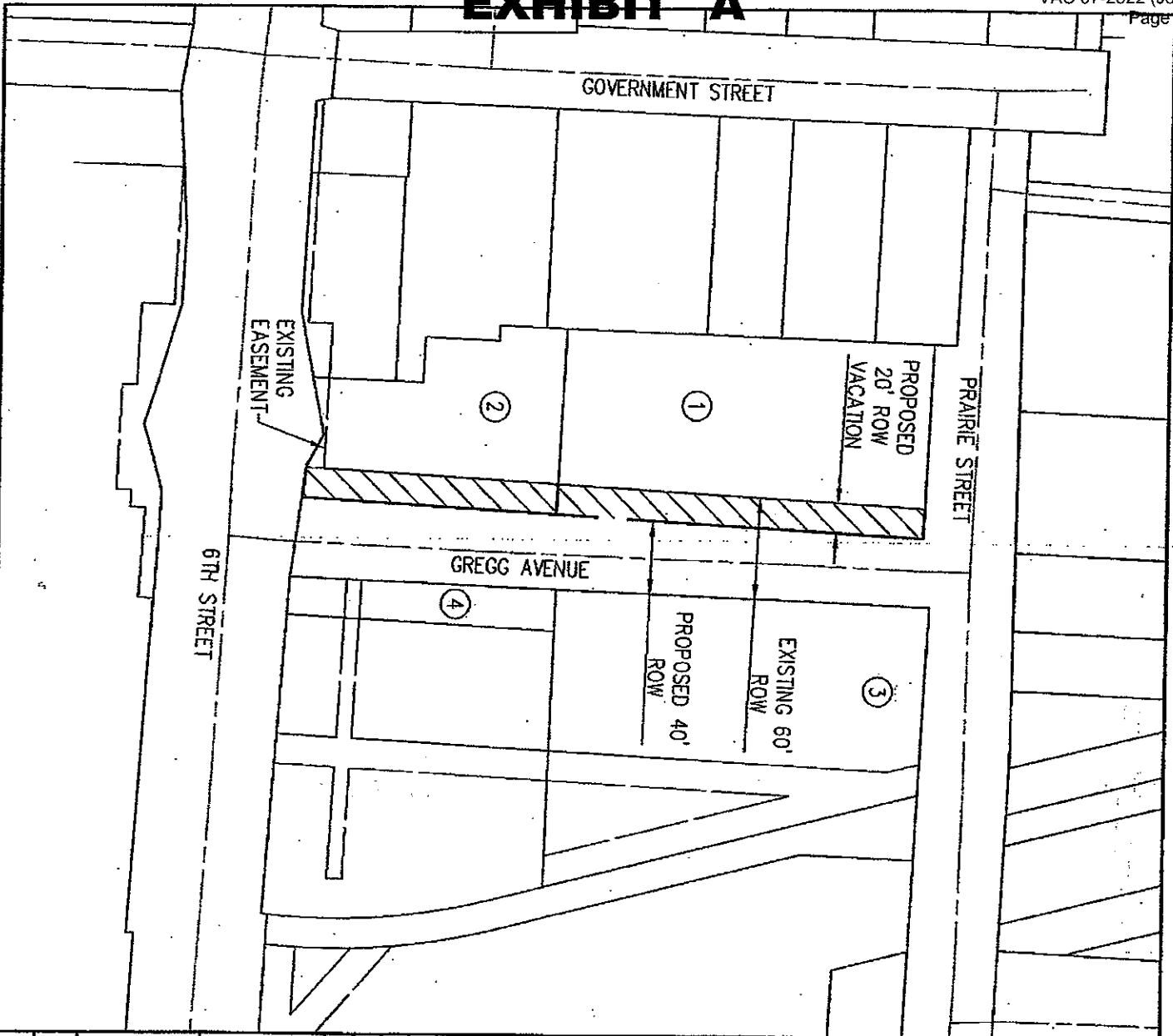
APPROVED:

ATTEST:

By: _____
DAN COODY, Mayor

By: _____
SONDRA SMITH, City Clerk/Treasurer

EXHIBIT "A"



PROPERTY OWNERS

- 1) 765-05533-00
JOHNSON MECH CONTR INC
513 W PRAIRIE ST
FAYETTEVILLE AR, 72701
- 2) 765-05539-000
JOHNSON, STANLEY P.
513 W PRAIRIE ST
FAYETTEVILLE AR, 72071

ADJACENT PROPERTY OWNERS

- 3) 765-05520-000
LEANDY, INC., AN ARKANSAS CORP
17400 S HIGHWAY 170
WEST FORK AR, 72774
- 4) 765-05524-000
ENGLAND, M. ANNE REVOCABLE TRUST
1357 N EDGEHILL DR
FAYETTEVILLE AR, 72703

LEGEND

- PROPOSED ROW
- EXISTING ROW
- EXISTING EASEMENT
- STREET CENTER LINE

DATE	BY	DESCRIPTION

REVISIONS

ROW
VACATION
Prepared For
STAN
JOHNSON

Bates & Associates, Inc.

Engineering & Surveying

3561 N. College
Fayetteville, AR
72703

479.442.9350
479.521.8950 Fax

DRAWN: JG DATE: 1/29/07 PROJECT NO.

CHECKED:

SHEET NO.:

07-023

EXHIBIT "B"
VAC 07-2522

A PART OF THE SOUTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 16, TOWNSHIP 16 NORTH, RANGE 30 WEST, WASHINGTON COUNTY, ARKANSAS, LYING IN THE EXISTING RIGHT-OF-WAY OF GREGG AVENUE BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS: BEGINNING AT THE NORTHEAST CORNER OF LOT 1 OF FERGUSON ADDITION TO THE CITY OF FAYETTEVILLE, WASHINGTON COUNTY, ARKANSAS, ON THE EXISTING WEST RIGHT-OF-WAY OF GREGG AVENUE AND RUNNING THENCE N90°00'00"E 20.00' ALONG THE SOUTH RIGHT-OF-WAY OF PRAIRIE STREET, THENCE S00°41'53"E 432.79' TO THE NORTH RIGHT-OF-WAY OF SIXTH STREET, THENCE S89°55'02"W 20.00' ALONG SAID RIGHT-OF-WAY TO A POINT ON THE EAST LINE OF LOT 9 OF SAID FERGUSON ADDITION AND THE EXISTING WEST RIGHT-OF-WAY OF GREGG AVENUE, THENCE N00°41'53"W 432.82' ALONG SAID RIGHT-OF-WAY TO THE POINT OF BEGINNING, CONTAINING 0.20 ACRES, MORE OR LESS.



PC Meeting of April 9, 2007

THE CITY OF FAYETTEVILLE, ARKANSAS

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

PLANNING DIVISION CORRESPONDENCE

TO: Fayetteville Planning Commission
FROM: Andrew Garner, Senior Planner
Matt Casey, Assistant City Engineer
THRU: Jeremy Pate, Director of Current Planning
DATE: ~~March 12, 2007~~ Updated April 10, 2007

VAC 07-2522: (JOHNSON, 523): Submitted by BATES & ASSOCIATES for property located at THE WEST SIDE OF GREGG AVENUE, BETWEEN 6TH AND PRAIRIE STREETS. The property is zoned DG, DOWNTOWN GENERAL and contains approximately 0.20 acres. The request is to vacate a 20' wide portion of un-constructed right-of-way along the west side of Gregg Avenue between 6th Street and Prairie Street.

Property Owner: Stanley P. Johnson
Planner: Andrew Garner

Findings:

Property Description and Background: This property is located on the west side of Gregg Avenue, north of 6th Street and south of Prairie Street. This property was originally developed in the 1960's and the original structure currently contains the Johnson Mechanical Contractors building at 513 West Prairie Street.

There is a 20' wide strip of un-constructed right-of-way along the property's Gregg Avenue street frontage that is requested to be vacated (0.20 acres). Gregg Avenue currently has 60' of existing right-of-way and is designated as an ST-40 Street in the Master Street Plan requiring only 40' of right-of-way. The subject area of right-of-way is not anticipated to be needed by the City for transportation purposes because 40' of required right-of-way for Gregg Avenue would remain in accordance with the Master Street Plan's designation of the Gregg as an ST-40 Street.

Request: The applicant requests the City to vacate 0.20 acres of right-of-way along the west side of Gregg Avenue.

The applicant has submitted the required notification forms to the utility companies and to the City with the result summarized below.

UTILITIES

RESPONSE

Ozarks Electric	No Objections
Cox Communications	No Objections
Southwestern Electric Power Company	No Objections

Arkansas Western Gas

No Objections; provided that 10' of the eastern half is needed for easement to protect existing facilities.

Southwestern Bell Telephone

Relocation of existing utilities shall be at the owner/developer's expense including the possible need for utility easements.

CITY OF FAYETTEVILLE:

RESPONSE

Water/Sewer

No Objections

Transportation

No Objections

Solid Waste

No Objections

Engineering

No Objections

Public Comment: No objections to the project have been received. The applicant adjoins all of the right-of-way being requested for the vacation along this block.

Recommendation: Staff recommends forwarding (VAC 07-2522) to the City Council with a recommendation for approval with the following conditions.

Conditions of Approval:

1. Any relocation of existing utilities shall be at the owner/developer's expense including the possible need for utility easements.
2. Ten feet of the eastern half of the subject area is required to be retained for utility easement to protect existing gas facilities.
3. At the time of development of the applicant's property along Gregg Avenue, Gregg Avenue shall be improved to Master Street Plan standards.

CITY COUNCIL ACTION: Required

PLANNING COMMISSION ACTION: Required

Planning Commission Action: ☒ Forwarded ☐ Denied ☐ Tabled

Date: April 9, 2007

Motion: Trumbo

Second: Ostner

Vote: 8-0

Comments: Approved on consent agenda.

The "CONDITIONS OF APPROVAL", as stated in this report, are accepted in total without exception by the entity requesting approval of this development item.

By

Title

Date

Bates & Associates, Inc.

Civil Engineering & Surveying

3561 No. College / Fayetteville, AR 72703
PH: 479-442-9350 / FAX: 479-521-9350

C. 2
VAC 07-2522 (Johnson)
Page 9 of 22

February 27, 2007

RE: Gregg Ave. right-of-way vacation

This letter is a description of a vacation of right-of-way along Gregg Ave. north of 6th St. and south of Prairie St. We are petitioning the City of Fayetteville to release a portion of that right-of-way. The proposed portion is 20ft of right-of-way along the western portion of Gregg Ave. and is adjacent to two parcels of property owned by Stanley Johnson. The resultant right of way for Gregg Ave. will be 40ft as it is per the Master Street Plan. If the city releases the right-of-way our client, Mr. Johnson, will be able to develop more of his property. Currently a 20ft paved asphalt road occupies the eastern portion of the right-of-way.

If you have any questions or concerns please contact me.

Sincerely,

Bates & Associates, Inc.

James Geurtz, EI
Staff Engineer

Bates & Associates, Inc.

C. 2
VAC 07-2522 (Johnson)
Page 10 of 22

Civil Engineering & Surveying

3561 No. College / Fayetteville, AR 72703
PH: 479-442-9350 / FAX: 479-521-9350

March 6, 2007

Ms. Jan Gumble
Fayetteville Planning
City of Fayetteville
113 West Mountain
Fayetteville, AR 72701

RE: Gregg St RoW Vacation

Dear Ms. Gumble

This letter is in response to our conversation concerning the RoW Vacation application for Stan Johnson. The two adjacent property owners have been sent letters via certified mail. I have tried to contact James Boyd at Arkansas Western Gas three times without success. And you have told me that you would contact the City of Fayetteville's Water and Sewer department.

If you need anything else for this application please let me know

Sincerely,

James Geurtz, EI
Staff Engineer
Bates & Associates, Inc.

**UTILITY APPROVAL FORM
FOR RIGHT- OF- WAY, ALLEY, AND
UTILITY EASEMENT VACATIONS**

DATE: 1/29/07

UTILITY COMPANY: Ozarks Electric

APPLICANT NAME: Stan Johnson
REQUESTED VACATION:

APPLICANT PHONE: (479) 442-5287

☐ Utility Easement☒ Right-of-way for alley or streets and all utility easements located within the vacated right- of- way.☐ Alley☒ Street right-of-wayI have been notified of the petition to vacate the following (*alley, easement, right-of-way*), described as follows:General location / Address (referring to attached document- must be completed**) West side of Gregg Ave. between 6th St. and Prairie St.

**

**(ATTACH legal description and graphic representation of what is being vacated-
SURVEY)**

UTILITY COMPANY COMMENTS:

☒ ~ No objections to the vacation(s) described above.

~ No objections to the vacation(s) described above, provided following described easements are retained. (State the location, dimensions, and purpose below.)

~ No objections provided the following conditions are met:

Mike Phipps
Signature of Utility Company RepresentativeSystem Staking Tech
Title

**UTILITY APPROVAL FORM
FOR RIGHT-OF-WAY, ALLEY, AND
UTILITY EASEMENT VACATIONS**

DATE: 1/29/07

UTILITY COMPANY: Cox Communications

APPLICANT NAME: Stan Johnson

APPLICANT PHONE: (479) 442-5287

REQUESTED VACATION:

☐ Utility Easement☒ Right-of-way for alley or streets and all utility easements located within the vacated right-of-way.☐ Alley☒ Street right-of-way

I have been notified of the petition to vacate the following (alley, easement, right-of-way), described as follows:

General location / Address (referring to attached document- must be completed**)

West side of Gregg Ave. between 6th St. and Prairie St.

**

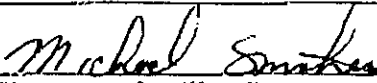
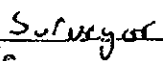
(ATTACH legal description and graphic representation of what is being vacated-
SURVEY)

UTILITY COMPANY COMMENTS:

☒ No objections to the vacation(s) described above.

~ No objections to the vacation(s) described above, provided following described easements are retained. (State the location, dimensions, and purpose below.)

~ No objections provided the following conditions are met:


Signature of Utility Company Representative
Title

**UTILITY APPROVAL FORM
FOR RIGHT-OF-WAY, ALLEY, AND
UTILITY EASEMENT VACATIONS**

FX 444-7572
Sent 2-20-07
KS

DATE: 1/29/07

UTILITY COMPANY: AEP/SWEPCO

APPLICANT NAME: Stan Johnson

APPLICANT PHONE: (479) 442-5287

REQUESTED VACATION:

☐ Utility Easement

☒ Right-of-way for alley or streets and all utility easements located within the vacated right-of-way.

☐ Alley

☒ Street right-of-way

I have been notified of the petition to vacate the following (*alley, easement, right-of-way*), described as follows:

General location / Address (referring to attached document- must be completed**)

West side of Gregg Ave. between 6th St. and Prairie St.

**

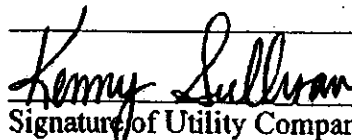
(ATTACH legal description and graphic representation of what is being vacated-SURVEY)

UTILITY COMPANY COMMENTS:

✓ KS
~ No objections to the vacation(s) described above.

~ No objections to the vacation(s) described above, provided following described easements are retained. (State the location, dimensions, and purpose below.)

~ No objections provided the following conditions are met:



Signature of Utility Company Representative .

SWEPCO Right of Way Associate

Title

JOHNSON
VACArkansas Western Gas
Company

A subsidiary of Southwestern Energy Company

UTILITY APPROVAL FORM FOR RIGHT-OF-WAY,
ALLEY, AND UTILITY EASEMENT VACATIONS

DATE: Thursday, March 08, 2007

UTILITY COMPANY: Arkansas Western Gas Company

REQUESTED VACATION:

- ☒ Street
☐ Utility Easement
☐ Street and all the utility easements located within the vacated street
☐ Right-of-way for alley or street
☒ Right-of-way for alleys or streets and all utility easements located within the vacated right-of-way
☐ Alley
☐ Alley and all utility easements located within the vacated alley

I have been notified of the petition to vacate the following

Utility Easement

(Please see list above)

Description described as follows:

West side of Gregg Avenue between 6th Street and Prairie Street in Fayetteville, Arkansas. Legal description and graphic representation attached.

UTILITY COMPANY COMMENTS:

- ☐ No objections to the vacates described above.
☒ No objections to the vacates described above, provided following described easements are retained. Please state the location, dimensions, and purpose below.

Arkansas Western Gas has no objections of releasing 10 feet of the western portion of the easement. We will need to retain 10 feet of the eastern half to protect our facilities.

Signature of Utility Company Representative

Fayetteville Assistant Operating Manager

Title

Mar 05 2007 2:31PM

BATES & ASSOCIATES INC.

479 521 9350

P. 2

**UTILITY APPROVAL FORM
FOR RIGHT-OF-WAY, ALLEY, AND
UTILITY EASEMENT VACATIONS**

DATE: 1/29/07

UTILITY COMPANY: Arkansas Western Gas

APPLICANT NAME: Stan Johnson

APPLICANT PHONE: (479) 442-5287

REQUESTED VACATION:

☐ Utility Easement☒ Right-of-way for alley or streets and all utility easements located within the vacated right-of-way.☐ Alley☒ Street right-of-way

I have been notified of the petition to vacate the following (*alley, easement, right-of-way*), described as follows:

General location / Address (referring to attached document- must be completed**)
West side of Gregg Ave. between 6th St. and Prairie St.

**

**(ATTACH legal description and graphic representation of what is being vacated-
SURVEY)**

UTILITY COMPANY COMMENTS:

~ No objections to the vacation(s) described above.

~ No objections to the vacation(s) described above, provided following described easements are retained. (State the location, dimensions, and purpose below.)

SEE ATTACHED

~ No objections provided the following conditions are met:

Signature of Utility Company Representative

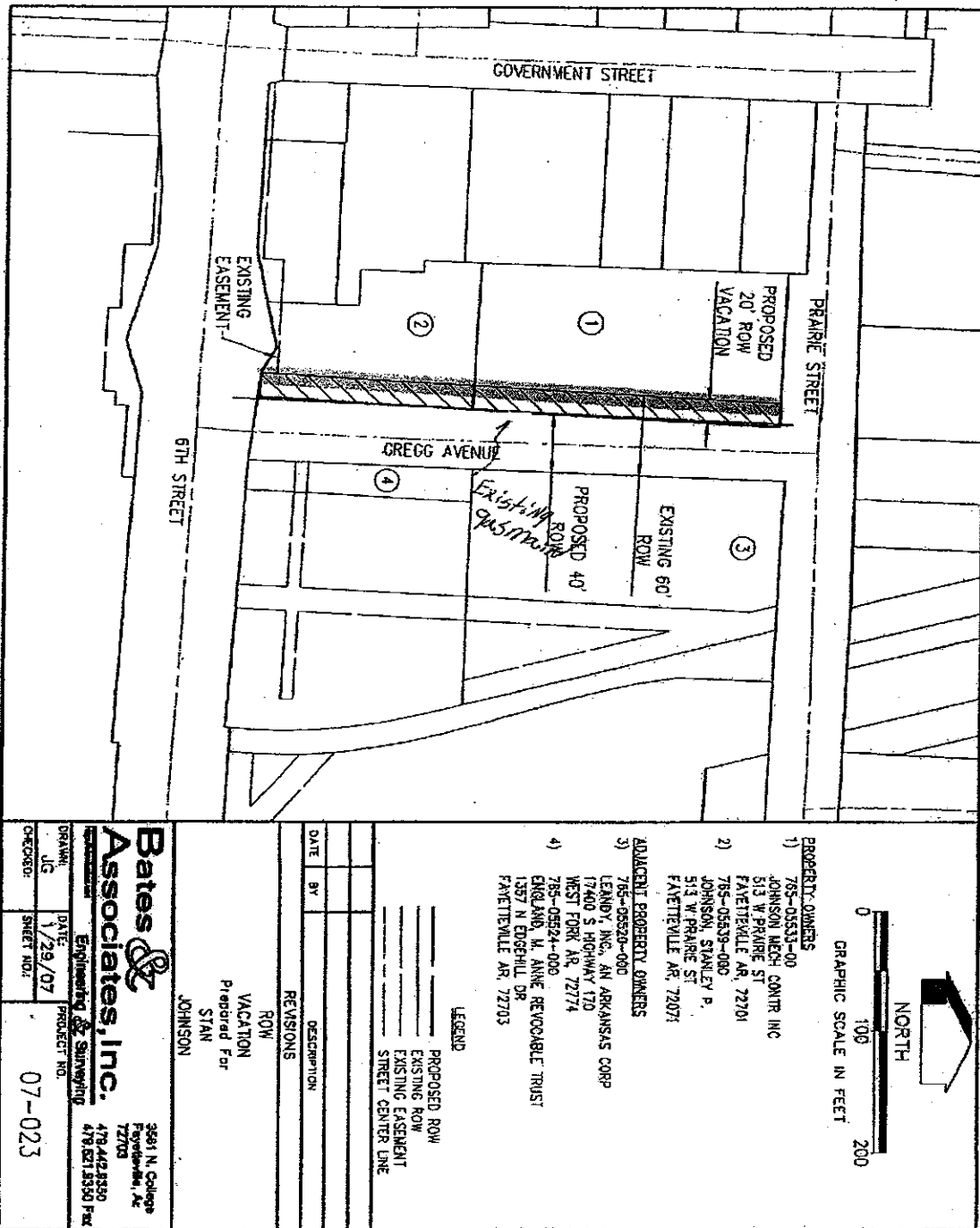
Title

Mar 05 2007 2:31PM

BATES & ASSOCIATES INC.

479 521 9350

P. 3



**UTILITY APPROVAL FORM
FOR RIGHT-OF-WAY, ALLEY, AND
UTILITY EASEMENT VACATIONS**

DATE: 1/29/07

UTILITY COMPANY: SWBT

APPLICANT NAME: Stan Johnson
REQUESTED VACATION:

APPLICANT PHONE: (479) 442-5287

- ☐ Utility Easement
☒ Right-of-way for alley or streets and all utility easements located within the vacated right-of-way.
☐ Alley
☒ Street right-of-way

I have been notified of the petition to vacate the following (alley, easement, right-of-way), described as follows:

General location / Address (referring to attached document- must be completed**)
West side of Gregg Ave. between 6th St. and Prairie St.
**

**(ATTACH legal description and graphic representation of what is being vacated-
SURVEY)**

UTILITY COMPANY COMMENTS:

- ~ No objections to the vacation(s) described above.
~ No objections to the vacation(s) described above, provided following described easements are retained. (State the location, dimensions, and purpose below.)

~ No objections provided the following conditions are met:

ANY EXISTING UTILITIES WILL NEED TO BE RELOCATED
AT THE OWNER/DEVELOPERS EXPENSE AND FUTURE
UTILITY EASEMENTS MAY BE REQUIRED
Susan K. Jensen

Signature of Utility Company Representative

MANAGER - ENG. DESIGN

Title

**UTILITY APPROVAL FORM
FOR RIGHT-OF-WAY, ALLEY, AND
UTILITY EASEMENT VACATIONS**

DATE: 1/29/07

UTILITY COMPANY: City of Fayetteville Transportation

APPLICANT NAME: Stan Johnson APPLICANT PHONE: (479) 442-5287
REQUESTED VACATION:

- ☐ Utility Easement
☒ Right-of-way for alley or streets and all utility easements located within the vacated right-of-way.
☐ Alley
☒ Street right-of-way

I have been notified of the petition to vacate the following (*alley, easement, right-of-way*), described as follows:

General location / Address (referring to attached document- must be completed**)
West side of Gregg Ave. between 6th St. and Prairie St.
..

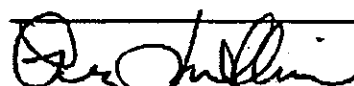
**(ATTACH legal description and graphic representation of what is being vacated-
SURVEY)**

UTILITY COMPANY COMMENTS:

☒ No objections to the vacation(s) described above.

~ No objections to the vacation(s) described above, provided following described easements are retained. (State the location, dimensions, and purpose below.)

~ No objections provided the following conditions are met:

 2/28/07
Signature of Utility Company Representative

Transportation Supt
Title
Operation Dept
Transportation Division
City of Fayetteville

515 8227

**UTILITY APPROVAL FORM
FOR RIGHT-OF-WAY, ALLEY, AND
UTILITY EASEMENT VACATIONS**

DATE: 1/29/07

UTILITY COMPANY: City of Fayetteville *Solid Waste + Recycling*
~~Water and Sewer~~

APPLICANT NAME: Stan Johnson

APPLICANT PHONE: (479) 442-5287

REQUESTED VACATION:

☐ Utility Easement

☒ Right-of-way for alley or streets and all utility easements located within the vacated right-of-way.

☐ Alley

☒ Street right-of-way

I have been notified of the petition to vacate the following (*alley, easement, right-of-way*), described as follows:

General location / Address (referring to attached document- must be completed**)

West side of Gregg Ave. between 6th St. and Prairie St.

**

(ATTACH legal description and graphic representation of what is being vacated-
SURVEY)

UTILITY COMPANY COMMENTS:

~ No objections to the vacation(s) described above.

~ No objections to the vacation(s) described above, provided following described easements are retained. (State the location, dimensions, and purpose below.)

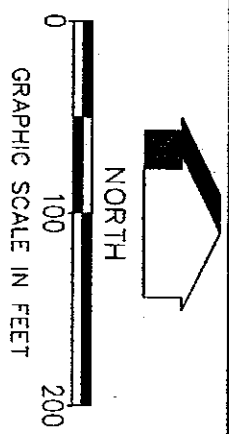
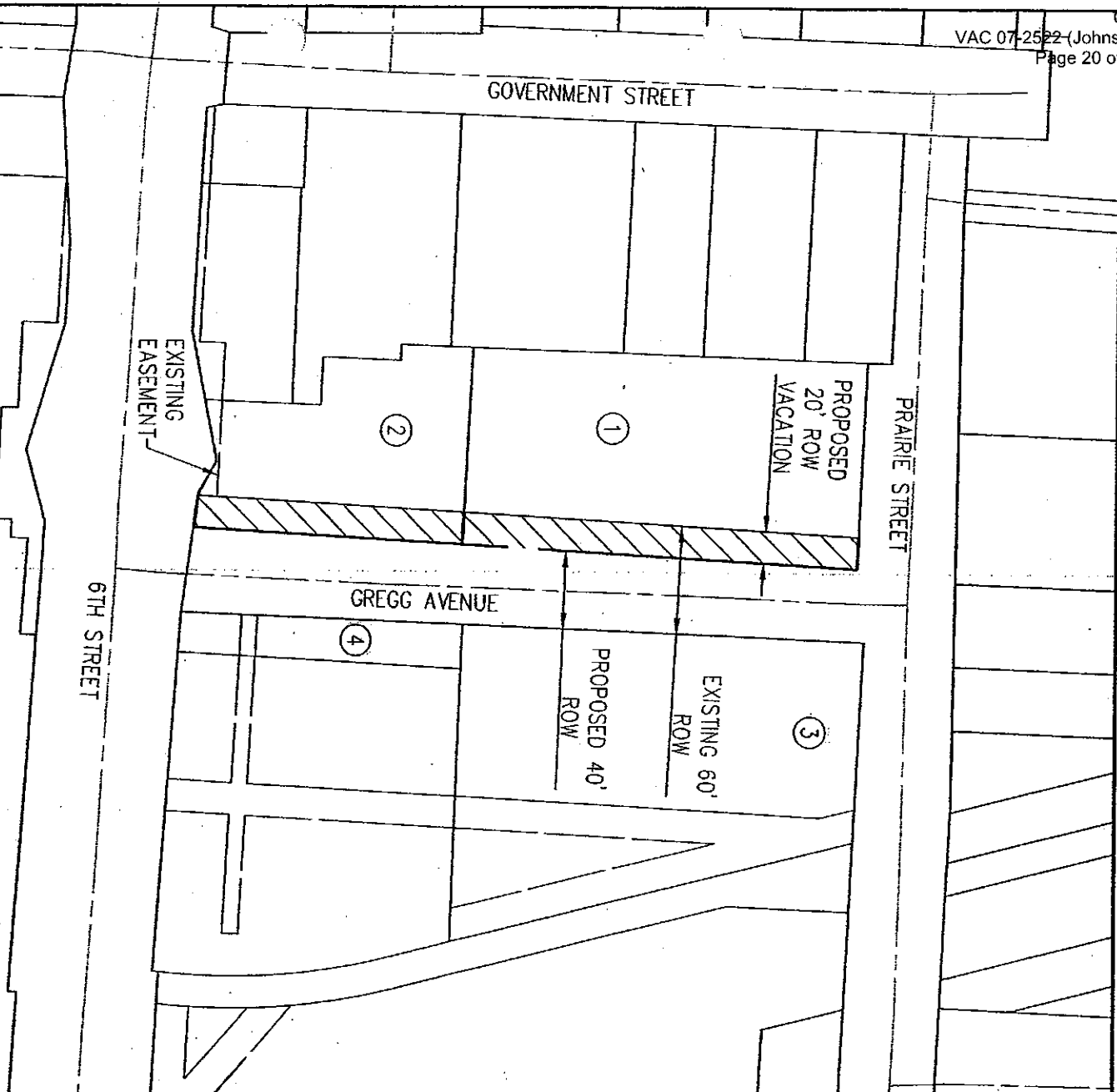
~ No objections provided the following conditions are met:

Brian Papp

Signature of Utility Company Representative

Waste Reduction Coordinator

Title



PROPERTY OWNERS

- 1) 765-05533-00
JOHNSON MECH CONTR INC
513 W PRAIRIE ST
FAYETTEVILLE AR, 72701
- 2) 765-05539-000
JOHNSON, STANLEY P.
513 W PRAIRIE ST
FAYETTEVILLE AR, 72071

ADJACENT PROPERTY OWNERS

- 3) 765-05520-000
LEANDY, INC., AN ARKANSAS CORP
17400 S HIGHWAY 170
WEST FORK AR, 72774
- 4) 765-05524-000
ENGLAND, M. ANNE REVOCABLE TRUST
1357 N EDGEHILL DR
FAYETTEVILLE AR, 72703

LEGEND

- PROPOSED ROW
- EXISTING ROW
- EXISTING EASEMENT
- STREET CENTER LINE

DATE	BY	DESCRIPTION

REVISIONS

ROW
VACATION
Prepared For
STAN
JOHNSON

Bates & Associates, Inc.
Engineering & Surveying

3561 N. College
Fayetteville, Ar.
72703
479.442.9360
479.521.9350 Fax

http://www.bates.net

DRAWN: JG DATE: 1/29/07 PROJECT NO. 07-023

CHECKED: SHEET NO. 1

VAC07-2522

Close Up View

JOHNSON



Overview



0 37.5 75 150 225 300 Feet

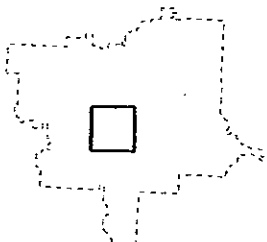
VAC07-2522

One Mile View

JOHNSON



Overview



Legend

Subject Property

VAC07-2522

Boundary

Planning Area

Overlay District

Outside City

Legend

Hillside-Hilltop Overlay District

0 0.25 0.5 1 Miles

**City of Fayetteville
Staff Review Form
City Council Agenda Items
or
Contracts**

1-May-07

City Council Meeting Date

Jeremy Pate *JP*
Submitted By

Planning
Division

Operations
Department

Action Required:

ADM 07-2565: (North Point, 248): Submitted by Steve Clark for property located at Lot 5 Block 1 of the North Point S/D. The property is zoned C-2, Thoroughfare Commercial and contains approximately 0.56 acres. Approval of an ordinance amending Ordinance No. 4932 (VAC 06-2219), allowing for a smaller area to be vacated than previously approved.

N/A

N/A

N/A

Cost of this request

Category/Project Budget

Program Category / Project Name

N/A

N/A

N/A

Account Number

Funds Used to Date

Program / Project Category Name

N/A

N/A

N/A

\$

-

Project Number

Remaining Balance

Fund Name

Budgeted Item

☐

Budget Adjustment Attached

☐

[Signature]
Department Director

4-12-07
Date

Previous Ordinance or Resolution # n/a

Original Contract Date: n/a

[Signature]
City Attorney

4-13-07
Date

Original Contract Number: n/a

Paul A. Bush
Finance and Internal Service Director

4-13-07
Date

Received in City Clerk's Office



[Signature]
Mayor

4/16/07
Date

Received in Mayor's Office



Comments:

CITY COUNCIL AGENDA MEMO

To: Mayor and City Council

Thru: Gary Dumas, Director of Operations

From: Jeremy C. Pate, Director of Current Planning

Date: April 12, 2007

Subject: Amendment to Easement Vacation for North Point Subdivision (VAC 06-2219)

RECOMMENDATION

Planning Staff recommends approval of an ordinance amending Ordinance No. 4932 (VAC 06-2219), allowing for a smaller area to be vacated than previously approved and referred to in Exhibit "A".

BACKGROUND

The subject property consists of Lot 5 Block 1 of the North Point Subdivision and contains approximately 0.56 acres located immediately south of I-540 and north of Point Circle. There is an existing 50' utility easement located along the north portion of the property with multiple utility lines, although none of the utilities lie within the area to be vacated.

The City Council on October 3, 2006 granted approval for the vacation of the southern 15' of the existing 50' utility easement. A specific condition of approval for the ordinance to be effective is that the existing water line be relocated such that a 10' separation is maintained between the relocated water line and the southeastern line of the easement.

Due to the expense of relocating the existing water line the applicant has decided to request a lesser vacation of the easement such that the 10' separation between the existing water line and the southeastern line of the easement is maintained without relocating the water line.

BUDGET IMPACT

None.

ORDINANCE NO. _____

AN ORDINANCE APPROVING ADM 07-2565, FOR PROPERTY LOCATED AT LOT 5 BLOCK 1 OF THE NORTH POINT SUBDIVISION, REPEALING AND REPLACING ORDINANCE NO. 4932 TO ALLOW FOR A LESSER EASEMENT VACATION THAN PREVIOUSLY APPROVED AS INDICATED 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 portion of the platted utility 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 Council of the City of Fayetteville, Arkansas hereby repeals Ordinance No. 4932 in its entirety.

Section 2: That the City Council of the City of Fayetteville, Arkansas hereby vacates and abandons the following described utility easement:

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

Section 3: That a copy of this Ordinance duly certified by the City Clerk along with the map attached hereto and labeled Exhibit "A" shall be filed in the office of the Recorder of the County and recorded in the Deed Records of the County.

Section 4: That this vacation approval is subject to the conditions of approval as follows, and shall not be in effect until all conditions are met herein.

1. **The vacation of said portion of the utility easement is subject to maintaining a 10' separation between the existing water line and the southeastern line of the easement.**
2. **Any relocation of existing utilities shall be at the owner/developer's expense.**

PASSED and APPROVED this day of , 2007.

APPROVED:

ATTEST:

By: _____
DAN COODY, Mayor

By: _____
SONDRA SMITH, City Clerk/Treasurer

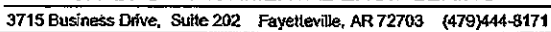


EXHIBIT "B"

Legal Description of Portion of Easement to be Vacated:

Commencing at the Southwest corner of Lot Five of North Point Subdivision of Fayetteville, AR Washington County Arkansas, thence S87°28'19"E 41.52 feet; thence N13°50'32"E 7.65 feet to the Point of Beginning, thence N13°50'32"E 45.98 feet; thence N17°06'07"E 28.69 feet, thence N29°40'20"E 74.42 feet, thence N27°34'17"E 40.02 feet, thence S23°43'03"E 17.78 feet, thence S33°48'09"W 33.69 feet, thence S26°08'27"W 103.93 feet, thence S13°08'14"W 35.98 feet, thence N87°28'19"W 9.25 feet, to the point of beginning, containing .048 acres more or less.

UTILITY APPROVAL FORM
FOR RIGHT- OF- WAY, ALLEY, AND
UTILITY EASEMENT VACATIONS

DATE: 4-10-07

UTILITY COMPANY: Fayetteville Water + Sewer

APPLICANT NAME: _____ APPLICANT PHONE: _____

REQUESTED VACATION (*applicant must check all that apply*):

- ~ Utility Easement
- ~ Right-of-way for alley or streets and all utility easements located within the vacated right- of- way.
- ~ Alley
- ~ Street right-of-way

I have been notified of the petition to vacate the following (*alley, easement, right-of-way*), described as follows:

General location / Address (referring to attached document- must be completed**)

**

(ATTACH legal description and graphic representation of what is being vacated-SURVEY)

UTILITY COMPANY COMMENTS:

- No objections to the vacation(s) described above.
- No objections to the vacation(s) described above, provided following described easements are retained. (State the location, dimensions, and purpose below.)

☒ No objections provided the following conditions are met:

No objections to reducing the easement being vacated as long as
original conditions are met.

[Signature]
Signature of Utility Company Representative

Water + Sewer Ops. Mgr.
Title

Monroe North Point, LLC
4887 Cedar Ridge Drive
Springdale, AR 72764

City of Fayetteville
Planning
Fayetteville, AR

April 4, 2007

Dear Sirs:

On October 3, 2006, the City Council passed Ordinance No. 4932 which vacated 15 feet of a utility easement contained in Lot 5 of North Point subdivision which is adjacent to the I-540 entrance ramp at the intersection of AR Hwy 112 and I-540. The vacation was subject to the relocation of the existing water line, such that a 10 foot separation was maintained between the relocated water line and the southeastern line of the easement.

We are requesting an adjustment of that approved vacation such that the 15 feet vacation that was approved on October 3, 2006, is reduced to the point that a 10 foot separation is maintained between the existing water line and the southeast line of the easement.

Attached is the revised Easement Vacation drawing.

Please contact me direct at 841-4296 or Steve Clark at Clark Consulting if you have any questions.

Regards,


Steve Fowler
Monroe North Point, LLC

ORDINANCE NO. 4932

AN ORDINANCE APPROVING VAC 06-2219 SUBMITTED BY TIM PATTERSON FOR PROPERTY LOCATED AT LOT 5, BLOCK 1 OF THE NORTH POINT SUBDIVISION, VACATING THE SOUTHERN 15' OF THE UTILITY EASEMENT LOCATED WITHIN THE SUBJECT PROPERTY.

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 portion of the platted utility 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 Council of the City of Fayetteville, Arkansas hereby vacates and abandons the following described utility easement:

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

Section 2: That a copy of this Ordinance duly certified by the City Clerk along with the map attached hereto and labeled Exhibit "B" shall be filed in the office of the Recorder of the County and recorded in the Deed Records of the County.

Section 3: That this vacation approval is subject to the conditions of approval as follows, and shall not be in effect until all conditions are met herein.

1. The vacation of said portion of the utility easement is subject to the relocation of the water line, such that 10' separation is maintained between the relocated water line and the southeastern line of the easement. Said relocation shall be completed within one year, or the vacation is rendered null and void.
2. Any relocation of existing utilities shall be at the owner/developer's expense.





PASSED and APPROVED this 3rd day of October, 2006.

APPROVED:

By: 
DAN COODY, Mayor

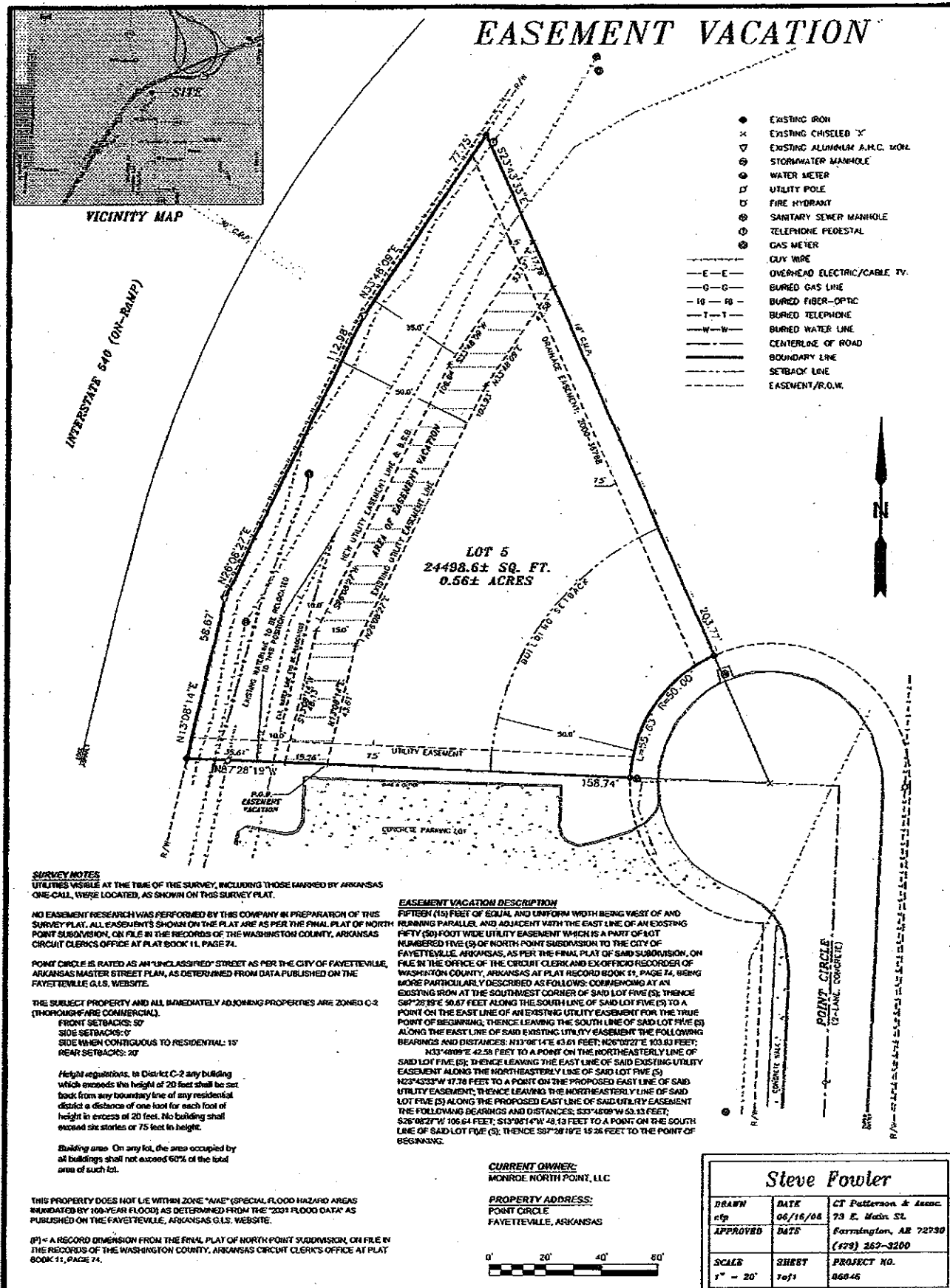
ATTEST:

By: 
SONDRA SMITH, City Clerk

EXHIBIT "A"
VAC 06-2219

FIFTEEN (15) FEET OF EQUAL AND UNIFORM WIDTH BEING WEST OF AND RUNNING PARALLEL AND ADJACENT WITH THE EAST LINE OF AN EXISTING FIFTY (50) FOOT WIDE UTILITY EASEMENT WHICH IS A PART OF LOT NUMBERED FIVE (5) OF NORTH POINT SUBDIVISION TO THE CITY OF FAYETTEVILLE, ARKANSAS, AS PER THE FINAL PLAT OF SAID SUBDIVISION, ON FILE IN THE OFFICE OF THE CIRCUIT CLERK AND EX-OFFICIO RECORDER OF WASHINGTON COUNTY, ARKANSAS AT PLAT RECORD BOOK 11, PAGE 74, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS: COMMENCING AT AN EXISTING IRON AT THE SOUTHWEST CORNER OF SAID LOT FIVE (5); THENCE S87°28'19"E 50.87 FEET ALONG THE SOUTH LINE OF SAID LOT FIVE (5) TO A POINT ON THE EAST LINE OF AN EXISTING UTILITY EASEMENT FOR THE TRUE POINT OF BEGINNING; THENCE LEAVING THE SOUTH LINE OF SAID LOT FIVE (5) ALONG THE EAST LINE OF SAID EXISTING UTILITY EASEMENT THE FOLLOWING BEARINGS AND DISTANCES: N13°08'14"E 43.61 FEET; N26°08'27"E 103.93 FEET; N33°48'09"E 42.58 FEET TO A POINT ON THE NORTHEASTERLY LINE OF SAID LOT FIVE (5); THENCE LEAVING THE EAST LINE OF SAID EXISTING UTILITY EASEMENT ALONG THE NORTHEASTERLY LINE OF SAID LOT FIVE (5) N23°43'33"W 17.78 FEET TO A POINT ON THE PROPOSED EAST LINE OF SAID UTILITY EASEMENT; THENCE LEAVING THE NORTHEASTERLY LINE OF SAID LOT FIVE (5) ALONG THE PROPOSED EAST LINE OF SAID UTILITY EASEMENT THE FOLLOWING BEARINGS AND DISTANCES: S33°48'09"W 53.13 FEET; S26°08'27"W 106.64 FEET; S13°08'14"W 48.13 FEET TO A POINT ON THE SOUTH LINE OF SAID LOT FIVE (5); THENCE S87°28'19"E 15.26 FEET TO THE POINT OF BEGINNING.

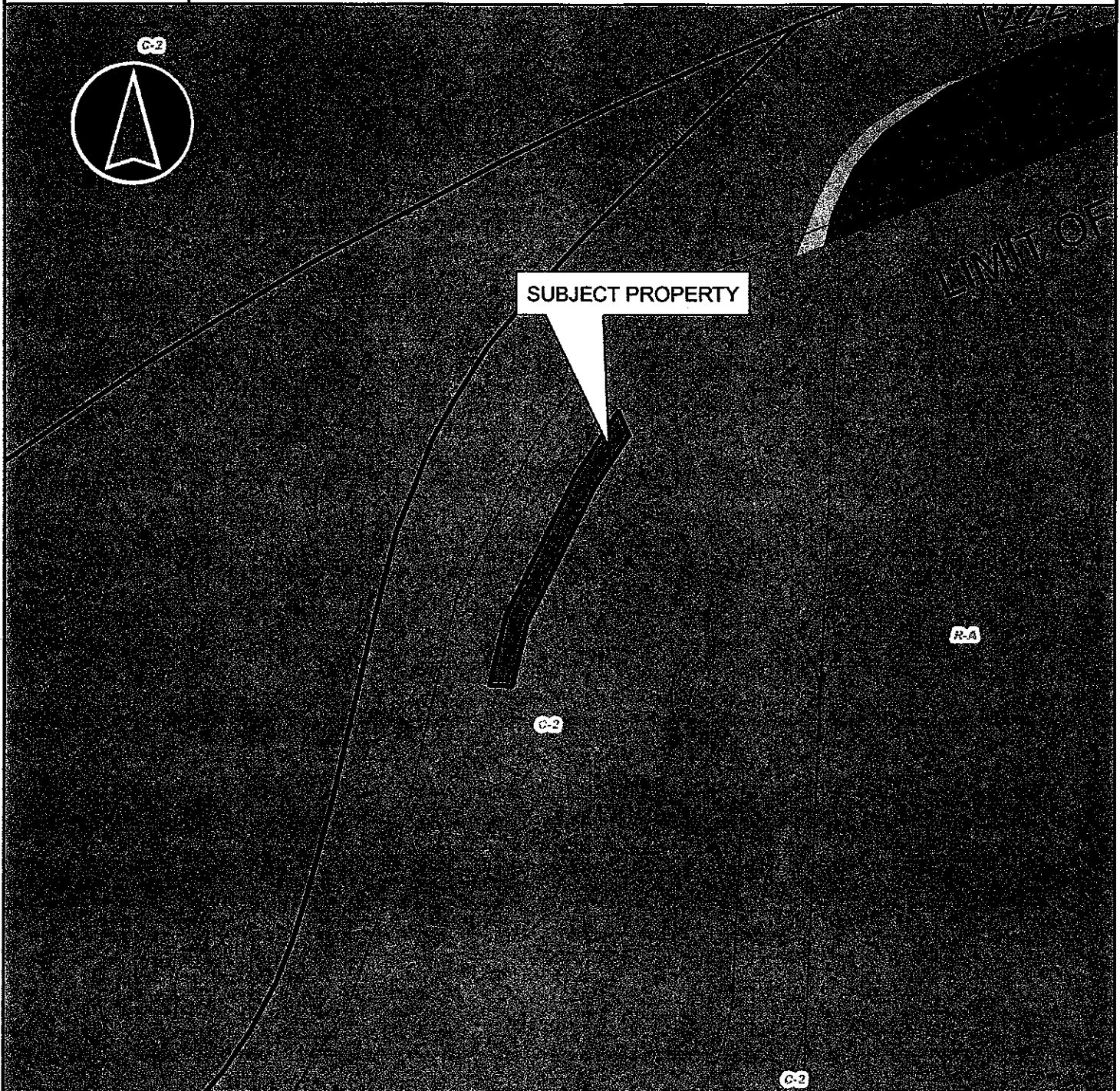
EXHIBIT "B"



VAC06-2219

Close Up View

NORTH POINT S/D



Overview

Legend

- ○ ○ ○ ○ Overlay District
- FLOODWAY
- 100 YEAR
- 500 YEAR
- LIMIT OF STUDY
- - - BaseLine Profile
- Fayetteville
- Outside City
- VAC06-2219
- vector.GDB.Footprint_2004
- Hillside-Hilltop Overlay District

0 37.5 75 150 225 300 Feet

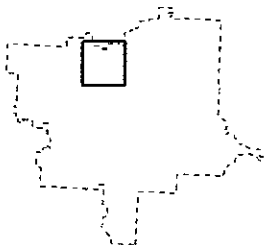
VAC06-2219

NORTH POINT S/D

One Mile View



Overview



Legend

Subject Property

VAC06-2219

Boundary

Planning Area

Overlay District

Outside City

Legend

Hillside-Hilltop Overlay District

0 0.25 0.5 1
 Miles

City of Fayetteville
Staff Review Form
City Council Agenda Items
or
Contracts

1-May-07

City Council Meeting Date

Connie Edmonston *CE*
Submitted By

Parks & Recreation
Division

Operations
Department

Action Required:

Resolution to authorize the Mayor to process a Conditional Use Application for a cell tower in Walker Park.

n/a

Cost of this request

Account Number

Project Number

Category/Project Budget

Funds Used to Date

Remaining Balance

Gulley Park Improvements

Program Category / Project Name

Gulley Park Improvements

Program / Project Category Name

Parks Development
Sales Tax

Fund Name

Budgeted Item ☐

Budget Adjustment Attached ☐

[Signature]
Department Director

4.13.07
Date

Previous Ordinance or Resolution # _____

Original Contract Date: _____

[Signature]
City Attorney

4-18-07
Date

Original Contract Number: _____

Finance and Internal Service Director

Date

Received in City Clerk's Office
ENTERED 4.13.07 <i>[Signature]</i>

[Signature]
Mayor

4/19/07
Date

Received in Mayor's Office

Comments:

--

CITY COUNCIL AGENDA MEMO

To: Mayor Dan Coody and City Council
Thru: Gary Dumas, Operations Director
From: Connie Edmonston, Parks and Recreation Director
Date: April 12, 2007
Subject: **Resolution to authorize the Mayor to process a Conditional Use application for a cell tower in Walker Park**

BACKGROUND

Smith Communications has submitted a request to place a 150 foot cell tower within the confines of Walker Park. This tower would be configured as a Monopine camo-mount to blend into the forest canopy and imitate the appearance of a pine tree. This request would be similar to the cell tower lease and contract that was approved at the new Fire Station in Routh Park.

Representatives of Smith Communications toured the Walker Park area with Park Staff and found the best location would be adjacent to the parking lot located north of 13th Street and Block. The tower would require a 30 foot road and utility easement from the northeast corner of the parking lot leading to a 3,600 square foot area in which the tower would be located. The area would be screened with a wood fence and landscaping. Many areas within Walker Park were not considered because they were not accessible to tower service vehicles, in too close proximity to active recreation areas, or were within the floodway.

There are two areas of Walker Park that are included in an Arkansas Parks and Tourism Outdoor Recreation Grant provision that secures in perpetuity the use of these areas for outdoor recreational use only. Several grant projects were awarded in these areas to build the skate park in the northwest section and the playground, restroom and racquetball court on the southern portion. The location of a cell tower would be prohibited in these areas. These areas are noted as A and B on the attached map. The western two thirds of the Block Street parking lot is not owned by the City.

The request for a 30 year lease with Smith Communications for a cell tower in Walker Park was presented to the Parks and Recreation Advisory Board (PRAB) on March 5, 2007. PRAB toured the site with David Reynolds from Smith Communications and unanimously voted to table the vote to a Special Board meeting on March 15, 2007.

On March 15th PRAB voted (5-3) against the proposed placement of the cell tower in Walker Park. Discussion included statements related to the incompatibility of a cell tower with the relative natural forested setting of Walker Park. Other members were concerned about potentially establishing a precedent for placing towers in parks and the long length of the lease that could conflict with the future use of the park. There was some discussion about distorting or obscuring the view from the downtown area to Walker Park. PRAB members voting for the cell tower stated that if the tower was going

Agenda Item Number

to be placed in that area and be visible from the park, they would like the Parks to receive the revenue instead of another entity. (See attached PRAB March 5 and 15, 2007 minutes.)

DISCUSSION

Unified Development Code Title XV, section 163.14 Wireless Communications Facilities (F), states the City "...should actively market its own property and existing structures as suitable co-location sites." Even though the Parks and Recreation Advisory Board voted against the tower to be located in Walker Park, Smith Communications is asking the City Council if a portion of Walker Park could be leased for the tower. (See attached letter.)

This submission is not a request for the approval of the cell tower, but a to allow a petition to the Planning Commission to determine land use compatibility in Walker Park for the tower. If approved by the City Council, a lease agreement will be forwarded for consideration. In order for Smith Communication to complete the Planning Commission Conditional Use Application, they must have the approval of the City to lease the land. In this instance in which PRAB recommended denial of the use of Walker Park for the cell tower placement, it is essential to determine the intent of City Council before Smith Communications proceeds with the Conditional Use Application. Smith Communications must know if the City would lease the land before they continue to the Planning Commission for final determination.

BUDGET IMPACT

The contract between the City and Smith Communications would be very similar to the contract for the Fire Station at Routh Park. This would be a 30 year lease allowing up to five carriers on the tower. The City could receive monthly revenues of \$3,500 to \$4,500 depending on the number of carriers and the contract negotiated by our City Attorney. Smith Communications has also agreed to donate \$20,000 to the Walker Park Mural project to help with it's completion to include three kiosk signs, audio recordings related to the depictions on the mural and a sidewalk around the perimeter for ADA accessibility.

Attachments:

Smith Communication Proposal

Smith Communication Letter

Walker Park Map

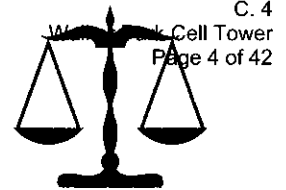
PRAB Meeting Minutes of March 5 and 15, 2007

FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

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

DEPARTMENTAL CORRESPONDENCE



LEGAL DEPARTMENT

TO: **Dan Coody**, Mayor
City Council
Connie Edmonston, Parks & Recreation Division Head

FROM: **Kit Williams**, City Attorney

A handwritten signature in black ink, appearing to read 'Kit Williams', followed by a long horizontal line.

DATE: **April 18, 2007**

RE: **Monopole cell tower proposed for Walker Park**

I have drafted a very similar potential contract to lease land in Walker Park to a cell tower company as was done next to the Fire Station at Hwy. 265 and Old Wire Road. This cell tower would generate:

- (a) \$20,000.00 contribution to the Walker Park Mural Project;
- (b) Free City use of the tower for at least two needed antennas;
- (c) \$12,000.00 to \$54,000.00 annual rent (depending on how many cell phone tenants locate on the tower). The rent is linked to the CPI and will increase with inflation.

The City Council's policy outlined in its cell tower ordinance is to locate cell towers on city land where feasible. However, if the City Council does not wish to locate this in a partially obscured location off a parking lot in Walker Park, the cell tower company will likely locate it right across 15th Street which will be plainly visible from Walker Park, but not physically inside our park's borders.

RESOLUTION NO. _____

A RESOLUTION TO APPROVE A TWENTY-FIVE YEAR LEASE WITH CALLAHAN TOWER JOINT VENTURE FOR A SMALL LOT IN WALKER PARK FOR A MONOPINE CELL TOWER AT AN ANNUAL RENT OF BETWEEN \$12,000.00 AND \$54,000.00, PLUS A \$20,000.00 CONTRIBUTION TO THE WALKER PARK MURAL PROJECT

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

Section 1: That the City Council of the City of Fayetteville, Arkansas hereby approves the attached Land Lease Agreement with Callahan Tower Joint Venture to lease a small lot in Walker Park for a monopine cell tower at an annual rent of between \$12,000.00 and \$54,000.00 (depending on the number of cell phone tenants subleased on the tower), plus the City's free use of the cell tower to place at least two city antennas for use of the Water and Sewer Department and/or other City Departments, and the contribution of \$20,000.00 by Callahan Tower Joint Venture for the City's Walker Park Mural Project.

PASSED and APPROVED this 1st day of May, 2007.

APPROVED:

ATTEST:

By: _____
DAN COODY, Mayor

By: _____
SONDRA E. SMITH, City Clerk/Treasurer

LAND LEASE AGREEMENT

This Agreement, made this ____ day of May, 2007, between the CITY OF FAYETTEVILLE, ARKANSAS, 113 W. Mountain Street, Fayetteville, AR 72701, hereinafter designated FAYETTEVILLE, and CALLAHAN TOWER JOINT VENTURE, with its principal office located at Callahan Tower, 520 N. College Avenue, Fayetteville, AR 72701, hereinafter designated as CALLAHAN. FAYETTEVILLE and CALLAHAN are at times collectively referred to hereinafter as the "Parties".

1. PREMISES. FAYETTEVILLE hereby leases to CALLAHAN a portion of that certain parcel of property referred to hereinafter as the Old Wire Road Fire Station site, located in Washington County, Arkansas, and described in Exhibit "A" attached hereto (the "Land Space"), together with the non-exclusive but constant (24 hours per day, 7 days a week) access and utility easement over, under, or along the existing driveway, said Land Space and easement (hereinafter collectively referred to as the "Premises") being substantially as described herein in Exhibit "A" attached hereto and made a part hereof. CALLAHAN agrees not to block the driveway at any time and to coordinate and cooperate with the CITY OF FAYETTEVILLE and its Parks Department in their use and access to their facilities.

2. SURVEY. FAYETTEVILLE also hereby grants to CALLAHAN the right to survey the Walker Park site and the Premises, and said survey after review and acceptance by FAYETTEVILLE shall then become Exhibit "B" which shall be attached hereto and made a part hereof, and shall control in the event of boundary and access discrepancies between it and Exhibit "A". Cost for such work shall be borne by CALLAHAN.

3. TERM. This Agreement shall be effective as of the date of execution by both parties, and the initial term of five (5) years shall commence on the first day of the month following the Planning Commission's approval of the conditional use permit for a cell tower at this site, at which time rental payments shall commence and be due at a total monthly rental of **One Thousand Dollars (\$1,000.00)** to be paid on the first day of the month, in advance, to FAYETTEVILLE.

4. EXTENSIONS. This Agreement shall automatically be extended for four (4) additional five (5) year terms unless CALLAHAN terminates it at the end of the then current term by giving FAYETTEVILLE written notice of its intent to terminate at least six (6) months prior to the end of the then current term.

5. EXTENSION RENTALS. The monthly rental for the first five year extension term shall be increased by an amount equal to the total CPI increase during the five year period of the lease; the monthly rental for the second five year extension term shall be further increased by an amount equal to the total CPI increase during the second five year period of the lease; the monthly rental for the third five year extension term shall be further increased by an amount equal to the total CPI increase during the third five year period of the lease; and the monthly rental for the fourth five year extension term shall be further increased by an amount equal to the total CPI increase during the fourth five year period of the lease.

6. USE: GOVERNMENTAL APPROVALS. CALLAHAN shall use the Premises for the purpose of constructing, maintaining, repairing and operating a communications facility and uses incidental thereto. A security fence consisting of chain link construction or similar but comparable construction may be placed around the perimeter of the Premises at the discretion of CALLAHAN (not including the access easement). All improvements, equipment and conduits shall be at CALLAHAN's expense and the installation of all improvements shall be at the discretion and option of CALLAHAN. CALLAHAN shall have the right to replace, repair, add or otherwise modify its equipment and/or conduits or any portion thereof and the frequencies over which the equipment operates, whether the equipment, conduits or frequencies are specified or not on any exhibit attached hereto, during the Term. It is understood and agreed that CALLAHAN's ability to use the Premises is contingent upon its obtaining after the execution date of this Agreement all of the certificates, permits and other approvals (collectively the "Governmental Approvals") that may be required by any Federal, State or Local authorities as well as satisfactory soil boring tests which will permit CALLAHAN use of the Premises as set forth above. FAYETTEVILLE shall take no action which would adversely affect the status of the Property with respect to the proposed use thereof by CALLAHAN. In the event that any of such applications for such Governmental Approvals should be finally rejected; any Governmental Approval issued to CALLAHAN is canceled, expires, lapses, or is otherwise withdrawn or terminated by governmental authority CALLAHAN shall have the right to terminate this Agreement. Notice of CALLAHAN's exercise of its right to terminate shall be given to FAYETTEVILLE in writing by certified mail, return receipt requested, and shall be effective upon the mailing of such notice by CALLAHAN, or upon such later date as designated by CALLAHAN. All rentals paid to said termination date shall be retained by FAYETTEVILLE. Upon such termination, this Agreement shall be of no further force or effect except to the extent of the representations, warranties and indemnities made by each party to the other hereunder. Otherwise, CALLAHAN shall have no further obligations for the payment of rent to FAYETTEVILLE. If this site becomes technologically unsuitable for CALLAHAN's purposes, CALLAHAN may terminate this lease upon ninety days notice.

7. INSURANCE. CALLAHAN agrees that at its own cost and expense, it will maintain commercial general liability insurance with limits not less than \$1,000,000 for injury to or death of one or more persons in any one occurrence and \$500,000 for damage or destruction to property in any one occurrence.

8. LIMITATION OF LIABILITY. In no event will either FAYETTEVILLE or CALLAHAN be liable to the other, or any of their respective agents, representatives, employees for any lost revenue, lost profits, loss of technology, rights or services, incidental, punitive, indirect, special or consequential damages, loss of data, or loss or interruption of use of service, under any theory of tort, strict liability or negligence.

9. INTERFERENCE. CALLAHAN agrees to install equipment of the type and frequency which will not cause material interference which is measurable in accordance with then existing industry standards to any equipment of FAYETTEVILLE or its lessees of the Property. In the event any after-installed CALLAHAN's equipment causes such interference, and after FAYETTEVILLE has notified CALLAHAN in writing of such interference, CALLAHAN will take all commercially reasonable steps necessary to correct

and eliminate the interference, including but not limited to, at CALLAHAN's option, powering down such equipment and later powering up such equipment for intermittent testing. In no event will FAYETTEVILLE be entitled to terminate this Agreement or relocate the equipment as long as CALLAHAN is making a good faith effort to remedy the interference issue. CALLAHAN agrees to indemnify and hold Fayetteville harmless from any claim by other tenants that CALLAHAN's equipment has damaged or interfered with their equipment or service to their customers. FAYETTEVILLE agrees that it or other tenants of the Property who currently have or in the future take possession of the Property will be permitted to install only such equipment that is of the type and frequency which will not cause material interference which is measurable in accordance with then existing industry standards to the then existing equipment of CALLAHAN.

10. REMOVAL AT END OF TERM. CALLAHAN shall, upon expiration of the Term, or within ninety (90) days after any earlier termination of the Agreement, remove its building(s), antenna structure(s) (except footings), equipment, conduits, fixtures and all personal property and restore the Premises to its original condition, reasonable wear and tear and casualty damage excepted. FAYETTEVILLE agrees and acknowledges that all of the equipment, conduits, fixtures and personal property of CALLAHAN shall remain the personal property of CALLAHAN and CALLAHAN shall have the right to remove the same at any time during the Term, whether or not said items are considered fixtures and attachments to real property under applicable Laws. If such time for removal causes CALLAHAN to remain on the Premises after termination of this Agreement, CALLAHAN shall pay rent at the then existing monthly rate or on the existing monthly pro-rata basis if based upon a longer payment term, until such time as the removal of the building, antenna structure, fixtures and all personal property are completed.

11. QUIET ENJOYMENT. FAYETTEVILLE covenants that CALLAHAN, on paying the rent and performing the covenants herein, shall peaceably and quietly have, hold and enjoy the Premises. FAYETTEVILLE agrees that this lease shall survive and remain in force if FAYETTEVILLE sells or transfers any part of the Land Space.

12. TITLE. FAYETTEVILLE represents and warrants to CALLAHAN as of the execution date of this Agreement, and covenants during the Term that FAYETTEVILLE is seized of good and sufficient title and interest to the Property and has full authority to enter into and execute this Agreement and that there are no covenants, easement or restrictions which prevent or adversely affect the use of occupancy of the Premises by CALLAHAN as set forth above.

13. INTEGRATION. It is agreed and understood that this Agreement contains all agreements, promises and understandings between FAYETTEVILLE and CALLAHAN and that no verbal or oral agreements, promises or understandings shall be binding upon either FAYETTEVILLE or CALLAHAN. In the event any provision of the Agreement is found to be invalid or unenforceable, such finding shall not affect the validity and enforceability of the remaining provisions of this Agreement. The failure of either Party to insist upon strict performance of any of the terms or conditions of this Agreement or to exercise any of its rights under the Agreement shall not waive such rights and such Party shall have the right to

enforce such rights at any time and take such action as may be lawful and authorized under this Agreement, in law or in equity.

14. GOVERNING LAW. This Agreement and the performance thereof shall be governed, interpreted, construed and regulated by the laws of Arkansas and venue shall be in Washington County.

15. ASSIGNMENT. This Agreement may be sold, assigned or transferred by CALLAHAN without any approval or consent of FAYETTEVILLE to CALLAHAN's principal, affiliates, subsidiaries of its principal or to any entity which acquires all or substantially all of CALLAHAN's assets in the market defined by the Federal Communications Commission in which the Property is located by reason of a merger, acquisition or other business reorganization. As to other parties, this Agreement may not be sold, assigned or transferred without the written consent of FAYETTEVILLE, which such consent will not be unreasonably withheld or delayed. No change of stock ownership or control of CALLAHAN shall constitute an assignment hereunder. CALLAHAN may sublease any portion of the Property at its sole discretion upon notice to FAYETTEVILLE. Any sublease that is entered into by CALLAHAN shall be subject to the provisions of this Agreement and shall be binding upon the successors, assigns, heirs and legal representatives of the respective parties hereto. The term "Sublease", "Sublet", "Sublessee" and any other similar term shall apply to any situation by which CALLAHAN allows a third party use of the Property for co-location, whether it be by formal sublease, license or other agreement. All rights and responsibilities of CALLAHAN set forth in this Agreement shall be enjoyed by and binding on any Sublessee.

(a) In the event CALLAHAN subleases any portion of the Property, in accordance with this Agreement, any rental paid by any Sublessee(s) shall be divided between FAYETTEVILLE and CALLAHAN in the following manner: (i) The first cell phone carrier's antenna array is paid for by the monthly rent charged to CALLAHAN pursuant to this Land Lease Agreement; (ii) The gross rental paid by (and the gross value of any other type of consideration received from) the business using the second set of cell phone antennas shall be divided with 75% of the gross going to CALLAHAN and 25% to FAYETTEVILLE; (iii) The gross rental paid by (and the gross value of any other type of consideration received from) the business using the third and any subsequent set of cell phone antennas shall be divided with 50% of the gross going to CALLAHAN and 50% to FAYETTEVILLE. Any Sublessee shall be instructed to pay the foregoing percentage amounts directly to CALLAHAN. CALLAHAN shall be responsible to Fayetteville for the collection or payment of rents by the Sublessee and their remittance to FAYETTEVILLE. However, CALLAHAN shall have no liability to FAYETTEVILLE in the event of failure of payment by Sublessee. In this event, CALLAHAN shall have no liability of any nature to FAYETTEVILLE for failure to sublet all or any part of the premises to any or all potential Sublessee(s); CALLAHAN will provide FAYETTEVILLE with all agreements that have been executed by CALLAHAN and its Sublessee.

(b) Notwithstanding any other provision of this Agreement, CALLAHAN shall not be required to obtain approval from FAYETTEVILLE for the subletting of the Property or

part thereof. CALLAHAN shall have the sole right to determine whether it will Sublet any portion of the Property or whether it will sublease to any specific Sublessee.

16. NOTICES. All notices hereunder must be in writing and shall be deemed validly given if sent by certified mail, return receipt requested or by commercial courier, provided the courier's regular business is delivery service and provided further that it guarantees delivery to the addressee by the end of the next business day following the courier's receipt from the sender, addressed as follows (or any other address that the Party to be notified may have designated to the sender by like notice):

FAYETTEVILLE: CITY OF FAYETTEVILLE
Office of the Mayor
113 W. Mountain Street
Fayetteville, AR 72701

CALLAHAN: CALLAHAN TOWER JOINT VENTURE
ATTN: Jason Steele
520 N. College Avenue
Fayetteville, AR 72701

Notice shall be effective upon actual receipt or refusal as shown on the receipt obtained pursuant to the foregoing.

17. SUCCESSORS. This Agreement shall extend to and bind the heirs, personal representative, successors and assigns of the Parties hereto.

18. DEFAULT.

(a) In the event there is a breach by CALLAHAN with respect to any of the provisions of this Agreement or its obligations under it, including the payment of rent, FAYETTEVILLE shall give CALLAHAN written notice of such breach. After receipt of such written notice, CALLAHAN shall have fifteen (15) days in which to cure any monetary breach and thirty (30) days in which to cure any non-monetary breach, provided CALLAHAN shall have such extended period as may be required beyond the thirty (30) days if the nature of the cure is such that it reasonably requires more than thirty (30) days and CALLAHAN commences the cure within the thirty (30) day period and thereafter continuously and diligently pursues the cure to completion. FAYETTEVILLE may not maintain any action or effect any remedies for default against CALLAHAN unless and until CALLAHAN has failed to cure the breach within the time periods provided in this Paragraph. However, repetitive breaches relating to blocking or interfering with the access easement or the rights of other tenants to successfully operate their equipment without electronic or other interference shall give FAYETTEVILLE the right to terminate this contract even if such breaches are temporary and cured within thirty days.

(b) In the event there is a breach by FAYETTEVILLE with respect to any of the provisions of this Agreement or its obligations under it, CALLAHAN shall give FAYETTEVILLE written notice of such breach. After receipt of such written notice,

FAYETTEVILLE shall have thirty (30) days in which to cure any such breach, provided FAYETTEVILLE shall have such extended period as may be required beyond the thirty (30) days if the nature of the cure is such that it reasonably requires more than thirty (30) days and FAYETTEVILLE commences the cure within the thirty (30) day period and thereafter continuously and diligently pursues the cure to completion. CALLAHAN may not maintain any action or effect any remedies for default against FAYETTEVILLE unless and until FAYETTEVILLE has failed to cure the breach within the time periods provided in this Paragraph. Notwithstanding the foregoing to the contrary, it shall be a default under this Agreement if FAYETTEVILLE fails, within five (5) days after receipt of written notice of such breach, to perform an obligation required to be performed by FAYETTEVILLE if the failure to perform such an obligation interferes with CALLAHAN's ability to conduct its business on the Property; provided, however, that if the nature of FAYETTEVILLE's obligation is such that more than five (5) days after such notice is reasonably required for its performance, then it shall not be a default under this Agreement if performance is commenced within such five (5) day period and thereafter diligently pursued to completion.

19. REMEDIES. Upon a default, the non-defaulting party may at its option (but without obligation to do so), perform the defaulting party's duty or obligation on the defaulting party's behalf. The costs and expenses of any such performance by the non-defaulting party shall be due and payable by the defaulting party upon invoice therefor. In the event of a default by either party with respect to a material provision of this Agreement, without limiting the non-defaulting party in the exercise of any right or remedy which the non-defaulting may have by reason of such default, the non-defaulting party may terminate the Agreement and/or pursue any remedy now or hereafter available to the non-defaulting party under the laws or judicial decisions of the state in which the Premises are located; provided, however, FAYETTEVILLE and CALLAHAN shall use reasonable efforts to mitigate any damages in connection with a default by FAYETTEVILLE or CALLAHAN. If CALLAHAN so performs any of FAYETTEVILLE's obligations hereunder, the full amount of the reasonable and actual cost and expense incurred by CALLAHAN shall immediately be owing by FAYETTEVILLE to CALLAHAN, and FAYETTEVILLE shall pay to CALLAHAN upon demand the full undisputed amount thereof with interest thereon from the date of payment at the highest rate permitted by applicable Laws. Notwithstanding the foregoing, if FAYETTEVILLE does not pay CALLAHAN the full undisputed amount within thirty (30) days of its receipt of an invoice setting forth the amount due from CALLAHAN, CALLAHAN may offset the full undisputed amount, including all accrued interest, due against all fees due and owing to FAYETTEVILLE until the full undisputed amount, including all accrued interest, is fully reimbursed to CALLAHAN.

20. CASUALTY. In the event of damage by fire or other casualty to the Premises that cannot reasonably be expected to be repaired within forty-five (45) days following the event, CALLAHAN may terminate this by sending written notice to FAYETTEVILLE. Any such notice of termination shall cause this Agreement to expire with the same force and effect as though the date set forth in such notice were the date originally set as the expiration date of this Agreement and the Parties shall make an appropriate adjustment, as of such termination date, with respect to payments due to the other under this Agreement. Notwithstanding the foregoing, the rent shall abate during the period of repair following such

fire or other casualty in proportion to the degree to which CALLAHAN'S use of the Premises is impaired.

21. CONDEMNATION. In the event of any condemnation of all or any portion of the Property, this Agreement shall terminate as to the part so taken as of the date the condemning authority takes title or possession, whichever occurs first. If as a result of a partial condemnation of the Premises or Property, CALLAHAN, in CALLAHAN's sole discretion, is unable to use the Premises for the purposes intended hereunder, or if such condemnation may reasonably be expected to disrupt CALLAHAN's operations at the Premises for more than forty-five (45) days, CALLAHAN may, at CALLAHAN's option, to be exercised in writing within fifteen (15) days after FAYETTEVILLE shall have given CALLAHAN written notice of such taking (or in the absence of such notice, within fifteen (15) days after the condemning authority shall have taken possession) terminate this Agreement as of the date the condemning authority takes such possession. CALLAHAN may on its own behalf make a claim in any condemnation proceeding involving the Premises for losses related to the equipment, conduits, fixtures, its relocation costs and its damages and losses. Any such notice of termination shall cause this Agreement to expire with the same force and effect as though the date set forth in such notice were the date originally set as the expiration date of this Agreement and the Parties shall make an appropriate adjustment as of such termination date with respect to payments due to the other under this Agreement. CALLAHAN does not terminate this Agreement in accordance with the foregoing, this Agreement shall remain in full force and effect as to the portion of the Premises remaining, except that the rent shall be reduced in the same proportion as the rentable area of the Premises taken bears to the total rentable area of the Premises. In the event that this Agreement is not terminated by reason of such condemnation, CALLAHAN shall promptly repair any damage to the Premises caused by such condemning authority.

22. SUBMISSION OF AGREEMENT/PARTIAL INVALIDITY/AUTHORITY. The submission of this Agreement for examination does not constitute an offer to lease the Premises and this Agreement becomes effective only upon the full execution of this Agreement by the Parties. If any provision herein is invalid, it shall be considered deleted from this Agreement and shall not invalidate the remaining provisions of this Agreement. Each of the Parties hereto warrants to the other that the person or persons executing this Agreement on behalf of such Party has the full right, power and authority to enter into and execute this Agreement on such Party's behalf and that no consent from any other person or entity is necessary as a condition precedent to the legal effect of this Agreement.

23. APPLICABLE LAWS. CALLAHAN shall, in respect to the condition of the Premises and at CALLAHAN's sole cost and expense, comply with (a) all Laws relating solely to CALLAHAN'S specific and unique nature of use of the Premises; and (b) all building codes requiring modifications to the Premises due to the improvements being made by CALLAHAN in the Premises.

24. SURVIVAL. Any provisions of this Agreement which require performance subsequent to the termination or expiration of this Agreement shall also survive such termination or expiration.

25. CAPTIONS. The captions contained in this Agreement are inserted for convenience only and are not intended to be part of the Agreement. They shall not affect or be utilized in the construction or interpretation of the Agreement.

26. CITY OF FAYETTEVILLE'S RIGHT TO USE TOWER. As an express condition for this lease and for the reduced rental payments demanded from CALLAHAN, CALLAHAN agrees to provide FAYETTEVILLE adequate access to and use of the tower and Leased Property to install antennas at sufficient height and location to fulfill the needs of FAYETTEVILLE and its operating departments. FAYETTEVILLE agrees to cooperate with CALLAHAN in the placement of its antennas to attempt to avoid interfering with CALLAHAN's or sublessees' use of the tower for cell phone purposes.

27. WALKER PARK MURAL DONATION. Callahan Joint Ventures agrees to contribute \$20,000.00 to the Walker Park Mural project upon approval of this contract by the City Council and approval of its conditional use permit request for the proposed cell tower by the Planning Commission.

IN WITNESS WHEREOF, the Parties hereto have set their hands and affixed their respective seals the day and year first above written.

**CALLAHAN TOWER
JOINT VENTURE**

CITY OF FAYETTEVILLE

By: _____
JASON STEELE
President

By: _____
DAN COODY
Mayor

By: _____
MICHAEL SMITH, CEO

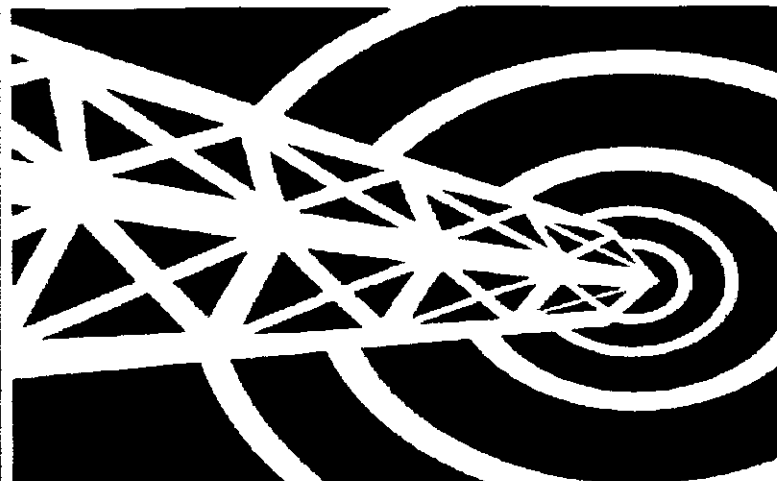
Attest: _____

Attest: _____
Sondra E. Smith, City Clerk/Treasurer

Walker Park Imagery

C. 4
Walker Park Cell Tower
Page 14 of 42



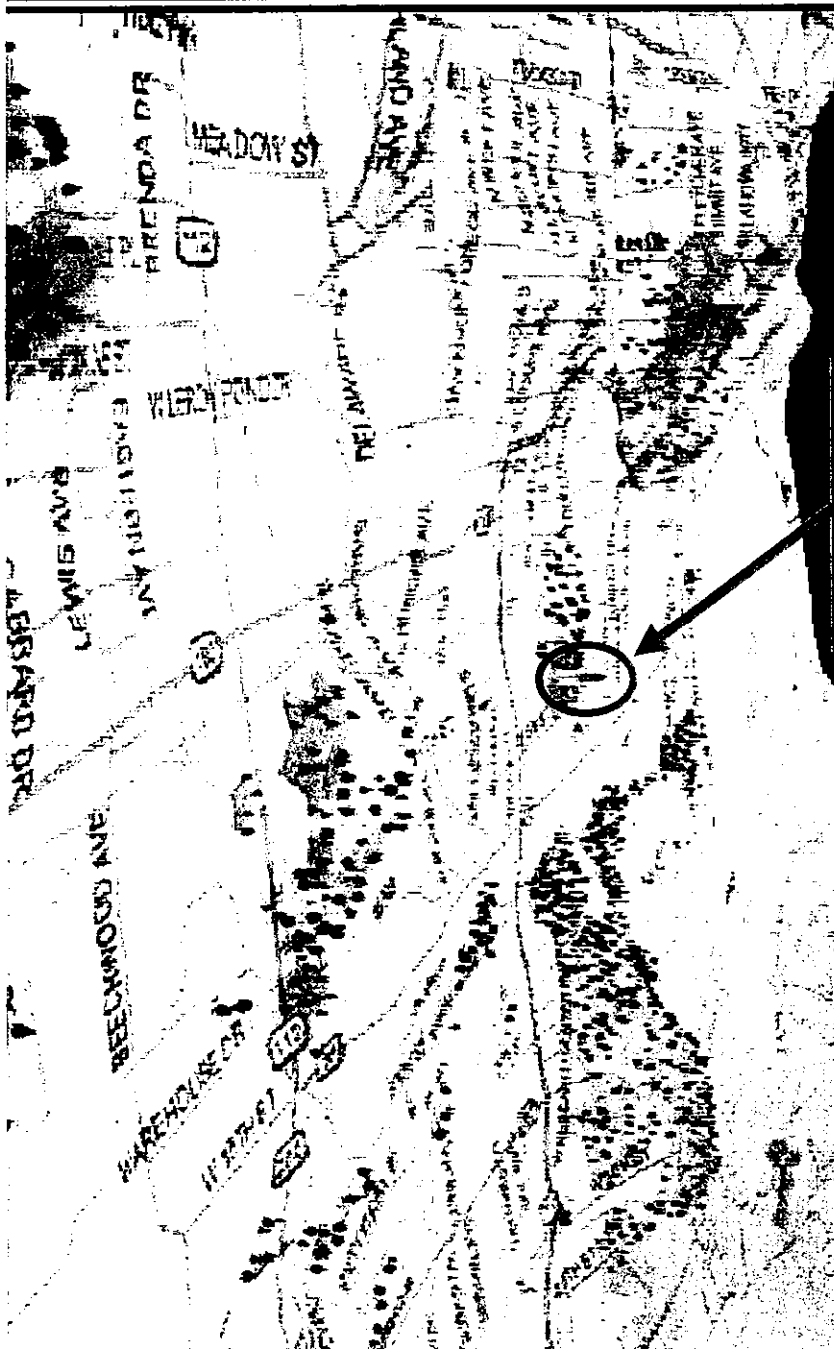


SMITH Two-Way RADIO

Smith Two Way Radio

Proposal for NEW Wireless Communications Facility @
WALKER PARK

NEW 150ft.
MONOPINE





Smith Two Way Radio

Geographic Area the Project Will Serve

WEDINGTON DR

GARLAND

NORTH ST

DICKSON ST

CROSSOVER RD

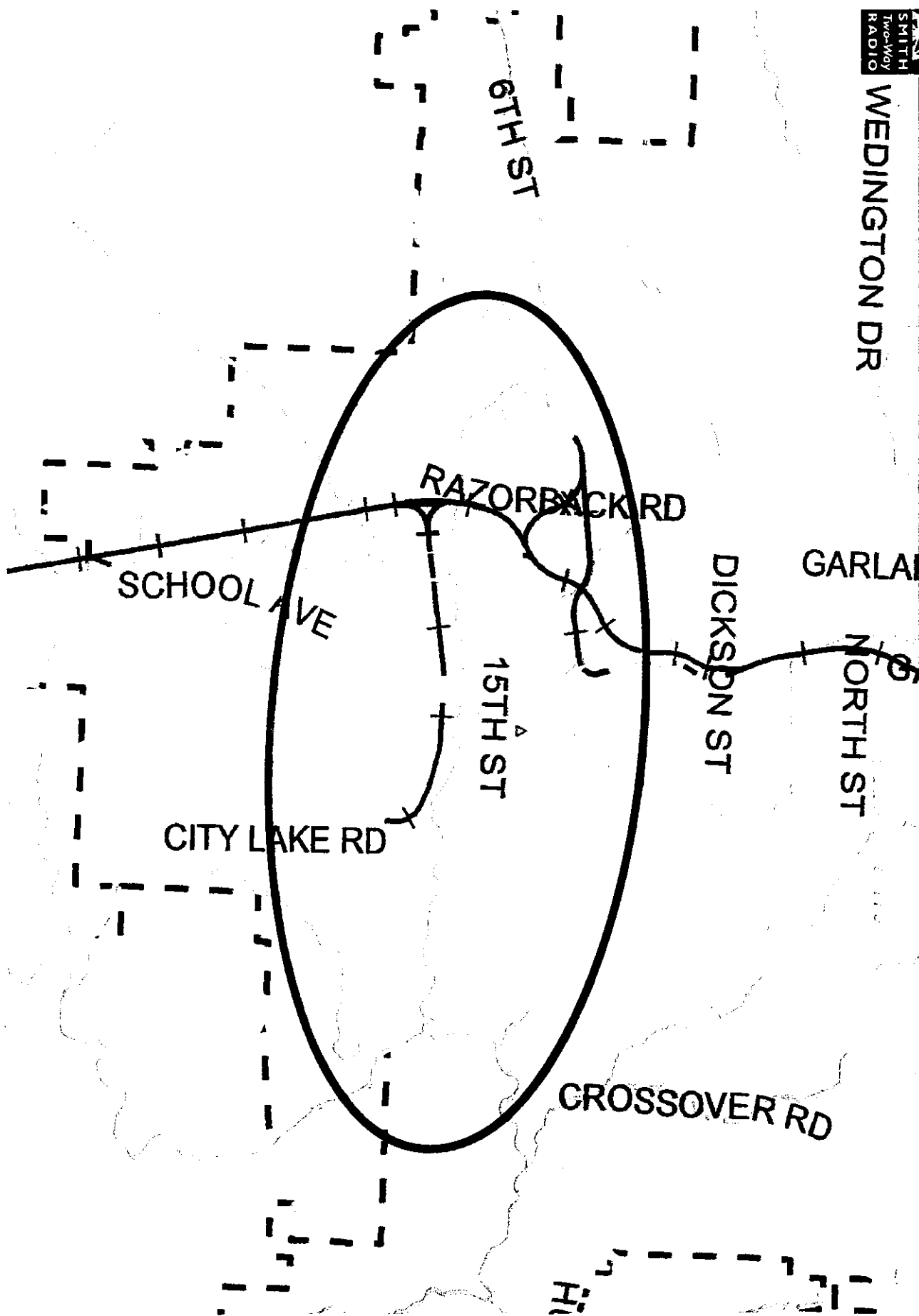
6TH ST

RAZORBACK RD

15TH ST

CITY LAKE RD

SCHOOL AVE

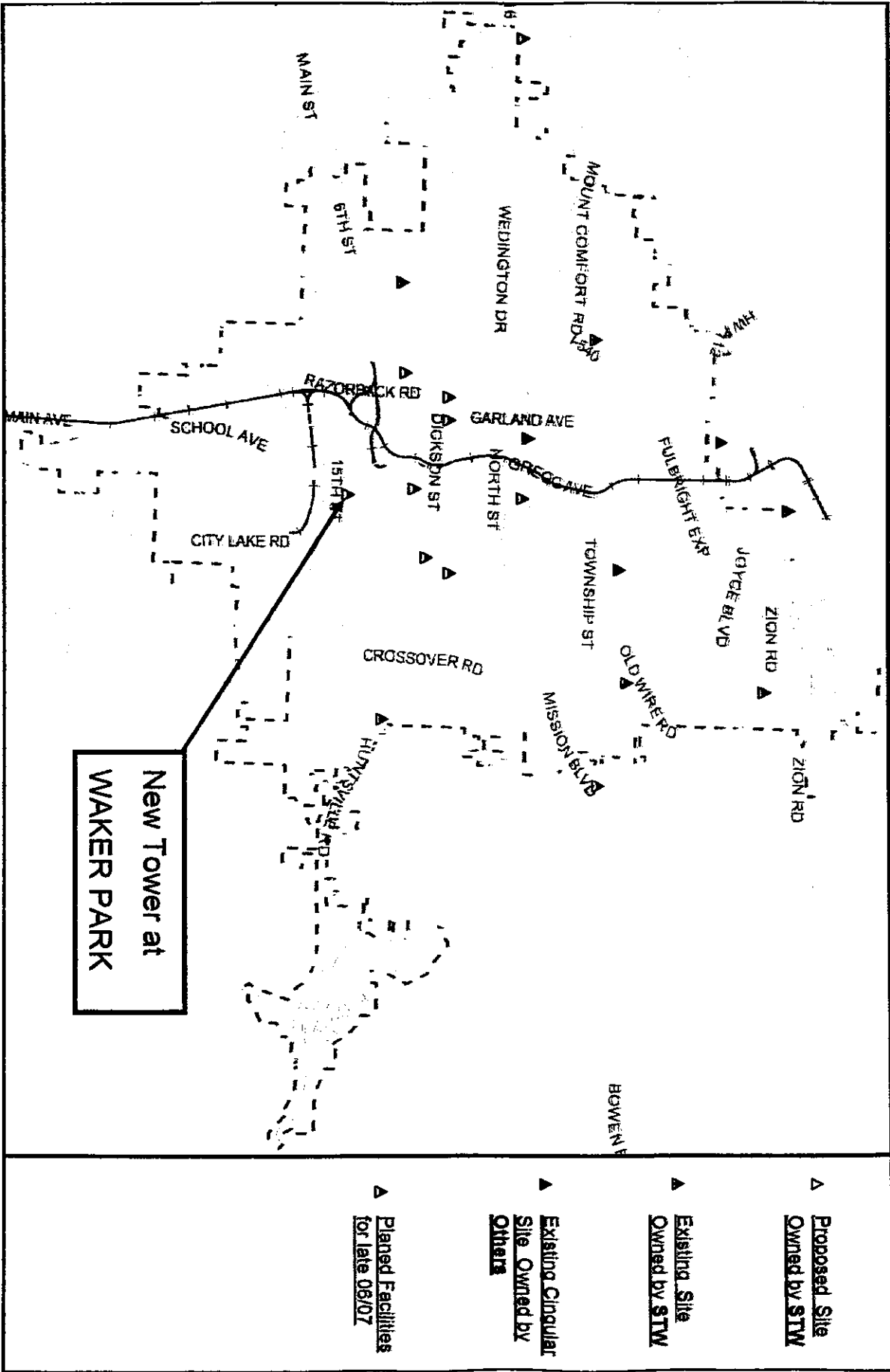




Smith Two Way Radio

Existing and Planned Facilities

P.8





Smith Two Way Radio

Existing Towers Within 1 Mile

WEDINGTON DR

6TH ST

RAZORBACK RD

SCHOOL AVE

DICKSON ST

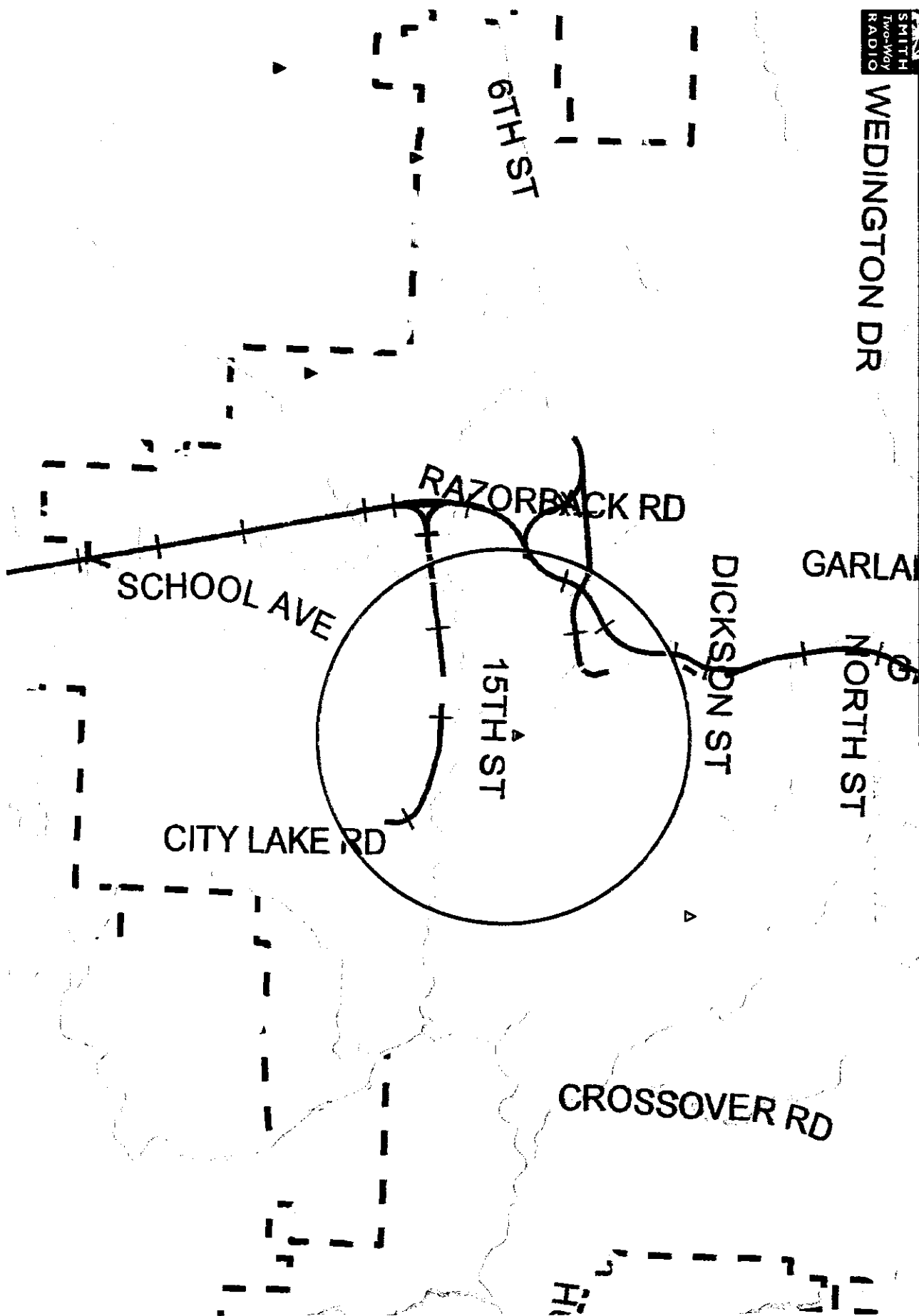
GARLAND

NORTH ST

15TH ST

CITY LAKE RD

CROSSOVER RD





Smith Two Way Radio

Single Family Residences $\frac{1}{2}$ Mile Radius

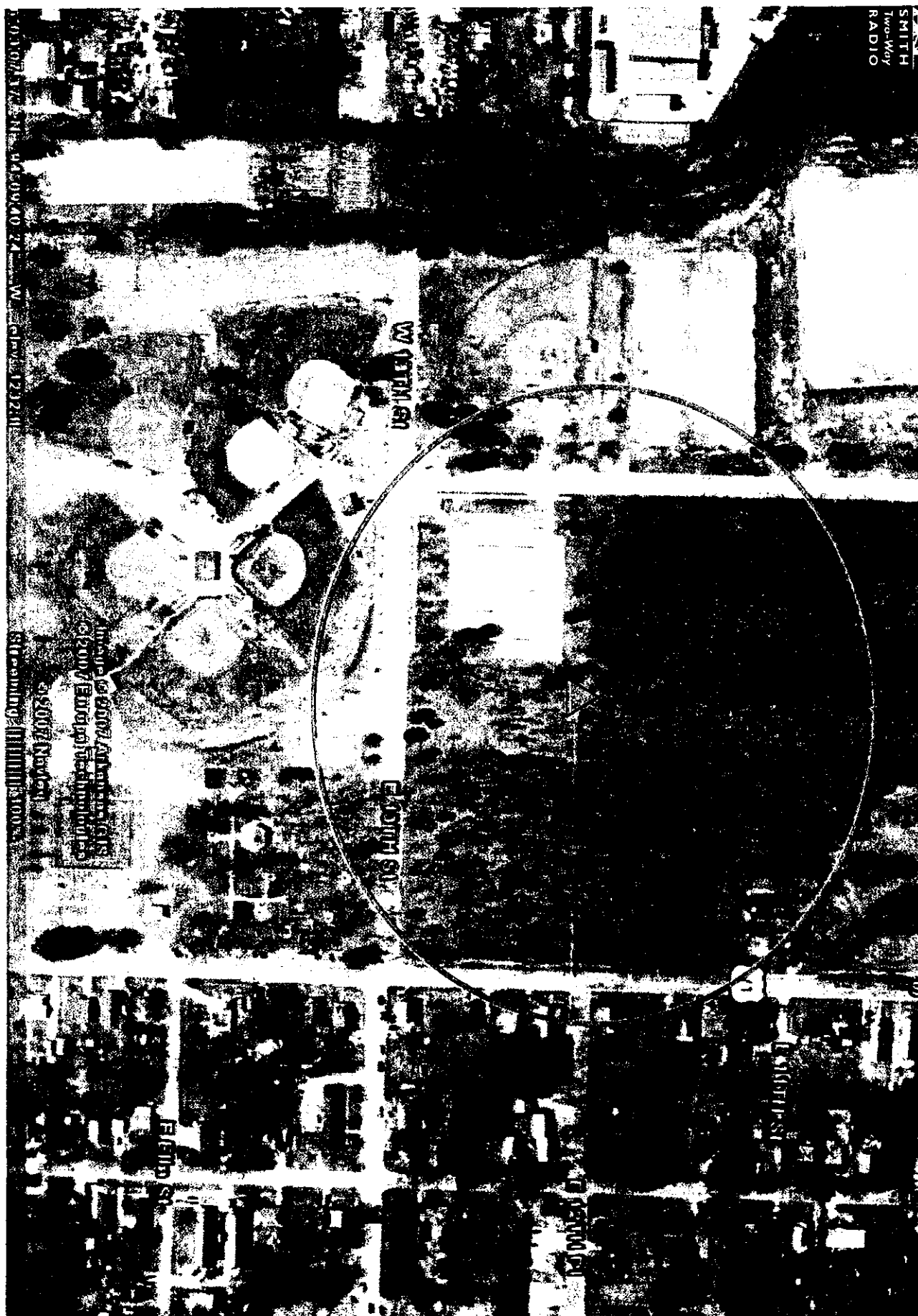


This Area
is Single
Family
Residents



Smith Two Way Radio

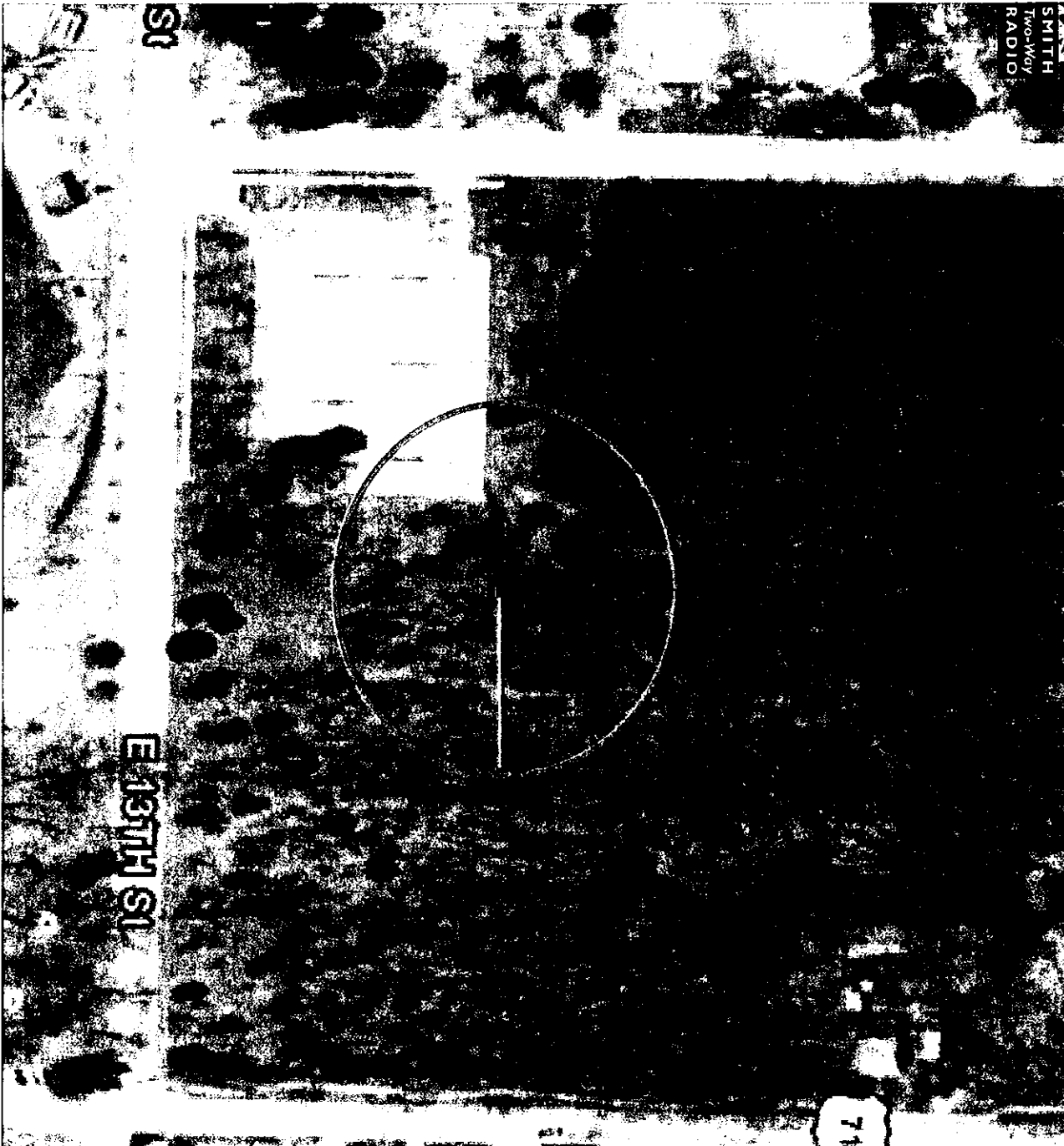
500 ft Radius

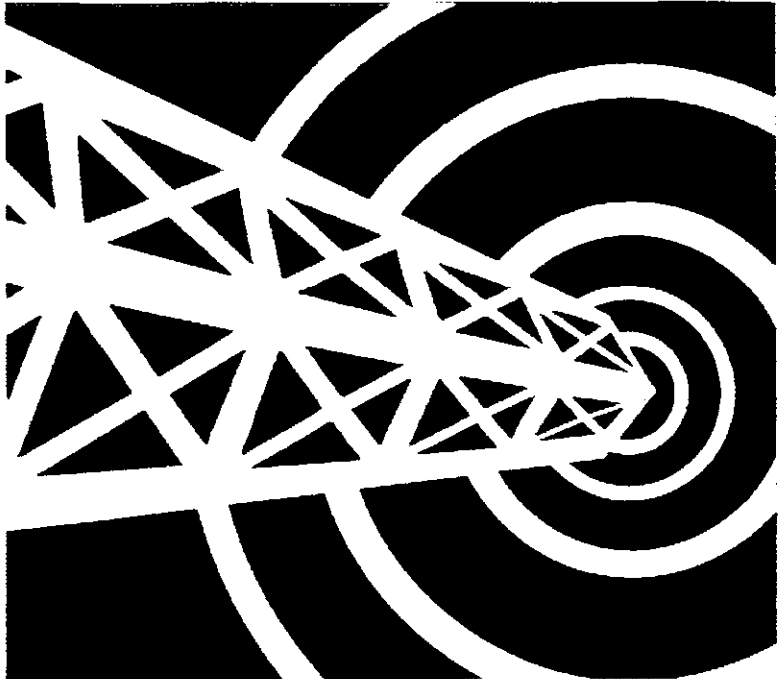




Smith Two Way Radio

150ft Radius





SMITH
Two-Way
RADIO

Sight Plan & Current Zoning Info.

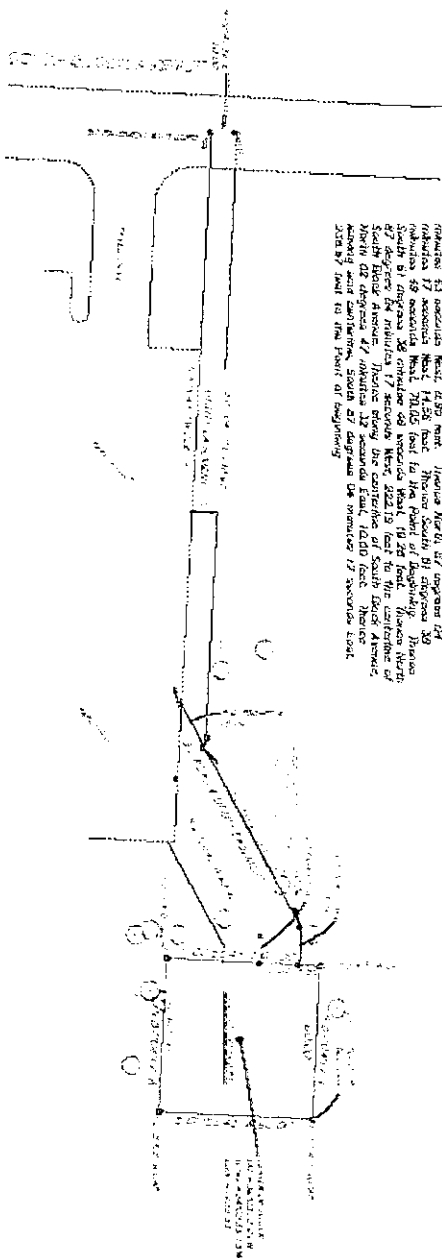
Four of the Southeast Cawston of the Northland District: Section 21, Township 16 North, Range 30 West, Northwestern County, Arkansas have never previously been described as follows:

[illegible]

Adrian is worried that Royal will destroy his life and the life of his son because of his selfishness and strong desire for power.

[illegible]

Alles in dieser Hinsicht ist eine politische Entscheidung und keine moralische.

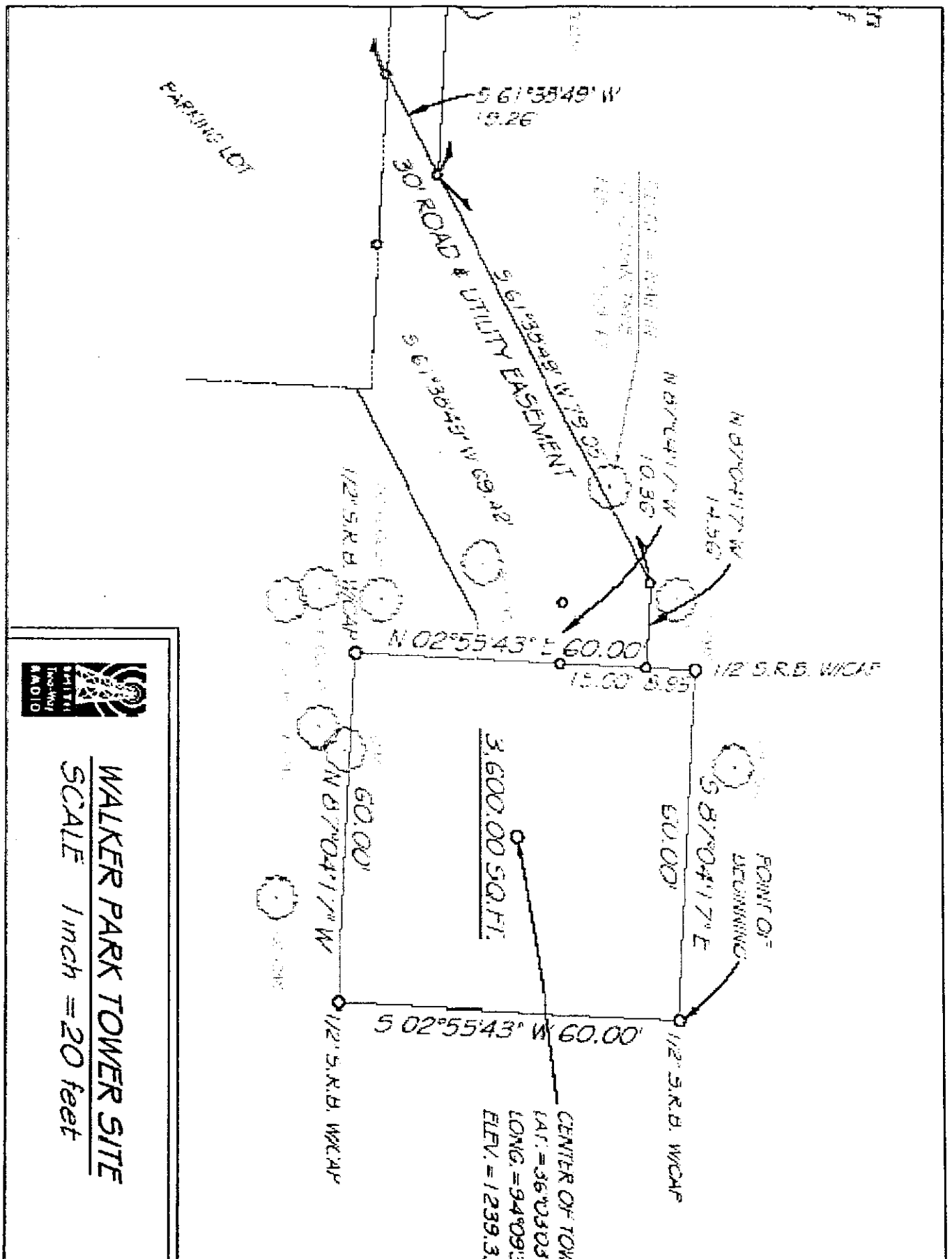
[illegible]

the study is being conducted in a smaller facility for the use of the equipment required for the study and the use of the laboratory is expected to be completed by the end of the year. The study is expected to be completed by the end of the year.

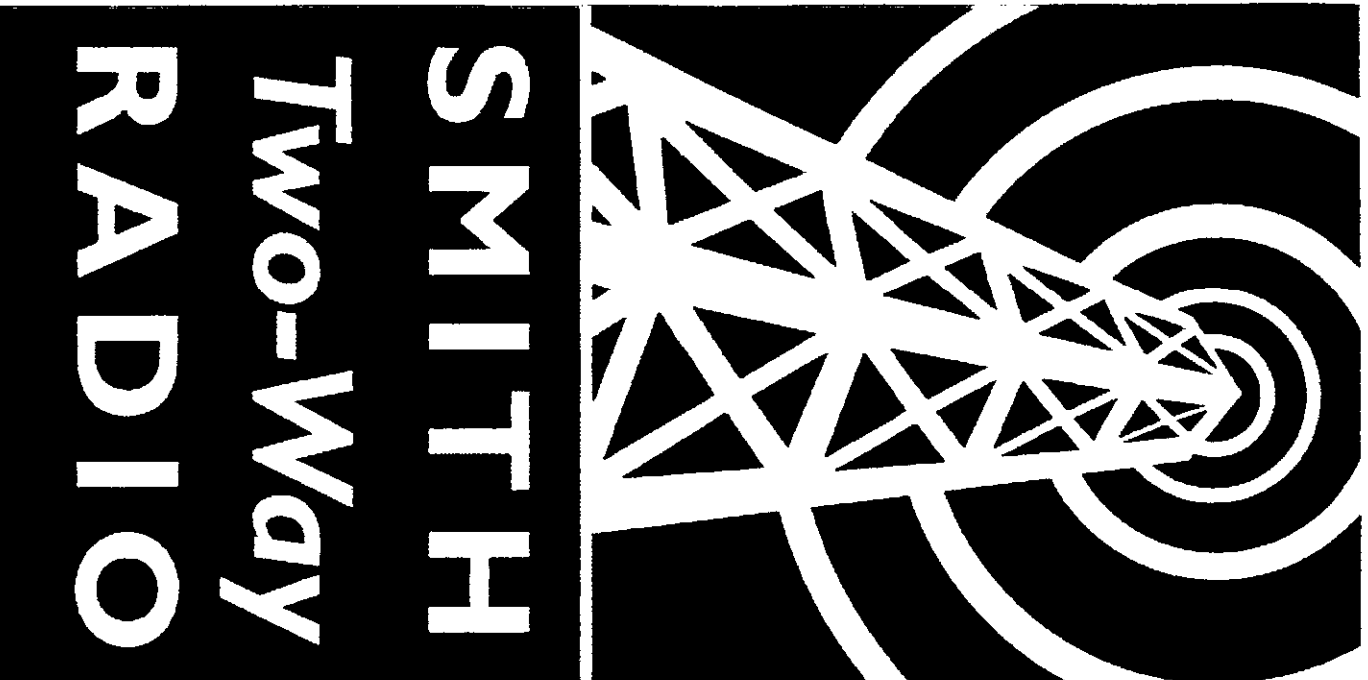
[illegible][illegible][illegible]

Dr. J. H. McCall, Jr., 136 N. 4th St.

[illegible]



WALKER PARK TOWER SITE
SCALE 1 inch = 20 feet

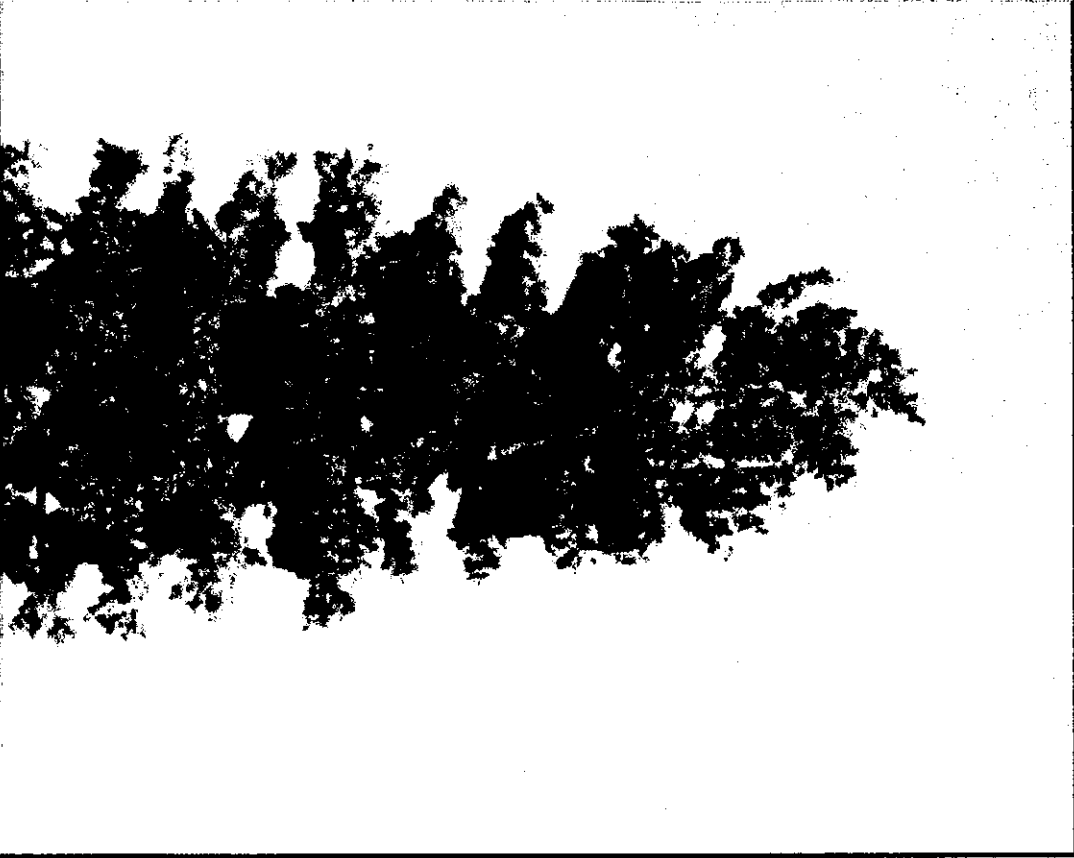


Efforts to Reduce Visual Impact Of the tower



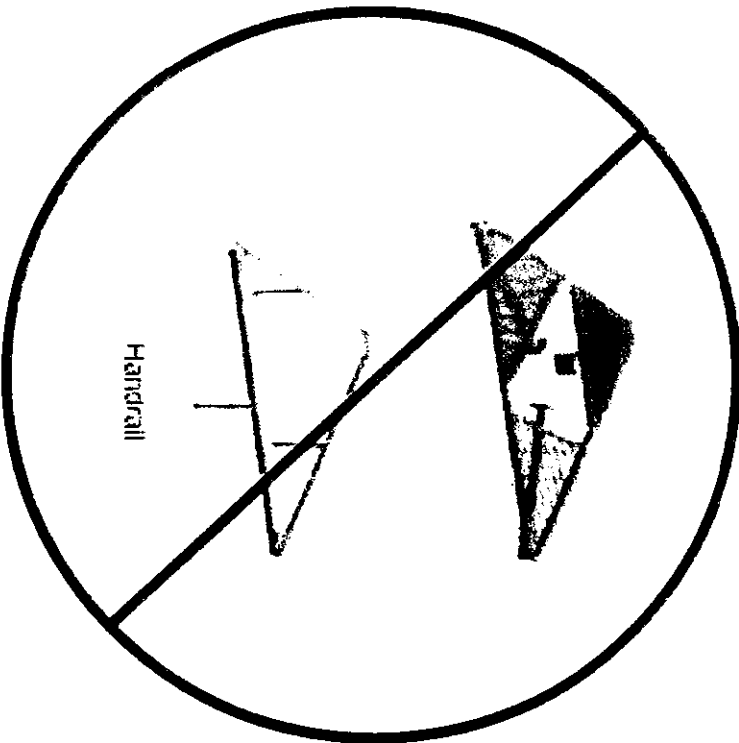
TREE TYPE MOUNTING VS Low Visibility Antenna Mount

Proposed MONOPINE CAMO-MOUNT



Typical Cellular Antenna Mounting Platform

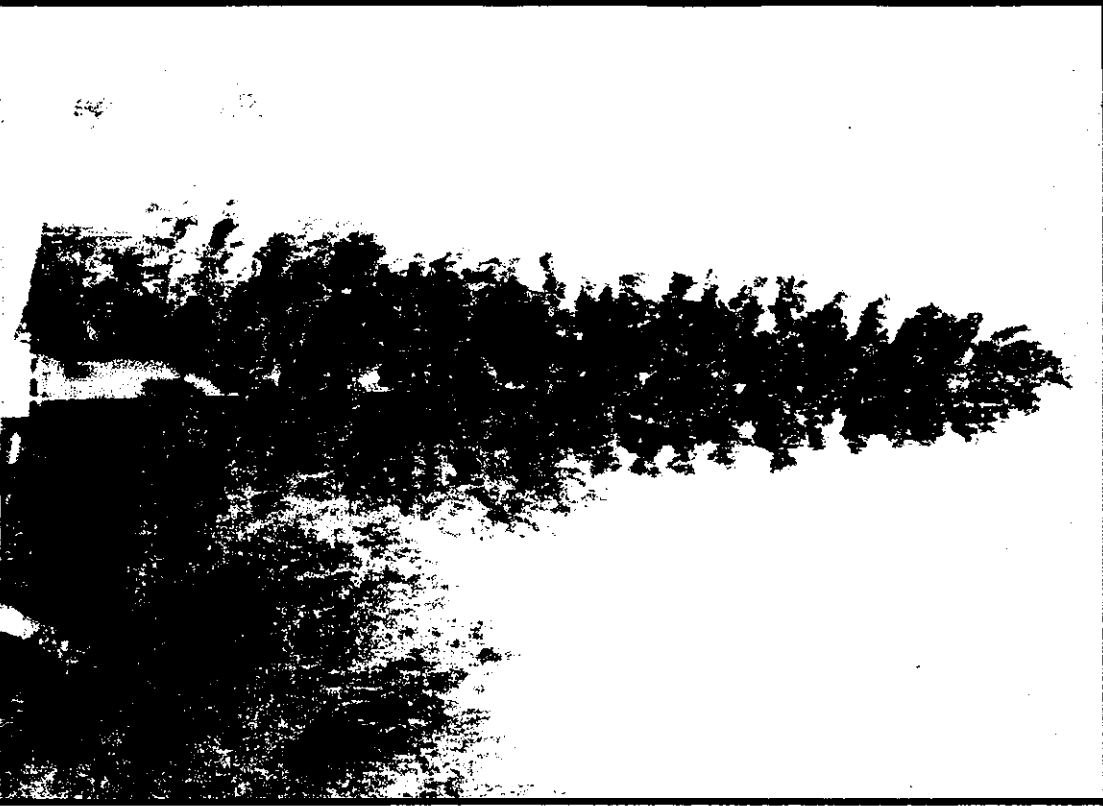
16' Face Low-Profile Platform Kit
For use with Tapered and Non-Tapered Monopoles
Fits 12" to 36" Diameter • 37 1/2" to 113" Circumference Monopoles



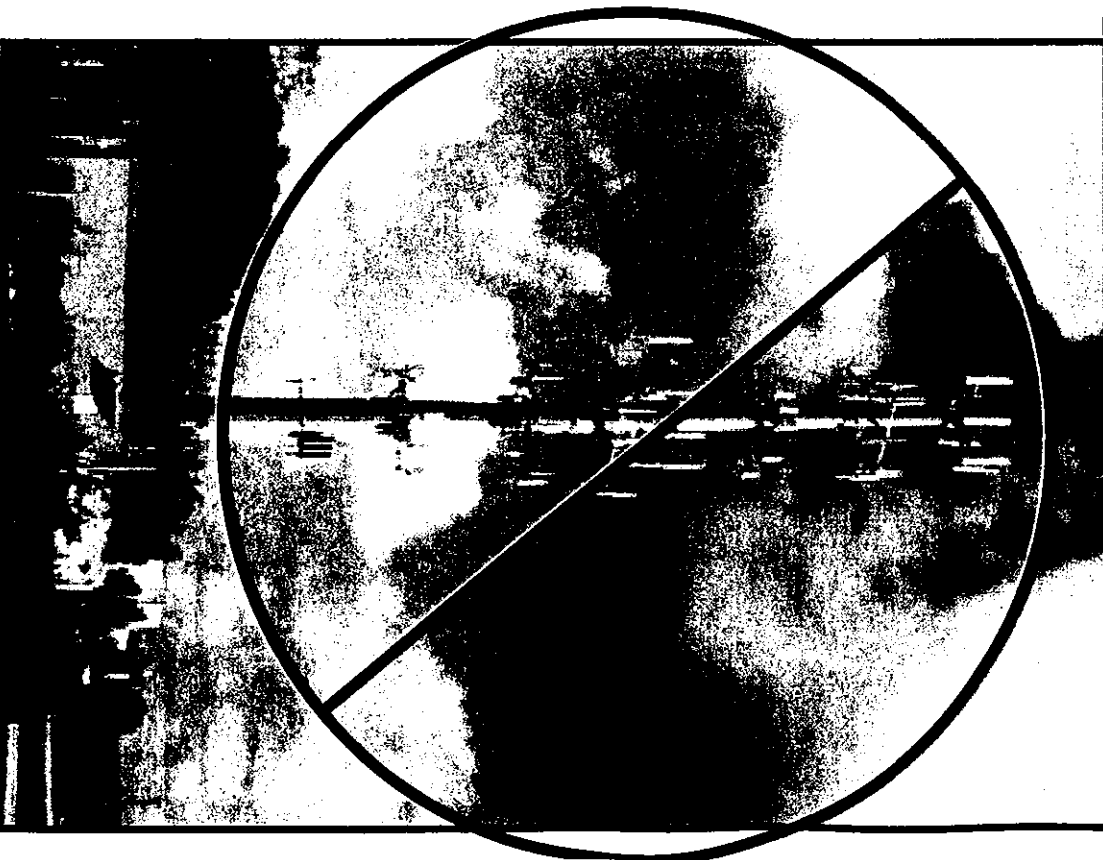


Low Visibility Impact From TOWER

Single Carrier MONOPINE MOUNT



Typical MONOPOLE Antenna Mounts

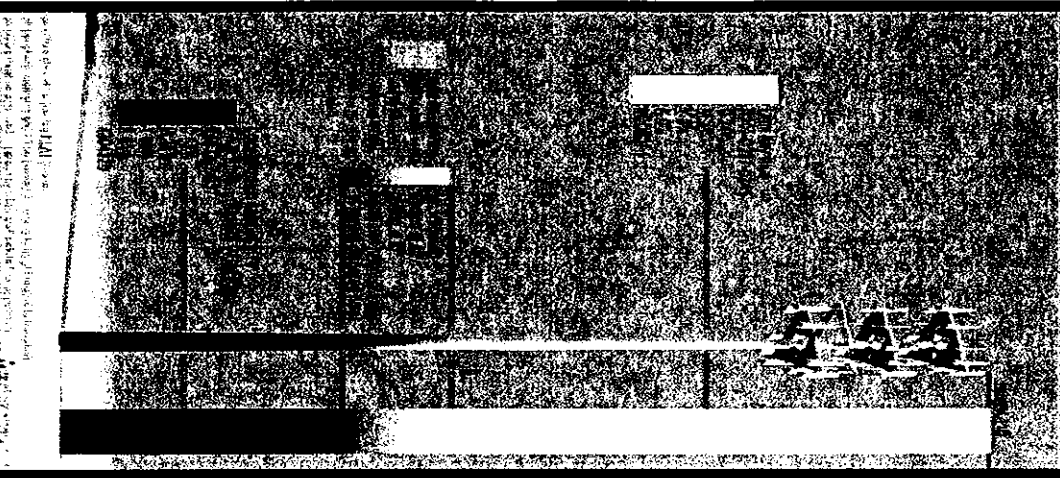




COMPAIRED STEALTH TECHNOOGY

CURRENT

Translitioning Paint Scheme Trees to Sky



PROPOSED Camouflaged MONOPINE



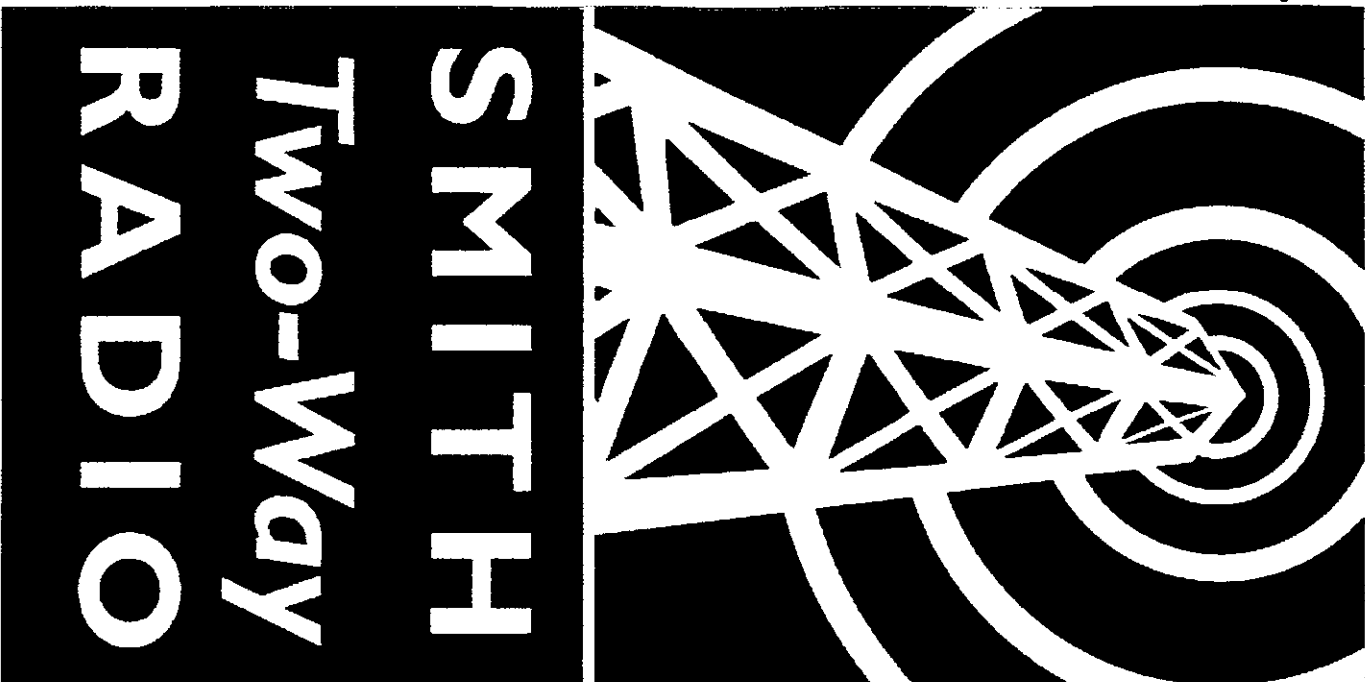
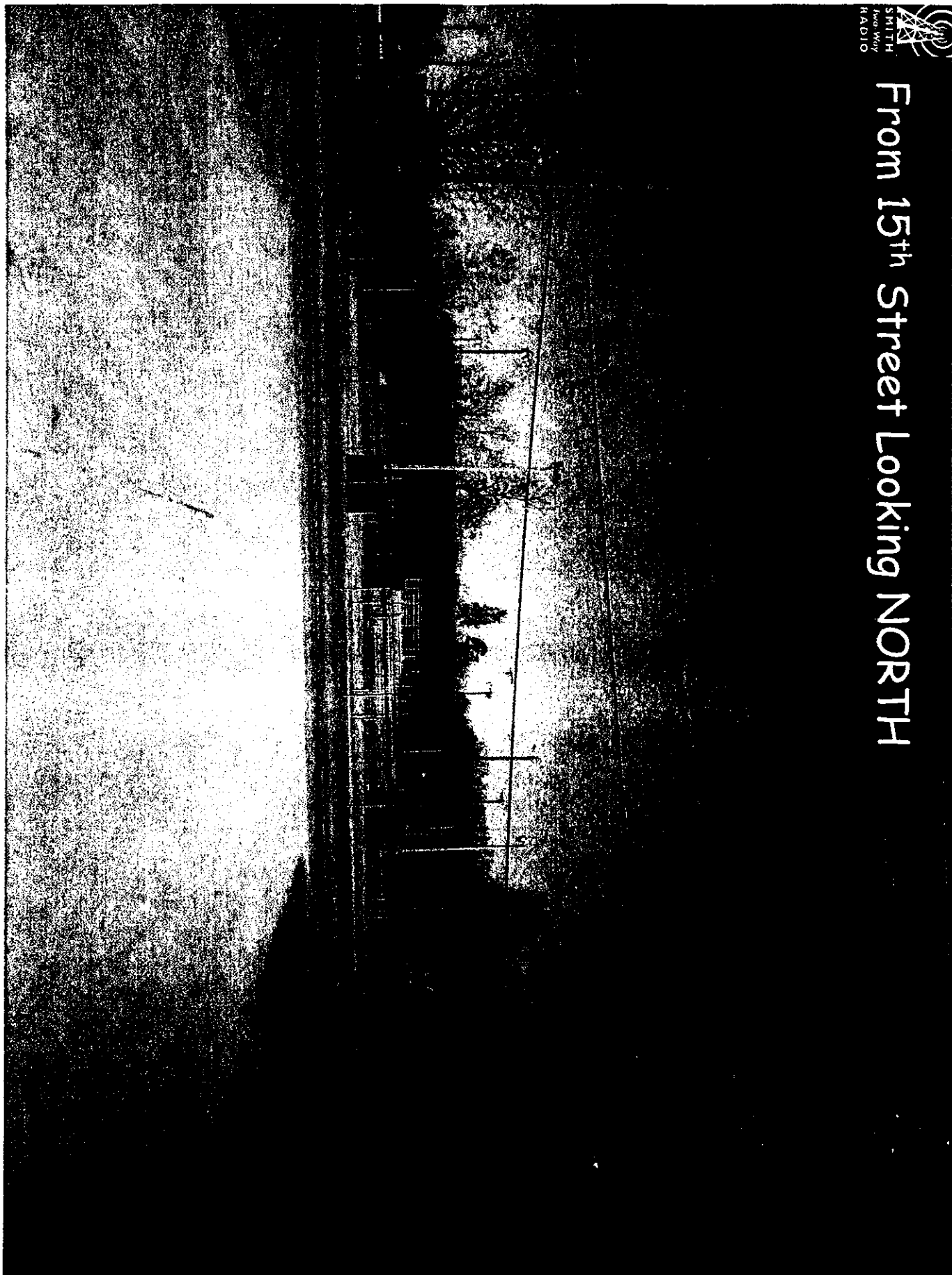


Photo- Sims

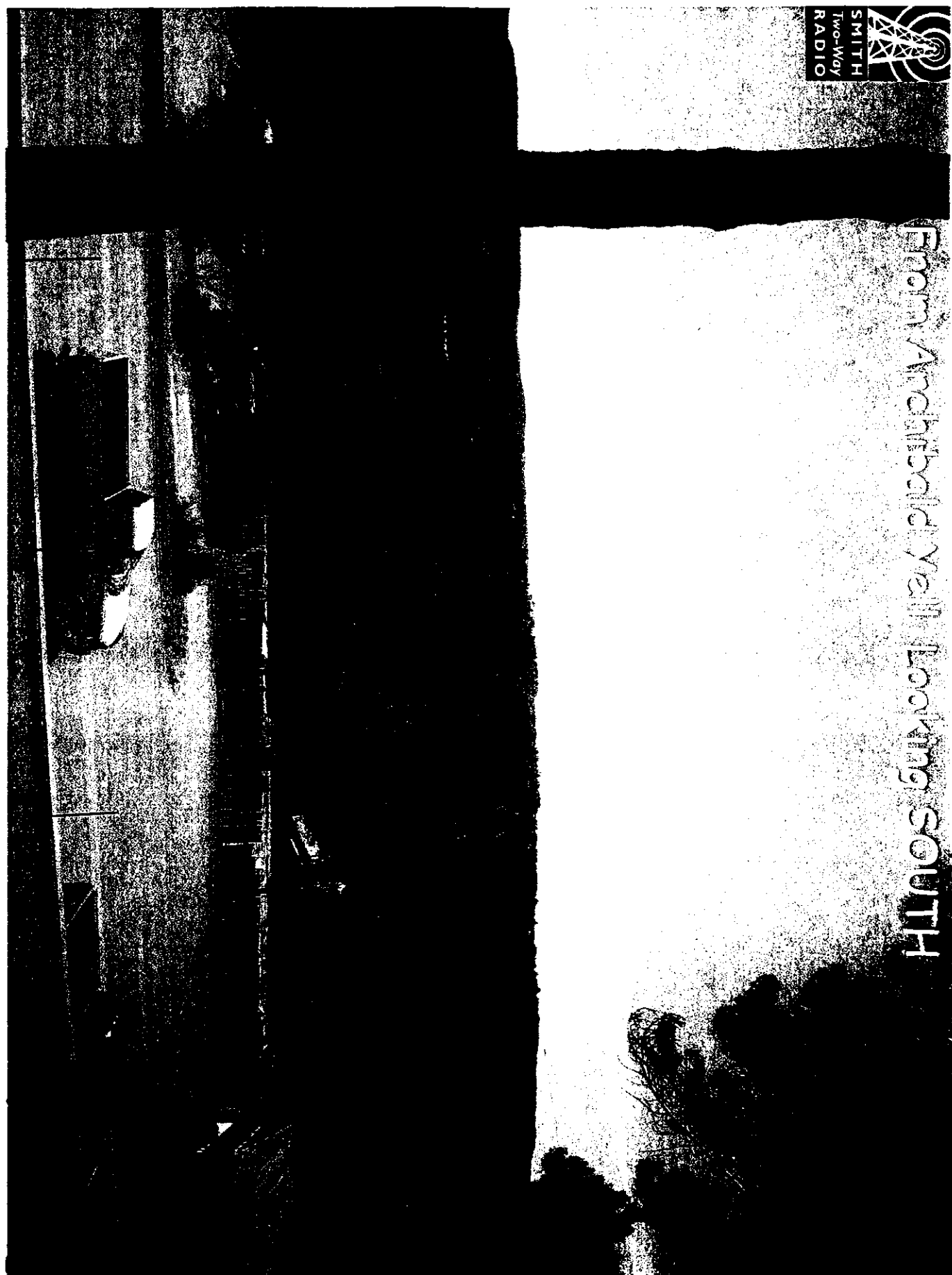


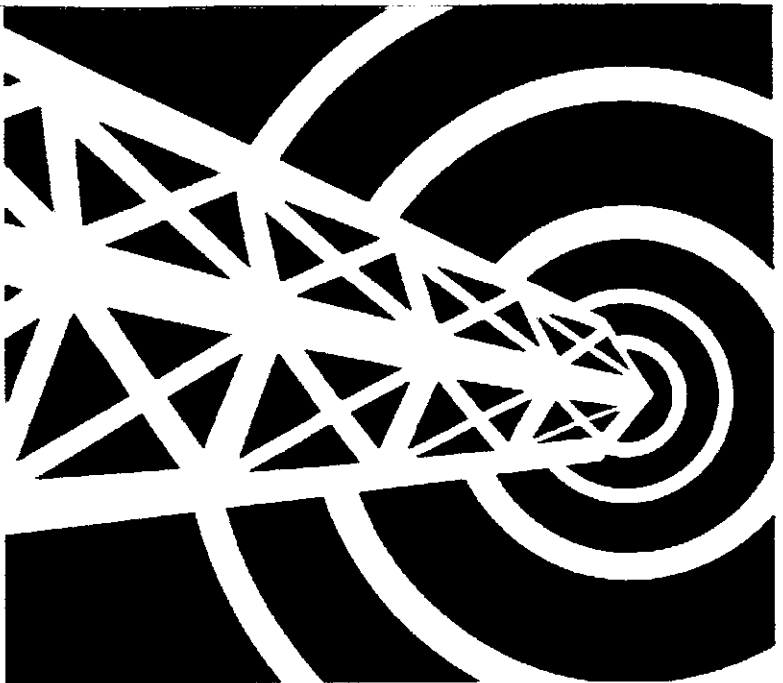
From 15th Street Looking NORTH





From Archibald Yell Looking SOUTH





SMITH
Two-Way
RADIO

Tower Information



December 14, 2006

Mr. Dave Reynolds
Smith Two-Way Radio
520 N. College St.
Fayetteville, AR 72701

RE: Proposed 150 ft. Sabre Monopine for site "Mud Creek" located in Washington County, AR.

Dear Mr. Reynolds,

Upon receipt of order, we propose to design and supply a 150' Sabre Monopine for the above referenced site. The Monopine and foundation are to be designed for 70 mph with $\frac{1}{2}$ " ice, in accordance with ANSI/TIA/EIA-222-F, to support the following:

Five (5) carriers, each including:

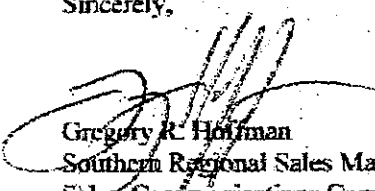
(9) 5' x 1' Panel Antennas

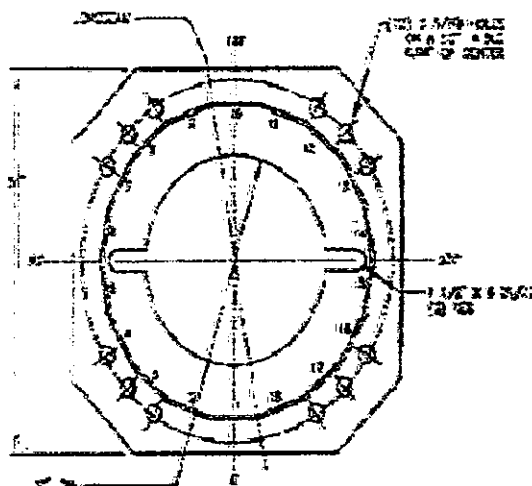
(9) 1-5/8" Coax

(3) 10' 3T-Arms

If you have any questions, please contact the undersigned.

Sincerely,


Gregory R. Hoffman
Southern Regional Sales Manager
Sabre Communications Corp.



Look Time Description	Jan Avg (Days)	Mar Avg (Days)	Apr Avg (Days)	May Avg (Days)
1) Max. Wind	31.7	11.1	21.5	15.3
2) Max. Wind Load x 75	31.5	10.7	17.4	12.7
3) Everyday Occupancy	32.7	8.9	12.1	1.9

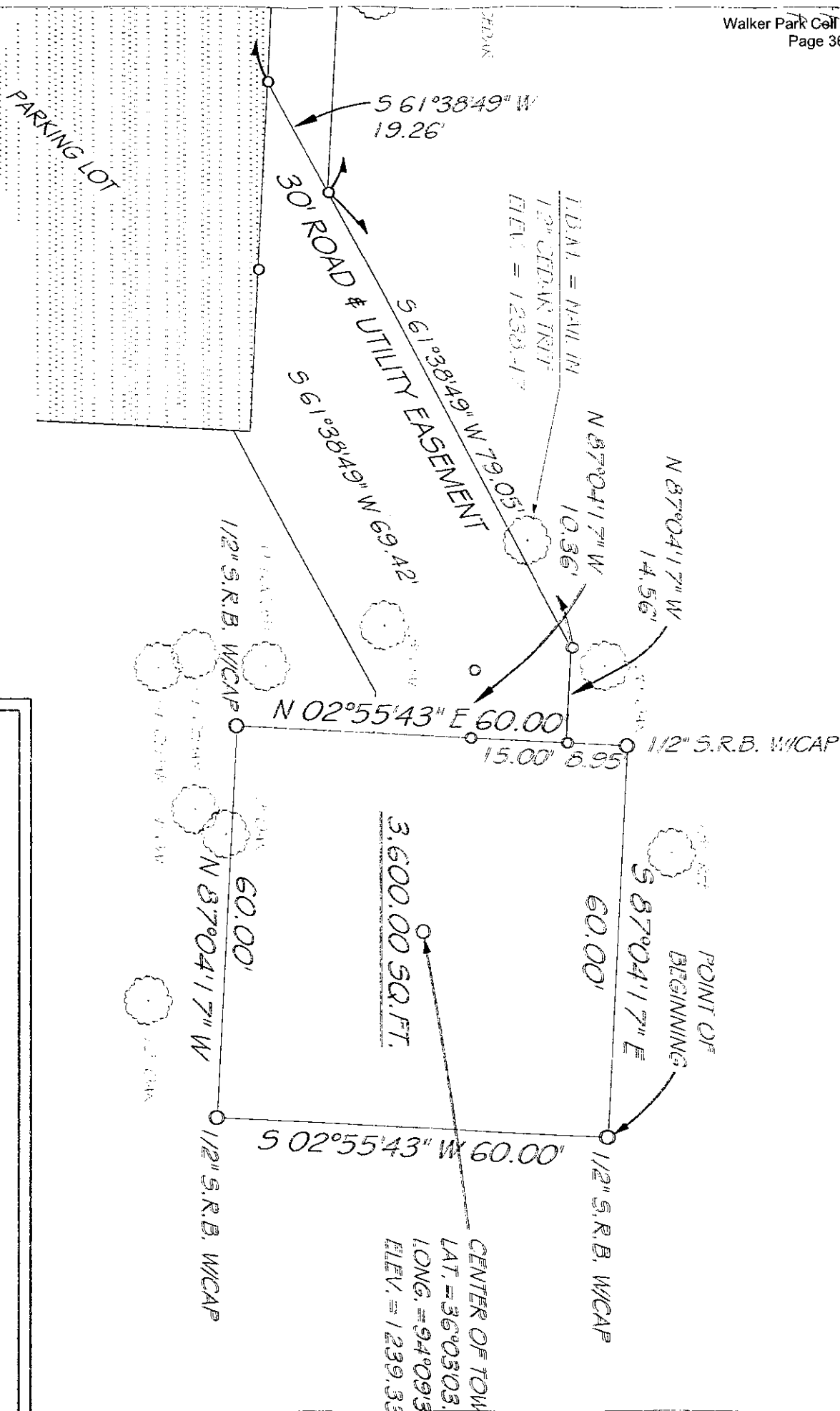
3 FULL HEIGHT STEP BOLTS
2 ANCHORS PER JOINT AND INSIDE RILE

ESTIMATED STRUCTURE WEIGHT= 20.5 Kps

Smith Two-Way Radio

[illegible]

**OLD WIRE RD
& CROSSOVER
RD
Fayetteville, AR**



WALKER PARK TOWER SITE
SCALE 1 inch = 20 feet

FAYETTEVILLE
PARKS AND RECREATION ADVISORY BOARD
Meeting Minutes March 5, 2007

A site visit to Walker Park was conducted at 5:30 P.M. to survey the location proposed by Staff for the communication tower to be installed by Smith's 2-way Radio. Discussion continued during the regular meeting at City Hall.

Opening:

The regular meeting of the Parks and Recreation Advisory Board was called to order by Chairman Wade Colwell at 6:05 P.M., on March 5, 2007 in Room 326 of the City Administration Building located at 113 West Mountain Street, Fayetteville, Arkansas.

Present:

Parks and Recreation Advisory Board members Colwell, Davidson, Burke, Davis, Biendara, Mauritson, Hatfield and Bitler were present; Park Staff Edmonston, Coles, Whillock, Curry, Wright and Jumper, City Horticulturist Netherland and audience were in attendance.

1. Walker Park Cell Tower Proposal: Dave Reynolds, Smith Radio Project Manager

The City is in the process of an agreement with Smith Radio to construct a cell tower at the new Fire Station located in Routh Park. Smith Radio is also interested in locating a cell tower in Walker Park. Staff has toured the site and found that the best location would be adjacent to the parking lot located on Block and 13th Street. The tower would be located on the northeast corner of the parking lot. The site was visited during the 5:30 pm tour. Dave Reynolds presented the proposal for the cell tower during the tour and also attended the meeting following the tour.

Colwell said the City has been given first right of refusal to provide the location for the tower. Parks would collect revenues from providing the space.

Edmonston said the Board will decide if this tower is compatible with the setting in Walker Park which the Board visited prior to this evening's convened meeting. The City will collect revenue but Smith 2-Way Radio will donate money which will be used toward the completion of the Walker Park Mural project.

Bitler asked if Staff has a recommendation.

Edmonston said the revenue is enticing since it's for a 30 year period.

Dave Reynolds explained the tower will be built at some location in the Walker Park vicinity due to the increased need for a tower in the area. Some location on commercial land will likely be used if Walker Park is not approved.

PRAB Motion:

Hatfield moved to table the vote to the Special Board meeting set for March 15th. Davis seconded the motion. The motion passed by a vote of 8-0-0.

Minutes prepared by Cheryl Whillock

March 5, 2007/ 1

**FAYETTEVILLE
PARKS AND RECREATION ADVISORY BOARD
SPECIAL MEETING**

Special Meeting Minutes March 15, 2007

Opening:

The special meeting of the Parks and Recreation Advisory Board was called to order by Chairman Wade Colwell at 5:35 P.M., on March 15, 2007 in Room 111 of the City Administration Building located at 113 West Mountain Street, Fayetteville, Arkansas.

Present:

Parks and Recreation Advisory Board members Colwell, Davidson, Burke, Davis, Biendara, Mauritson, Hatfield and Bitler were present; Park Staff Edmonston, Coles, Whillock, Curry, Wright and Jumper, City Trails Coordinator Mihalevich and audience were in attendance.

2. Walker Park Cell Tower Proposal: Dave Reynolds, Smith Radio Project Manager

Edmonston provided an update stating at the last meeting the north parking lot location at Walker Park had been mentioned as possibly a more desirable location over the proposed location. She said Parks doesn't own all of the north parking lot and the area has been designated a Parks and Tourism Outdoor Recreation Grant Boundary in perpetuity. After considering other City lands in the surrounding area it was determined none are within the area that will serve the needs required for the cell tower.

Davidson said while in Ft. Smith he had looked for the tower Smith 2-Way Radio had placed there and to the credit of the manufacturer he could not find it.

Reynolds said if the tower is located outside the Park it will not look like a pine tree but will have the same appearance as other cell towers. His company will, however, construct it to be as aesthetically pleasing as possible because no one wants a tower near them.

Edmonston said approving the tower on park land for a 30 year lease is a long time for Parks to be responsible. If it's in a park we do have some responsibility.

Reynolds said Smith Radio will be responsible for upkeep.

Edmonston said she isn't sure she wants to have the City set this precedence (commercial structures placed on park land).

Bitler asked should that area of Walker Park ever be developed would it possibly

March 15, 2007/ 1

be an obstruction.

Burke said everyone he spoke to was not in favor of setting the precedence of placing towers in parks.

Colwell suggested placing it across the street on Salvation Army land could benefit that organization and they could use the money.

Reynolds said Smith Radio has talked to the Salvation Army and the mini-storage owners next door about placement on their land.

Mauritson said the fact it's going to be placed somewhere in that area and will certainly be visible makes him think Parks should get the revenue for placing it on park land.

Hatfield asked what would happen if the tower was no longer needed due to advanced technology.

Reynolds said their contract with the City states if technology deems towers to be obsolete the existing towers installed by Smith 2-Way Radio will be dismantled within a year.

PRAB Motion:

Mauritson moved to approve the placement of the cell tower in Walker Park as presented. Davis seconded the motion. The motion failed by a vote of 3-5-0 with Davis, Mauritson and Bitler voting 'yes' and Colwell, Biendara, Hatfield, Burke and Davidson voting 'no'.

Minutes prepared by Cheryl Whillock

Fayetteville Code of Ordinances

permit, may approve the following antenna installation:

(a) *Locating on existing structures*. Installation of an antenna on an existing structure other than a tower (such as a building, sign, light pole, electric transmission tower and similarly scaled public utilities/facilities, water tower, or other free-standing nonresidential structure), provided that the addition of the antenna does not add more than 20 feet of height to the original structure;

(b) *Locating on exiting towers*. Installation of an antenna on an existing tower of any height, and the placement of additional buildings or other supporting equipment used in connection with such additional antenna, so long as the proposed additions would add no more than 20 feet of height to the original height of the tower. The addition or modification, to the extent possible, should be designated to minimize visibility; and

(c) For the purpose of co-location, the applicant must submit information from a licensed professional engineer certifying the capacity of the tower for additional providers and a letter of intent from the applicant indicating their intent to share space.

(D) *Other requirements.*

(1) *Wireless communications facilities placed on top of buildings*. When a wireless communications facility extends above the roof height of a building on which it is mounted, every effort shall be made to conceal the facility within or behind existing architectural features to limit its visibility from public ways. Facilities mounted on a roof shall be stepped back from the front façade in order to limit their impact on the building's silhouette.

(2) *Wireless communications facilities placed on sides of buildings*. Antennas which are side-mounted on buildings shall be painted or constructed of materials to match the color of the building material directly behind them.

(E) *Exemptions.*

(1) *Personal use*. Towers for personal use which, including the height of all antenna arrays, do not extend more than 80 feet from the ground and shall meet the current setbacks as required by zoning.

(2) *Temporary structures*. Temporary structures designed to be used for not more than 14 days in connection with a special event or for any reasonable period of time in and immediately following an emergency, including without limitation those towers which are identified as "C.O.W.s" or "Cellular on Wheels."

(3) *Existing towers*. All existing towers may be replaced with the same type and height of tower structure as currently exists. All replacement towers shall comply with §163.14(A) and (B) regarding color of towers, structural integrity and inspections of towers, security fencing and anti-climbing device, and vegetative screening requirements. All existing guyed towers shall also be subject to the following conditions:

(a) A demolition permit shall be issued prior to a building permit being issued for the replacement tower;

(b) The demolition permit shall expire within 90 days and shall require the existing tower to be demolished within 90 days from issuance of the building permit for the replacement tower;

(c) The new tower shall be constructed as close as technically feasible to the existing tower;

(d) Additional antennas may be installed on an existing tower of any height, and additional buildings or other supporting equipment used in connection with such additional antennas may be placed at the tower site so long as the proposed additions would add no more than 20 feet height to the original height of the existing tower. The addition or modification, to the extent possible, should be designed to minimize visibility;

(e) The replacement structure may be increased in width to a maximum of 36 inches. Existing guyed towers over 36 inches shall not be increased in width with a replacement tower.

(4) *Emergency and utility towers and antennas*. Towers and antennas under 35 feet in height used for 9-1-1 services and utility monitoring (gas, water, sewer, traffic lights, etc.).

(F) *Municipal profits from towers*. The City of Fayetteville should actively market its own property and existing structures as suitable co-

TITLE XV. UNIFIED DEVELOPMENT CODE

location sites. As noted above, the review process is shortened and simplified when co-location on city property is submitted by applicant. An annual lease amount should be charged according to the fair market value of the location. In cases where the company no longer needs the tower, the city may require it to be removed. Applicants can provide co-location space for city-owned antenna.

(G) *Abandoned antennas and towers.* At such time that a licensed carrier abandons or discontinues operation of a wireless communication facility, such carrier will notify the city of the proposed date of abandonment or discontinuation of operations. Such notice shall be given no less than 30 days prior to abandonment or discontinuation of operations. In the event that licensed carrier fails to give such notice, the wireless communications facility shall be considered abandoned upon such discontinuation of operations. Upon abandonment or discontinuation of use, the carrier shall physically remove the wireless communications facility within 90 days from the date of abandonment or discontinuation of use. "Physically remove" shall include, but not be limited to:

- (1) Removal of antenna, equipment shelters and security barriers from the subject property;
- (2) Proper disposal of the waste materials from the site in accordance with local and state solid waste disposal regulations;
- (3) Restoring the location of the wireless communications facility to its natural condition, except that any landscaping and grading shall remain in the after-condition.

(H) *Notification of change of ownership/operator.* Upon assignment or transfer of a conditional use permit, or any of the rights thereunder to a new wireless telecommunications operator, the owner or operator shall provide written notice within 30 days to the Zoning and Development Administrator.

(Ord. No. 4178, §4, 8-31-99; Ord. No. 4285, 1-2-01)

163.15-163.99 Reserved

FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

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



DEPARTMENTAL CORRESPONDENCE

LEGAL DEPARTMENT

TO: **Dan Coody**, Mayor

THRU: **Sondra Smith**, City Clerk

FROM: **Kit Williams**, City Attorney

DATE: **May 2, 2007**

A handwritten signature in black ink, appearing to be 'Kit Williams', written over a horizontal line.

RE: **Ordinances and Resolutions prepared by the City Attorney's Office and passed at the City Council meeting of May 1, 2007**

1. **Bid 07-30 – Heckathorn Construction Co.:** Resolution approving construction contract with Heckathorn Construction Co., in amount of \$1,290,520.00 for construction of Fire Station #3; and approving contingency in amount of \$170,000.00;
2. **Don Spann Architects:** Resolution approving Change Order #1 to contract with Don Spann Architects in amount of \$70,000.00 for Fire Station #3 architecture services;
3. **2007 Dept. of Homeland Security to Firefighters Grant:** Resolution authorizing Fayetteville Fire Department to apply for a 2007 Department Of Homeland Security Assistance To Firefighters Grant in the amount of \$330,700.00 to purchase a live fire mobile training unit;
4. **TM3, LLC:** Resolution authorizing Mayor to execute a contract with TM3, LLC to haul and dispose of solid waste within City Limits Of Fayetteville;
5. **TWM Waste Management:** Resolution authorizing mayor to execute contract with TWM Waste Management to haul and dispose of solid waste within City Limits Of Fayetteville;
6. **McClelland Consulting Engineers, Inc.:** Resolution awarding engineering contract to McClelland Consulting Engineers, Inc. in amount of \$71,302.00 to perform drainage study within Upper Scull Creek Watershed between College Avenue and Mission Boulevard;

7. **Tomlinson Asphalt Co., Inc.:** Resolution awarding contract to Tomlinson Asphalt Company, Inc. in amount of \$187,760.00 for traffic calming construction in the Wilson Park and Washington/Willow Neighborhoods as part of the transportation improvement bond program and approving project contingency in amount of \$18,776.00;
8. **Bid #07-32 Scott Const. Equipment:** Resolution rescinding Resolution #68-07; awarding a portion of Bid #07-32 to Scott Construction Equipment for purchase of one Trench Roller in amount of \$30,202.18 and to Hertz Equipment for purchase of one trailer to haul the trench roller in amount of \$3,835.96, both for use by Water & Sewer Division; and approving budget adjustment in the amount of \$34,400.00;
9. **Fayetteville 9-1-1 House Numbering:** Resolution To Change The Names Of Several Streets Or Roads Within Fayetteville Because Of Duplicate Or Confusing Street Names Within Annexed Areas, To Renumber All Addresses To Conform With The City Grid System, And To Approve A Budget Adjustment Of \$8,000.00 To Pay Reimbursement Expenses Of Up To \$50.00 Per Address;
10. **Roll Off Service, Inc.:** Resolution authorizing mayor to execute contract with Roll Off Service, Inc. to haul and dispose of solid waste within City Limits Of Fayetteville;
11. **Fayetteville Property Owner's District #18 – Woodbury:** Ordinance to establish and lay off Fayetteville Municipal Property Owners' Improvement District No. 18 – Woodbury;
12. **Fayetteville Property Owner's District #20 – Quarry Trace Commons Subdivision:** Ordinance to establish and lay off Fayetteville Municipal Property Owners' Improvement District No. 20 – Quarry Trace Commons Subdivision infrastructure project;
13. **2007 Citizen Survey:** Resolution authorizing mayor to negotiate and execute contract with Survey Research Center at U of A in amount not-to-exceed \$25,000.00, to design and conduct 2007 Citizen Survey and approving budget adjustment in amount of \$25,000.00.

Agenda Set
4/24/07

Aldermen

Mayor Dan Coody
City Attorney Kit Williams
City Clerk Sondra Smith



Ward 1 Position 1 – Adella Gray
Ward 1 Position 2 – Brenda Thiel
Ward 2 Position 1 – Kyle B. Cook
Ward 2 Position 2 – Nancy Allen
Ward 3 Position 1 – Robert K. Rhoads
Ward 3 Position 2 – Robert Ferrell
Ward 4 Position 1 – Shirley Lucas
Ward 4 Position 2 – Lioneld Jordan

**Tentative Agenda
City of Fayetteville Arkansas
City Council Meeting
May 1, 2007**

A meeting of the Fayetteville City Council will be held on May 1, 2007 at 6:00 PM in Room 219 of the City Administration Building located at 113 West Mountain Street, Fayetteville, Arkansas.

**Call to Order
Roll Call
Pledge of Allegiance**

~~**New Police/Court Building Discussion - Greg Tabor – Agenda Session only.**~~

A. CONSENT:

- 1. Bid #07-30 Heckathorn Construction Co:** A resolution approving a construction contract with Heckathorn Construction Co., Inc. in the amount of \$1,290,520.00 for construction of Fire Station #3; and approving a project contingency in the amount of \$170,000.00.
- 2. Don Spann Architects:** A resolution approving Change Order #1 to the contract with Don Spann Architects in the amount of \$70,000.00 for Fire Station #3 Architecture Services.
- 3. 2007 Department of Homeland Security Assistance to Firefighters Grant:** A resolution authorizing the Fayetteville Fire Department to apply for a 2007 Department of Homeland Security Assistance to Firefighters Grant in the amount of \$330,770.00 to purchase a Live Fire Mobile Training Unit.
- 4. TM3, LLC:** A resolution authorizing the Mayor to execute a contract with TM3, LLC to haul and dispose of solid waste within the city limits of Fayetteville.
- 5. TWM Waste Management:** A resolution authorizing the Mayor to execute a contract with TWM Waste Management to haul and dispose of solid waste within the city limits of Fayetteville.

✓ 6. **McClelland Consulting Engineers, Inc:** A resolution awarding an engineering contract to McClelland Consulting Engineers, Inc. in the amount of \$71,302.00 to perform a drainage study within the Upper Scull Creek Watershed between College Avenue and Mission Boulevard.

✓ 7. **Tomlinson Asphalt Company, Inc:** A resolution awarding a contract to Tomlinson Asphalt Company, Inc. in the amount of \$187,760.00 for traffic calming construction in the Wilson Park and Washington/Willow Neighborhoods as part of the Transportation Improvement Bond Program; and approving a project contingency in the amount of \$18,776.00.

✓ 8. **2007 Citizen Survey:** A resolution authorizing the Mayor to negotiate and execute a contract with the Survey Research Center (SRC) at the University of Arkansas in an amount not-to-exceed of \$25,000.00 to design and conduct the 2007 Citizen Survey; and approving a budget adjustment in the amount of \$25,000.00.

*Need New
Copy from
Susan Thomas*

B. UNFINISHED BUSINESS:

✓ 1. **Fayetteville E911 House Numbering:** A resolution to change the names of several streets or roads within Fayetteville because of duplicate or confusing street names within annexed areas. *This resolution was tabled at the April 17, 2007 City Council meeting to the May 1, 2007 City Council meeting.*

✓ 2. **RZN 07-2504 (Sloan/Cobblestone):** An ordinance rezoning that property described in rezoning petition RZN 07-2504, for approximately 17.22 acres, located south of Salem Road and east of Crystal Springs Subdivision in the interior of the Cobblestone Subdivision from RSF-4, Residential Single-Family, 4 units per acre, to RSF-8, Residential Single-Family, 8 units per acre. *This ordinance was left on the Second Reading at the April 17, 2007 City Council meeting.*

✓ 3. **Roll Off Service, Inc:** A resolution denying renewal of the contract with Roll Off Service, Inc. to haul and dispose of solid waste within the city limits of Fayetteville. *This resolution was tabled at the April 17, 2007 City Council meeting to the May 1, 2007 City Council meeting.*

✓ 4. **The Links at Fayetteville Appeal:** An ordinance establishing a Residential Planned Zoning District titled R-PZD 07-2452, The Links at Fayetteville, located at the northeast corner of Wedington and Ruppel Road; containing approximately 152.23 acres; amending the official zoning map of the city of Fayetteville; and adopting the Associated Master Development Plan. *This ordinance was left on the Second Reading at the April 17, 2007 City Council meeting.*

C. NEW BUSINESS:

✓ 1. **Fayetteville Municipal Property Owners' Improvement District No. 18 - Woodbury:** An ordinance to establish and lay off Fayetteville Municipal Property Owners' Improvement District No. 18 – Woodbury.

- ✓ 2. **VAC 07-2522 (Johnson):** An ordinance approving VAC 07-2522 submitted by Bates and Associates for property located at the west side of Gregg Avenue, between 6th and Prairie Streets, vacating a 20' wide portion of un-constructed right-of-way, a total of 0.20 acres.
- ✓ 3. **ADM 07-2565 (North Point):** An ordinance approving ADM 07-2565, for property located at Lot 5 Block 1 of the North Point Subdivision, repealing and replacing Ordinance No. 4932 to allow for a lesser easement vacation than previously approved as indicated on the attached map and legal description.
- ✓ 4. **Walker Park Cell Tower:** A resolution to approve a twenty-five year lease with Callahan Tower Joint Venture for a small lot in Walker Park for a monopine cell tower at an annual rent of between \$12,000.00 and \$54,000.00, plus a \$20,000.00 contribution to the Walker Park Mural Project.

D. INFORMATIONAL:

City Council Tour: ~~April 30, 2007~~ **NONE**

Add:

(Consent) → Scott Construction Equipment Trench
Roller Purchase. (Need to route)

(# 2 NB) → Fayetteville Municipal Property Owners'
Improvement District #20

Pre-Agenda Meeting 11/18/07

Aldermen

Mayor Dan Coody
City Attorney Kit Williams
City Clerk Sondra Smith



Ward 1 Position 1 – Adella Gray
Ward 1 Position 2 – Brenda Thiel
Ward 2 Position 1 – Kyle B. Cook
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City Council Meeting
May 1, 2007**

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9. **Walker Park Cell Tower:** in City Attorney's office waiting on contract

~~Gary Damas says there is not a contract involved.~~

B. UNFINISHED BUSINESS:

1. **Fayetteville E911 House Numbering:** A resolution to change the names of several streets or roads within Fayetteville because of duplicate or confusing street names within annexed areas. *This resolution was tabled at the April 17, 2007 City Council meeting to the May 1, 2007 City Council meeting.*

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*Remove
move to
next agenda*

4. ~~**ADM 07-2566 Amend Title XV (Use Unit Ordinance Amendments):** An ordinance amending Title XV: Unified Development Code of the Code of Fayetteville to amend Chapter 161: Zoning Regulations, Chapter 162: Use Units, and Chapter 163: Use Conditions in order to assign Use Unit 29: Dance Halls, Use Unit 40: Sidewalk Cafes, and Use Unit 5: Government Facilities to appropriate zoning districts.~~

D. INFORMATIONAL:

City Council Tour: April 30, 2007

Mayor Coody has gone to Washington D.C. to meet with representatives from several agencies, including the U.S. Environmental Protection Agency, the U.S. Department of Justice, the U.S. Department of Transportation and the U.S. Dept. of Housing and Urban Development. While he is there he will also meet with representatives of the offices of Congressman Boozman and Senator Lincoln. The purpose of the trip is to make every effort to bring more federal dollars home to Fayetteville.

From: Greg Tabor
To: Smith, Sondra
Date: 4/17/2007 9:16 AM
Subject: Agenda Item

Sorry I forgot to send this to you yesterday. I just need a few minutes at the agenda session to discuss the new Police/Court Building. Thanks, Greg

2. 5. New Business

From: "Dave Reynolds" <DReynolds@smithradio.com>
To: <city_clerk@ci.fayetteville.ar.us>
Date: 5/1/2007 9:39 AM
Subject: TABLE TONIGHTS ITEM

Sondra,

This an official request to table our Item for tonight's meeting until the June 5th Meeting.

Thank You,

Dave Reynolds

479-443-2222

PS. This item should be listed as Smith Communications Not Callahan Tower Joint Venture

4. Walker Park Cell Tower: A resolution to approve a twenty-five year lease with

Callahan Tower Joint Venture for a small lot in Walker Park for a monopine cell tower at

an annual rent of between \$12,000.00 and \$54,000.00, plus a \$20,000.00 contribution to

the Walker Park Mural Project.

Arkansas Democrat Gazette

NORTHWEST ARKANSAS EDITION

Northwest Arkansas Times
Benton County Daily Record

P. O. BOX 1607
FAYETTEVILLE, AR 72702
PHONE: 479-571-6421

AFFIDAVIT OF PUBLICATION

I, Erin Emis, do solemnly swear that I am Legal Clerk of the Arkansas Democrat Gazette newspaper. Printed and published in Benton County Arkansas, (Lowell) and that from my own personal knowledge and reference to the files of said publication, the advertisement of:

Final Agenda

Was inserted in the Regular Editions:

April 30, 2007

Publication Charge: \$174.08

See
Attached

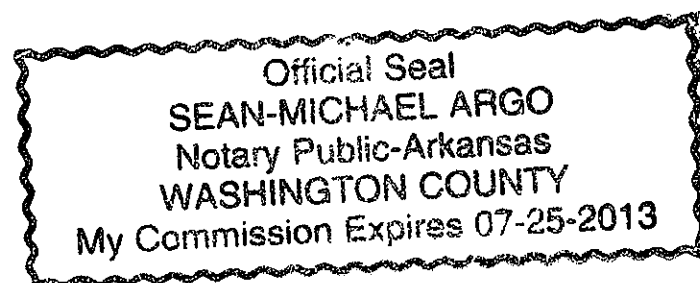
Subscribed and sworn to before me
This 01 day of May, 2007.

Notary Public

Sean-Michael Argo

My Commission Expires:

07-25-2013



RECEIVED

MAY 16 2007

CITY OF FAYETTEVILLE
CITY CLERK'S OFFICE

**FINAL AGENDA
CITY OF FAYETTEVILLE ARKANSAS
CITY COUNCIL MEETING
MAY 1, 2007**



A meeting of the Fayetteville City Council will be held on May 1, 2007 at 6:00 PM in Room 219 of the City Administration Building located at 113 West Mountain Street, Fayetteville, Arkansas.

**Call to Order
Roll Call
Pledge of Allegiance**

A. CONSENT:

- 1. Approval of the March 20, 2007 and April 3, 2007 City Council meeting minutes.**
- 2. Bid #07-30 Heckathorn Construction Co:** A resolution approving a construction contract with Heckathorn Construction Co., Inc. in the amount of \$1,290,520.00 for construction of Fire Station #3; and approving a project contingency in the amount of \$170,000.00.
- 3. Don Spann Architects:** A resolution approving Change Order #1 to the contract with Don Spann Architects in the amount of \$70,000.00 for Fire Station #3 Architecture Services.
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- 6. TWM Waste Management:** A resolution authorizing the Mayor to execute a contract with TWM Waste Management to haul and dispose of solid waste within the city limits of Fayetteville.
- 7. McClelland Consulting Engineers, Inc:** A resolution awarding an engineering contract to McClelland Consulting Engineers, Inc. in the amount of \$71,302.00 to perform a drainage study within the Upper Scull Creek Watershed between College Avenue and Mission Boulevard.
- 8. Tomlinson Asphalt Company, Inc:** A resolution awarding a contract to Tomlinson Asphalt Company, Inc. in the amount of \$187,760.00 for traffic calming construction in the Wilson Park and Washington/Willow Neighborhoods as part of the Transportation Improvement Bond Program; and approving a project contingency in the amount of \$18,776.00.
- 9. 2007 Citizen Survey:** A resolution authorizing the Mayor to negotiate and execute a contract with the Survey Research Center (SRC) at the University of Arkansas in an amount not-to-exceed of \$25,000.00 to design and conduct the 2007 Citizen Survey; and approving a budget adjustment in the amount of \$25,000.00.
- 10. Bid #07-32 Scott Construction Equipment Trench Roller Purchase:** A resolution rescinding Resolution 68-07; awarding a portion of bid #07-32 to Scott Construction Equipment for the purchase of one (1) Trench Roller in the amount of \$30,202.18 and to Hertz Equipment for the purchase of one (1) Trailer to haul the trench roller in the amount of \$3,835.96, both for use by the Water & Sewer Division; and approving a budget adjustment in the amount of \$34,400.00.

B. UNFINISHED BUSINESS:

- 1. Fayetteville E911 House Numbering:** A resolution to change the names of several streets or roads within Fayetteville because of duplicate or confusing street names within annexed areas. *This resolution was tabled at the April 17, 2007 City Council meeting to the May 1, 2007 City Council meeting.*
- 2. RZN 07-2504 (Sloan/Cobblestone):** An ordinance rezoning that property described in rezoning petition RZN 07-2504, for approximately 17.22 acres, located south of Salem Road and east of Crystal Springs Subdivision in the interior of the Cobblestone Subdivision from RSF-4, Residential Single-Family, 4 units per acre, to RSF-8, Residential Single-Family, 8 units per acre. *This ordinance was left on the Second Reading at the April 17, 2007 City Council meeting.*
- 3. Roll Off Service, Inc:** A resolution denying renewal of the contract with Roll Off Service, Inc. to haul and dispose of solid waste within the city limits of Fayetteville. *This resolution was tabled at the April 17, 2007 City Council meeting to the May 1, 2007 City Council meeting.*
- 4. The Links at Fayetteville Appeal:** An ordinance establishing a Residential Planned Zoning District titled R-PZD 07-2452, The Links at Fayetteville, located at the northeast corner of Wedington and Ruppel Road; containing approximately 152.23 acres; amending the official zoning map of the city of Fayetteville; and adopting the Associated Master Development Plan. *This ordinance was left on the Second Reading at the April 17, 2007 City Council meeting.*

C. NEW BUSINESS:

- 1. Fayetteville Municipal Property Owners' Improvement District No. 18 - Woodbury:** An ordinance to establish and lay off Fayetteville Municipal Property Owners' Improvement District No. 18 - Woodbury.
- 2. Fayetteville Municipal Property Owners' Improvement District No. 20 - Quarry Trace Commons Subdivision:** An ordinance to establish and lay off Fayetteville Municipal Property Owners' Improvement District No. 20 - Quarry Trace Commons Subdivision Infrastructure Project.
- 3. VAC 07-2522 (Johnson):** An ordinance approving VAC 07-2522 submitted by Bates and Associates for property located at the west side of Gregg Avenue, between 6th and Prairie Streets, vacating a 20' wide portion of un-constructed right-of-way, a total of 0.20 acres.
- 4. ADM 07-2565 (North Point):** An ordinance approving ADM 07-2565, for property located at Lot 5 Block 1 of the North Point Subdivision, repealing and replacing Ordinance No. 4932 to allow for a lesser easement vacation than previously approved as indicated on the attached map and legal description.
- 5. Walker Park Cell Tower:** A resolution to approve a twenty-five year lease with Callahan Tower Joint Venture for a small lot in Walker Park for a monopine cell tower at an annual rent of between \$12,000.00 and \$54,000.00, plus a \$20,000.00 contribution to the Walker Park Mural Project.

**D. INFORMATIONAL:
City Council Tour: None**

RECEIVED

MAY 16 2007

CITY OF FAYETTEVILLE
CITY CLERK'S OFFICE